



AGENDA ITEM

5 - 7

PLANNING APPLICATION P/13/0513/FUL - ERECTION OF DETACHED DWELLINGHOUSE AND DETACHED DOMESTIC DOUBLE GARAGE (PLOT 1) AT LAND TO THE SOUTH EAST OF BYWAYS, GLEN ROAD, TORWOOD (CONTINUATION)

PLANNING APPLICATION P/13/0514/FUL - ERECTION OF DETACHED DWELLINGHOUSE AND DETACHED DOMESTIC DOUBLE GARAGE (PLOT 2) AT LAND TO THE SOUTH EAST OF BYWAYS, GLEN ROAD, TORWOOD (CONTINUATION)

PLANNING APPLICATION P/13/0509/FUL - ERECTION OF DETACHED DWELLINGHOUSE AND DETACHED DOMESTIC DOUBLE GARAGE (PLOT 3) AT LAND TO THE SOUTH EAST OF BYWAYS, GLEN ROAD, TORWOOD (CONTINUATION)

List of Documents relating to Agenda Items 5, 6 and 7

1.	Report by Director of Corporate and Housing Services including:-	18-23
(a)	Annex A - Report to meeting of Planning Review Committee on 9 October 2015.	24-26
(b)	Appendix 1 - Minutes of meeting of Planning Review Committee on 9 April, 9 June and 29 September 2014.	27-36
(c)	Appendix 2 - Decision Notices relating to Plots 1, 2 and 3.	37-66
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(f)	Appendix 5 - Letters sent by Chief Governance Officer and Brodies Solicitors.	104-117
(g)	Appendix 6 - Responses to letters from Chief Governance Officer and Brodies Solicitors.	118-129
(h)	Annex B – Minute of meeting of Planning Review Committee on 9 October 2015.	130-132
(i)	Annex C – Scottish Ministers Screening Direction dated 1 March 2016.	133-134

2. Important Note: - the previous papers on this item were submitted to the meetings of the Planning Review Committee on 9 June and 29 September 2014 and 9 October 2015. These papers are available to view on the Falkirk Council website at:-

<http://www.falkirk.gov.uk/services/council-democracy/councillors-decision-making/committees/planning-local-review-body>

See website

FALKIRK COUNCIL

Subject: PLANNING APPLICATIONS P/13/0509/FUL, P/13/0513/FUL & P/13/0514/FUL - LAND TO THE SOUTH-EAST OF BYWAYS, GLEN ROAD TORWOOD
Meeting: PLANNING REVIEW COMMITTEE
Date: 9 JUNE 2016
Author: DIRECTOR OF CORPORATE AND HOUSING SERVICES

1. INTRODUCTION

- 1.1 Members will recall that the three applications noted above were considered at meetings of the Planning Review Committee on 9 April 2014, 9 June 2014, 29 September 2014 and 9 October 2015. The report to the meeting held on 9 October 2015 is attached as Annex A. The appendices to Annex A are referred to in this report also and will be called Appendix 1, Appendix 2 and so on. Copies of the minutes of all of these meetings are attached at Appendix 1 and Annex B.
- 1.2 At the meeting of 29 September 2014, the Planning Review Committee decided, in each case, that it was minded to grant permission subject to the satisfactory conclusion of planning agreements. Copies of the three decision notices are at Appendix 2.
- 1.3 Subsequent to that, the Scottish Ministers determined, on appeal, that deforestation had been carried out without consent under the Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999 (“the 1999 Regs”) and that such consent was required. The Scottish Ministers’ decision in the enforcement appeal (Appendix 4) was considered to represent a material change in circumstances, which the Planning Review Committee required to take into account in determining the application.
- 1.4 At its meeting of 9 October 2015, the Planning Review Committee agreed to seek a screening direction from the Scottish Ministers as to whether or not the proposed developments required Environmental Impact Assessment (EIA) to be undertaken. The Scottish Ministers’ response is attached as Annex C and advises that EIA is not required to be carried out but comments that the sites are subject to Enforcement Notices issued by FCS under the 1999 Regs requiring planting and subsequent maintenance of trees on the sites for a period of 10 years.

2. BACKGROUND

- 2.1 The report presented to the Planning Review Committee on 9 October 2015 set out the background at that time. This report repeats much of that information for ease of reference.

- 2.2 Applications were submitted to the Council for the development of three houses on three adjoining plots of land. The Planning Review Committee considered the applications and, as part of these considerations, requested the Council's Director of Development Services to provide a screening opinion in respect of the applications under the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 ("the 2011 Regs"). This opinion (at Appendix 3) indicated EIA was not required. The Committee, as noted above, decided that it was minded to grant planning permission subject to a planning agreement requiring replacement of a conifer woodland elsewhere at Whinnie Muir with a native broadleaved woodland over an area twice the size of the application site. The planning agreement remains unconcluded and therefore permission has not yet been issued.
- 2.3 As the Planning Review Committee was and is aware, three enforcement notices had previously been issued by Forestry Commission Scotland (FCS) under the 1999 Regs in respect of the failure of the landowners to obtain consent under those regulations for deforestation in respect of the three plots of land. The landowners appealed unsuccessfully to the Scottish Ministers against those enforcement notices. As noted above, the Scottish Ministers determined, on 14 April 2015 (subsequent to the minded to grant decision by the Planning Review Committee), that deforestation had been carried out without consent under the 1999 Regs and that such consent was required (even though the area of deforestation was just below the threshold at which an automatic requirement for consent applied). Copies of the Reporter's report and the Scottish Ministers' Decision Notice are at Appendix 4. The letter from the FCS, referred to at paragraph 2.6 below, acknowledges that the existence of the enforcement notices is not in itself an impediment to planning permission being granted. If planning permission is to be granted, FCS recommend that an informative be included advising that consent should also be obtained under the 1999 Regs prior to works commencing.
- 2.4 The Council took specialist external legal advice on the matter at that time and was advised that grant of the planning applications would include consent for a deforestation which the Scottish Ministers had determined in the enforcement notice appeal was an EIA project under the 1999 Regs. Although the Planning Review Committee had determined it was minded to grant permission, since the decision notice had not yet been issued the application had not finally been determined. The Scottish Ministers' decision in the enforcement appeal was considered to represent a material change in circumstances, which the Planning Review Committee required to take into account in determining the application. It followed that grant of the planning permissions was likely to be unlawful until the Planning Review Committee had taken the Scottish Ministers' appeal decision into account in its determination of the planning applications.
- 2.5 The Council, as noted above, had already issued a negative screening opinion in respect of the applications under the 2011 Regs. The Planning Review Committee was, however, not bound by a negative screening opinion and could subsequently decide that EIA was required for the planning applications, having considered the Scottish Ministers' appeal decision. However, it appeared that the Council was not in a position itself to resolve this matter since, on the face of it, it has before it three separate applications for houses, all of which would fall below a threshold at which the Council would either be obliged or have power to screen them for EIA.

- 2.6 The Council's legal advisers, Brodies LLP, prepared letters that were sent to the applicants and the interested parties and copies of these letters are at Appendix 5 (there being three versions of the letter attached – one to the applicants' agent, one to FCS and an example of the letter sent to interested parties). Comments on the letters were requested and the responses received are at Appendix 6. The FCS letter mentioned material change in circumstances (particularly in relation to replanting that has taken place at the application site) that they consider should be taken into account by the Planning Review Committee. They also raised a difference of opinion with the Council's advice on the relationship between enforcement under the 1999 Regs and the grant of planning permission.
- 2.7 All of this information was presented to members at the Planning Review Committee meeting of 9 October 2015. At that meeting, members considered all of the information before them and decided to request a screening direction from the Scottish Ministers in respect of the applications.
- 2.8 Accordingly, on 24 November 2015 the Council (pursuant to Regulation 5 of the 2011 Regs) requested that Scottish Ministers issue a screening direction to determine whether EIA is required in connection with the three planning applications.
- 2.9 The Scottish Ministers, on 1 March 2016, intimated their opinion to be that the applications should be treated as three separate and distinct developments. The screening direction is, as noted above, attached as Annex C. Even on the assumption that each development may comprise an "urban development project" under the 2011 Regs, each development on its own does not exceed the relevant threshold criterion in Column 2 of Schedule 2 to the 2011 Regs and consequently is not Schedule 2 development. Therefore, Scottish Ministers conclude that no further screening or EIA is required. Scottish Ministers accordingly directed that the three planning applications are not EIA development within the meaning of the 2011 Regulations and so an EIA will not be required. FCS via their agent has previously opined that the three applications should be taken together as one development for assessment against the 2011 Regulations and therefore to assess the applicants as separate developments would amount to "project slicing". The Scottish Ministers' screening direction is, however, conclusive on these matters.
- 2.10 Members should be aware that, in the Screening Direction, Scottish Ministers note that the sites identified in the planning applications are still subject to the enforcement notices issued by FCS and in respect of which Scottish Ministers did not uphold the applicants' appeal. As previously commented and as the Council's specialist legal advisers have advised, the implementation of the planning permission, if granted, would result in a change of use of the land and, at that point in time, the FCS should withdraw their enforcement notices.

- 2.11 FCS has expressed the view that as well as planning permission consent; consent under the 1999 Regs will also be required to implement the replantation at Whinnie Muir. FCS state that they object to the replantation works and that they would not give consent to the replantation. Their legal and/or policy basis for refusing consent is not clear. The lack of a reasonable prospect of the replantation works being carried out is not necessarily a ground for refusal of permission and such an objection does not prevent the entering into of a planning agreement. It is understood that the site of the new planting is already planted with a conifer plantation. The conifer plantation would be replaced with native broad leaf species. As no conversion of land use from forestry is therefore involved, it would appear that the new planting would not fall under the 1999 Regs regime. If members are minded to grant permission subject to a legal agreement, it is suggested below that they may wish to clarify that any such replantation works at Whinnie Muir are completed prior to commencement of development of the dwellinghouses.

3. Council Options

- 3.1 As previously advised to Committee, it is important that members take the Scottish Ministers' appeal decision and their screening direction into account along with the comments of the applicants and FCS before determining the planning applications.
- 3.2 The applications have been appealed to the Planning Review Committee. It has previously been determined that it is minded to grant permission subject to conclusion of a planning agreement. It is for the Committee to decide how it should take account of the Scottish Ministers' appeal decision, the Scottish Ministers' screening direction and other changes in circumstances which FCS claim are material to the planning decisions.
- 3.3 It appears that Committee has the following options:
- 3.3.1 To decide, notwithstanding the Scottish Ministers' appeal decision and having taken into account the representations from FCS, the applicants and the Scottish Ministers' screening direction, if it is considered that there are no material changes in circumstances which justify a refusal of the planning permissions, to proceed to conclude the planning agreement and, if satisfactorily concluded, then issue permission. In that case, it is suggested that the Committee may wish to consider clarifying that the replacement planting at Whinnie Muir would require to be completed in advance of commencement of construction of the dwellinghouses;
- 3.3.2 To decide, having taken into account the Scottish Ministers' appeal decision, the representations from FCS, the applicants and the Scottish Ministers' screening direction, that there is a material change of circumstances which would justify a refusal of the planning permissions and that the planning applications should be refused; or
- 3.3.3 To decide, having taken into account the Scottish Ministers' appeal decision, the representations from FCS, the applicants and the Scottish Ministers' screening direction, that further representations should be made or information should be made available or provided to the Committee by means of written submissions, a hearing session or an inspection of the land.

4. RECOMMENDATION

- 4.1** It is recommended that Committee considers the terms of the report and its Appendices and determines which option set out in paragraph 3.3 it wishes to pursue.

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Director of Corporate and Housing Services
Date: 30 May 2016
Contact Officer: Iain Henderson
Tel: 01324 506070

FALKIRK COUNCIL

Subject: PLANNING APPLICATIONS P/13/0509/FUL, P/13/0513/FUL & P/13/0514/FUL - LAND TO THE SOUTH-EAST OF BYWAYS, GLEN ROAD TORWOOD
Meeting: PLANNING REVIEW COMMITTEE
Date: 9 OCTOBER 2015
Author: DIRECTOR OF CORPORATE AND HOUSING SERVICES

1. INTRODUCTION

- 1.1 Members will recall that the three applications noted above were considered at meetings of the Planning Review Committee on 9 April 2014, 9 June 2014 and 29 September 2014. Copies of the minutes of these meetings are attached as Appendix 1.
- 1.2 At the meeting of 29 September, the Planning Review Committee decided, in each case, that it was minded to grant permission subject to the satisfactory conclusion of planning agreements. Copies of the three decision notices are attached as Appendix 2.

2. BACKGROUND

- 2.1 Applications were submitted to the Council for the development of three houses on three adjoining plots of land. The Planning Review Committee considered the applications and, as part of these considerations, requested the Council's Director of Development Services to provide a screening opinion in respect of the applications under the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 ("the 2011 Regs"). This opinion (attached as Appendix 3) indicated environmental impact assessment (EIA) was not required. The Committee, as noted above, decided that it was minded to grant planning permission subject to a planning agreement requiring replacement of a conifer woodland elsewhere at Whinnie Muir with a native broadleaved woodland over an area twice the size of the application site. The planning agreement has not yet been concluded and therefore permission has not yet been issued.
- 2.2 Three enforcement notices had previously been issued by Forestry Commission Scotland (FCS) under the Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999 ("the 1999 Regs") in respect of the failure to obtain consent under those regulations for deforestation in respect of the three plots of land. The landowners appealed unsuccessfully to the Scottish Ministers against those enforcement notices. The Scottish Ministers determined, on 14 April 2015 (subsequent to the minded to grant decision by the Planning Review Committee), that deforestation had been carried out without consent under the 1999 Regs and that such consent was required (even though the area of deforestation was just below the threshold at which an automatic requirement for consent applied). Copies of the Reporter's report and the Scottish Ministers' Decision Notice are attached at Appendix 4. The letter from the FCS, referred to at paragraph 2.5 below, acknowledges that the existence of the enforcement notices is not in itself an impediment to planning permission being granted. If planning permission is to be granted, the Forestry Commission recommend that an informative be included advising that consent should also be obtained under the 1999 Regulations prior to works commencing.

- 2.3 The Council has taken specialist external legal advice on the matter and it appears that grant of the planning applications will include consent for a deforestation which the Scottish Ministers have determined in the enforcement notice appeal is an EIA project. Although the Planning Review Committee has determined it is minded to grant permission, since the decision notice has not yet been issued the application has not finally been determined. The Scottish Ministers' decision in the enforcement appeal appears to represent a material change in circumstances, which the Planning Review Committee is required to take into account in determining the application. It follows that, as things stand, grant of the planning permissions is likely to be unlawful until the Planning Review Committee has taken the Scottish Ministers' appeal decision into account in its determination of the planning applications.
- 2.4 The Council, as noted above, has already issued a negative screening opinion in respect of the applications under the 2011 Regs. The Planning Review Committee is, however, not bound by a negative screening opinion and may subsequently decide that EIA is required for the planning applications, having considered the Scottish Ministers' appeal decision. However, it appears that the Council may not be in a position itself to resolve this matter since, on the face of it, it has before it three separate applications for houses, all of which fall below a threshold at which the Council would either be obliged or have power to screen them for EIA. The Council could resolve the matter by requesting a screening direction from the Scottish Ministers in respect of the applications.
- 2.5 The Council's legal advisers, Brodies LLP, prepared letters that were sent to the applicants and the interested parties and copies of these letters are attached at Appendix 5 (there being three versions of the letter attached – one to the applicants' agent, one to FCS and an example of the letter sent to interested parties). Comments on the letters were requested and the responses received are attached at Appendix 6. The FCS letter mentions material change in circumstances (particularly in relation to replanting that has taken place at the application site) that they consider should be taken into account by the Planning Review Committee. They also raise a difference of opinion with the Council's advice on the relationship between enforcement under the 1999 Regs and the grant of planning permission.

3. Council Options

- 3.1 The Council has previously screened the three planning applications under the 2011 Regs as not requiring EIA. The three planning applications would permit a deforestation that the Scottish Ministers have determined in their subsequent enforcement appeal decision is an EIA project. It seems, therefore, that the Committee must take the Scottish Ministers' appeal decision into account before determining the planning applications. If the Council grants the applications without doing so, it appears that there is a risk the planning permissions will be unlawful.
- 3.2 If the applications are to be treated as a single development, then the Council may reconsider its position as to whether EIA is required under the 2011 Regs. However, it is not clear in law that they are for a single development. If the three applications are to be treated as being for separate developments, the Council has neither the obligation nor the power to screen them for EIA under the 2011 Regs.
- 3.3 However, the Scottish Ministers have power to issue a direction as to whether each of the three planning application is for EIA development, since the Ministers may do so if the application is for development that falls within one of the classes in schedule 2 column 1 of the 2011 Regs, even if it falls below the threshold in column 2. Ministers may make such a screening direction if requested to do so in writing by any person.
- 3.4 The applications have been appealed to the Planning Review Committee. It has determined that it is minded to grant permission subject to conclusion of a planning

agreement. Therefore, Council officers are not presently in a position to delay the issue of permission for any reason other than the negotiation and conclusion of a planning agreement. It is for the Committee to decide how it should take account of the Scottish Ministers' appeal decision and other changes in circumstances which FCS claim are material to the planning decisions.

3.5 It appears that Committee has the following options:

- 3.5.1 To determine, notwithstanding the Scottish Ministers' appeal decision, that the application does not require EIA, to take no further steps in respect of EIA, and, having taken into account the representations from FCS, if it is considered that there are no material changes in circumstances which justify a refusal of the planning permissions, to proceed to conclude the planning agreement and, if satisfactorily concluded, then issue permission;
- 3.5.2 Having determined that the three applications can be treated as being for a single development (and therefore above the threshold in the 2011 Regs schedule 2), to determine that EIA is required; or
- 3.5.3 To request the Scottish Ministers for a screening direction.

4. Conclusion

Of these three options, it is suggested that the safest course for the Planning Review Committee is to request the Scottish Ministers for a screening direction. If the Council does so, there can be no question about whether it could properly have decided itself that the three planning applications require EIA, and also no question of any inconsistency arising between its decision on the three planning applications and the Scottish Ministers' decision on the enforcement appeals that might lead to legal challenge of the Council's decision.

5. RECOMMENDATION

- 5.1 It is recommended that Committee considers the terms of the report and its Appendices and determines which option set out in paragraph 3.5 it wishes to pursue.



DIRECTOR OF CORPORATE AND HOUSING SERVICES

Date: 1 October 2015

Contact Officer: Iain Henderson, Tel: 01324 506070

FALKIRK COUNCIL

MINUTE of MEETING of the PLANNING REVIEW COMMITTEE held in the MUNICIPAL BUILDINGS, FALKIRK on WEDNESDAY 9 APRIL 2014 at 9.30 A.M.

COUNCILLORS: Colin Chalmers
Craig Martin
John McLuckie (Convener)
Sandy Turner

OFFICERS: Shona Barton, Committee Services Officer
Allan Finlayson, Senior Planning Officer
Iain Henderson, Legal Services Manager
Brent Vivian, Senior Planning Officer

PRC1. APOLOGIES

An apology was submitted on behalf of Baillie William Buchanan.

PRC2. DECLARATIONS OF INTEREST

No declarations were made.

PRC3. MINUTES

Decision

The minute of the meeting of the Planning Review Committee held on 25 March 2014 was approved.

PRC4. OPENING REMARKS

The Convener welcomed everyone in attendance to the meeting of the Planning Review Committee and following a short introduction asked Mr Henderson, Legal Services Manager, to provide a summary of the procedure to be followed at the Committee.

PRC5. REQUESTS FOR SITE VISITS

The Committee, prior to consideration of the applications on the agenda, and having heard advice from Mr Henderson, **AGREED** that they did not have sufficient information to allow them to make a determination on any of the applications under consideration and that the meeting would be adjourned to allow Members to conduct an inspection of the sites in relation to applications P/13/0513/FUL, P/13/0514/FUL, P/13/0509/FUL and P/13/0439/PPP. The meeting adjourned at 9.50 a.m. and reconvened at 12.30 p.m. with all those members present as per the sederunt.

PRC6. ORDER OF BUSINESS

The Convener varied the order of business. The following items have been recorded in the order that they were taken at the meeting.

PRC7. PLANNING APPLICATION P/13/0439/PPP ERECTION OF DWELLINGHOUSE AT BLACKBRAES, FALKIRK, FK1 2DH

The Committee considered documents which related to the Application for Review for planning application P/13/0439/PPP for the erection of a dwellinghouse at Blackbraes, Falkirk, FK1 2DH.

The Committee heard a short presentation from Mr Finlayson, who provided a summary of the application, the papers before the Committee, referring to the Report of Handling and the reasons for refusal of the application now being reviewed.

After discussion, and having heard advice from Mr Henderson and Mr Finlayson, the Committee **AGREED** that they had sufficient information (a) within the papers provided in relation to the application for Review, and (b) from the unaccompanied inspection of the site, and considered:-

- (1) Policy Env.1 of the Falkirk Council Structure Plan;
- (2) Policies EQ19 and SC03 of the Falkirk Council Local Plan;
- (3) Policies CG01 and CG03 of the Falkirk Local Development Plan – Proposed Plan;
- (4) the consultation responses received;
- (5) the representation submitted;
- (6) the report provided by Lawrence Gould Associates in relation to the viability and need of the sheep farming on the site;
- (7) the supporting documents provided by the applicant, and
- (8) the benefit of the site inspection.

After discussion the Committee **AGREED** that the decision of the Director of Development Services to **REFUSE** planning permission be **UPHELD** and that the preparation of the decision notice be delegated to the Chief Governance Officer.

PRC8. PLANNING APPLICATION P/13/0513/FUL ERECTION OF DETACHED DWELLINGHOUSE AND DETACHED DOMESTIC DOUBLE GARAGE (PLOT 1) AT LAND TO THE SOUTH EAST OF BYWAYS, GLEN ROAD, TORWOOD

The Committee considered documents which related to the Application for Review for planning application P/13/0513/FUL for the erection of a detached dwellinghouse and detached domestic double garage (Plot 1) at land to the south east of Byways, Glen Road, Torwood.

The Committee heard a short presentation from Mr Vivian, who provided a summary of the application, the papers before the Committee, referring to the Report of Handling and the reasons for refusal of the application now being reviewed.

After further discussion and having heard advice from Mr Henderson and Mr Vivian, and having given consideration to the benefit of the site inspection, the Committee **AGREED:-**

- (1) that the matter be continued to a future meeting of the Committee on a date to be agreed,
- (2) that further information in the form of written submissions, be submitted by:-
 - (a) the Forestry Commission providing further information on the following:-
 - (i) response to and comments on a letter which was submitted by the agent for the applicants, dated 2 April 2014;
 - (ii) an explanation of the designation and definition of Ancient woodlands;
 - (iii) copies of previous submissions made by the Forestry Commission in relation to previous planning applications affecting the land comprising the site as well as in relation to the immediately adjoining properties;
 - (iv) the view from the Forestry Commission in relation to any mitigating approaches that could be taken on the site if planning permission were to be granted, and
 - (v) information on the requirements on the applicants should they not successfully defend the enforcement notices served by the Forestry Commission.
 - (b) the Director of Development Services providing information on the following:-

- (i) provision of copies of relevant planning reports to Committee, Reports of Handling, Decision Notices and Reporter's Decisions in relation to the land comprising the plot as well as in relation to the sites which are immediately adjoining the plot;
 - (ii) views on the biodiversity impact of the development if planning permission were granted, and
 - (iii) a view on any acceptable, mitigating approaches that could be taken in terms of planting or screening on the application sites if planning permission were granted.
- (3) that the written submissions requested be provided within a period of 14 days from receipt of the request, and
- (4) that the respective written submissions requested be copied to the applicant in order that they may make comments in reply.

PRC9. PLANNING APPLICATION P/13/0514/FUL ERECTION OF DETACHED DWELLINGHOUSE AND DETACHED DOMESTIC DOUBLE GARAGE (PLOT 2) AT LAND TO THE SOUTH EAST OF BYWAYS, GLEN ROAD, TORWOOD

The Committee considered documents which related to the Application for Review for planning application P/13/0514/FUL for the erection of a detached dwellinghouse and detached domestic double garage (Plot 2) at land to the south east of Byways, Glen Road, Torwood.

The Committee **AGREED** that the Review be dealt with as per the recommendations at PRC8, as the applications were of a similar nature and referred to immediately adjoining sites.

PRC10. PLANNING APPLICATION P/13/0509/FUL ERECTION OF DETACHED DWELLINGHOUSE AND DETACHED DOMESTIC DOUBLE GARAGE (PLOT 3) AT LAND TO THE SOUTH EAST OF BYWAYS, GLEN ROAD, TORWOOD

The Committee considered documents which related to the Application for Review for planning application P/13/0509/FUL for the erection of a detached dwellinghouse and detached domestic double garage (Plot 3) at land to the south east of Byways, Glen Road, Torwood.

The Committee **AGREED** that the Review be dealt with as per the recommendations at PRC8, as the applications were of a similar nature and referred to immediately adjoining sites.

FALKIRK COUNCIL

MINUTE of MEETING of the PLANNING REVIEW COMMITTEE held in the MUNICIPAL BUILDINGS, FALKIRK on MONDAY 9 JUNE 2014 at 2.00 P.M.

COUNCILLORS: Colin Chalmers
Craig Martin
John McLuckie (Convener)
Sandy Turner

OFFICERS: Shona Barton, Committee Services Officer
Iain Henderson, Legal Services Manager
Brent Vivian, Senior Planning Officer

PRC11. APOLOGIES

None.

PRC12. DECLARATIONS OF INTEREST

None.

PRC13. MINUTES

Decision

The minute of the meeting of the Planning Review Committee held on 9 April 2014 was approved.

PRC14. OPENING REMARKS

The Convener welcomed everyone in attendance to the meeting of the Planning Review Committee and following a short introduction asked Mr Henderson, Legal Services Manager, to provide a summary of the procedure to be followed at the Committee.

PRC15. PLANNING APPLICATION P/13/0513/FUL ERECTION OF DETACHED DWELLINGHOUSE AND DETACHED DOMESTIC DOUBLE GARAGE (PLOT 1) AT LAND TO THE SOUTH EAST OF BYWAYS, GLEN ROAD, TORWOOD (CONTINUATION)

The Committee considered documents which related to the Application for Review for planning application P/13/0513/FUL for the erection of a detached dwellinghouse and detached domestic double garage (Plot 1) at land to the south east of Byways, Glen Road, Torwood.

The Committee heard a presentation from Mr Vivian, who provided a summary of the papers before the Committee referring to the written submissions which had been requested following the meeting held on 9 April 2014.

After further discussion and having heard advice from Mr Henderson and Mr Vivian, and having given consideration to the benefit of the unaccompanied site inspection and to the material contained within the written submissions, the Committee considered that they did not have sufficient information to allow them to make a determination. Thereafter, the Committee **AGREED:-**

- (1) that the matter be continued to a future meeting of the Committee on a date to be agreed;
- (2) that further information in the form of written submissions, be requested from:-
 - (a) the Director of Development Services seeking a screening opinion as to whether or not Environmental Impact Assessment is required for the development in terms of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011;
 - (b) the Scottish Ministers seeking information on the timescales for a decision in relation to the appeal against the enforcement notice issued by the Forestry Commission in respect of the tree felling on the site;
 - (c) the Forestry Commission in relation to the mitigation approaches proposed in the applicant's agent's letter dated 8th May 2014;
 - (d) the Forestry Commission in relation to any information on the timescales relating to the said enforcement notice,
 - (e) the Council's Biodiversity Officer in relation to the mitigation approaches proposed in the applicant's agent's letter dated 8th May 2014.
- (3) that the written submissions requested from the Forestry Commission should be provided by an officer who has not had any prior involvement in the planning application process or the tree felling enforcement process;
- (4) that the written submissions requested be provided within a period of 14 days from receipt of the request, and
- (5) that the respective written submissions requested be copied to the applicant in order that they may make comments in reply.

PRC16. PLANNING APPLICATION P/13/0514/FUL ERECTION OF DETACHED DWELLINGHOUSE AND DETACHED DOMESTIC DOUBLE GARAGE (PLOT 2) AT LAND TO THE SOUTH EAST OF BYWAYS, GLEN ROAD, TORWOOD (CONTINUATION)

The Committee considered documents which related to the Application for Review for planning application P/13/0514/FUL for the erection of a detached dwellinghouse and detached domestic double garage (Plot 2) at land to the south east of Byways, Glen Road, Torwood.

The Committee **AGREED** that the Review be dealt with as per the recommendations at PRC15, as the applications were of a similar nature and referred to immediately adjoining sites.

PRC17. PLANNING APPLICATION P/13/0509/FUL ERECTION OF DETACHED DWELLINGHOUSE AND DETACHED DOMESTIC DOUBLE GARAGE (PLOT 3) AT LAND TO THE SOUTH EAST OF BYWAYS, GLEN ROAD, TORWOOD (CONTINUATION)

The Committee considered documents which related to the Application for Review for planning application P/13/0509/FUL for the erection of a detached dwellinghouse and detached domestic double garage (Plot 3) at land to the south east of Byways, Glen Road, Torwood.

The Committee **AGREED** that the Review be dealt with as per the recommendations at PRC15, as the applications were of a similar nature and referred to immediately adjoining sites.

FALKIRK COUNCIL

MINUTE of MEETING of the PLANNING REVIEW COMMITTEE held in the MUNICIPAL BUILDINGS, FALKIRK on MONDAY 29 SEPTEMBER 2014 at 3.00 P.M.

COUNCILLORS:

Colin Chalmers
Craig Martin
John McLuckie (Convener)
Sandy Turner

OFFICERS:

Iain Henderson, Legal Services Manager
Antonia Sobieraj, Committee Services Officer
Brent Vivian, Senior Planning Officer

PRC32. APOLOGIES

No apologies were intimated.

PRC33. DECLARATIONS OF INTEREST

No declarations were made.

PRC34. OPENING REMARKS

The Convener welcomed everyone in attendance to the meeting of the Planning Review Committee and following a short introduction asked Mr Henderson, Legal Services Manager, to provide a summary of the procedure to be followed at the Committee.

The Committee **AGREED** to hear the following three agenda items together as the applications had been continued from the meeting on 9 June 2014 (Paragraphs PRC15, PRC16 and PRC17 refer) and were of a similar nature and referred to immediately adjoining sites.

PRC35. PLANNING APPLICATION P/13/0513/FUL ERECTION OF DETACHED DWELLINGHOUSE AND DETACHED DOMESTIC DOUBLE GARAGE (PLOT 1) ON LAND TO THE SOUTH EAST OF BYWAYS, GLEN ROAD, TORWOOD (CONTINUATION)

PRC36. PLANNING APPLICATION P/13/0514/FUL ERECTION OF DETACHED DWELLINGHOUSE AND DETACHED DOMESTIC DOUBLE GARAGE (PLOT 2) ON LAND TO THE SOUTH EAST OF BYWAYS, GLEN ROAD, TORWOOD (CONTINUATION)

PRC37. PLANNING APPLICATION P/13/0509/FUL ERECTION OF DETACHED DWELLINGHOUSE AND DETACHED DOMESTIC DOUBLE GARAGE (PLOT 3) ON LAND TO THE SOUTH EAST OF BYWAYS, GLEN ROAD, TORWOOD (CONTINUATION)

With reference to the Minutes of Meetings of the Planning Review Committee held on 9 April (Paragraphs PRC8, PRC9 and PRC10 refer) and 9 June 2014 (Paragraphs PRC15, PRC16 and PRC17 refer), the Committee considered submitted documents (circulated) in relation to the Applications for Review for three planning applications P/13/0513/FUL, P/13/0514/FUL and P/13/0509/FUL each being for the erection of a detached dwellinghouse and a detached domestic double garage (Plots 1, 2 and 3) on land to the south east of Byways, Glen Road, Torwood.

The Committee heard a short presentation from Mr Vivian, who provided a summary of the application, the papers before the Committee referring to the Report of Handling, the reasons for the refusal of the applications now being reviewed and the further written submissions which had been requested following the meeting held on 9 June 2014.

After discussion, and having heard advice from Mr Henderson and Mr Vivian, and give consideration to the benefit of the unaccompanied site inspection following the meeting on 9 April 2014 and the material contained within the further written submissions, the Committee considered:-

- (1) the responses in the form of written submissions from Scottish Ministers, Falkirk Council's Director of Development Services and Biodiversity Officer and from the Forestry Commission; and
- (2) the response from the applicant to the written submissions.

Councillor Chalmers, seconded by Councillor Turner, moved that Committee continue consideration of this item of business to allow for the decision of the Directorate for Planning and Environmental Appeals (DPEA) on the appeal against the enforcement notice issued by the Forestry Commission in respect of tree felling on the site.

By way of an amendment, Councillor McLuckie, seconded by Councillor Martin, moved that the Committee make a determination on the application at this meeting as it had sufficient information within the papers before it to assist its decision making.

On a division, 2 Members voted for the motion and 2 voted for the amendment.

There being an equality of votes, and in terms of Standing Order 22.6, the Convener used his casting vote in favour of the amendment.

Accordingly, the Committee **AGREED** to make a determination at this meeting.

Having heard advice from Mr Henderson, detailed discussion thereafter took place on the documents contained within the agenda papers and the reasons for refusal, with particular reference made to the following policies:-

- (1) Policy Env.1 of the Falkirk Council Structure Plan;
- (2) Policies EQ19, SC03, SC08 and EQ26 of the Falkirk Council Local Plan;
- (3) Policies CG01, HSG05, CG03 and GN04 of the Falkirk Council Local Development Plan - Proposed Plan; and
- (4) Scottish Planning Policy.

Councillor Chalmers, seconded by Councillor Turner, moved that Committee refuse planning permission for the reasons detailed in the decision by the officer made under delegated authority.

By way of an amendment, Councillor McLuckie, seconded by Councillor Martin, moved (a) that the Committee be minded to grant the planning permissions subject to the completion of an appropriate legal agreement in terms satisfactory to the Director of Development Services in relation to the provision of off site mitigation measures in relation to trees and planting on the basis that the sites for the proposed developments can be considered to be an identifiable gap site between existing properties, the proposals would not constitute ribbon development being in keeping with the established settlement pattern which has developed on both sides of Glen Road and appropriate mitigation measures could be implemented in respect of trees and planting, and (b) that approval be subject to such conditions considered appropriate by the Director of Development Services.

On a division, 2 Members voted for the motion and 2 voted for the amendment.

There being an equality of votes, and in terms of Standing Order 22.6, the Convener used his casting vote in favour of the amendment.

Accordingly, the Committee **AGREED:-**

- (1) that it is **MINDED** to **GRANT** the planning permissions subject, in each case, to the satisfactory conclusion of an appropriate legal agreement in terms satisfactory to the Director of Development Services to secure the provision of off site mitigation measures in relation to trees and planting. Thereafter, on conclusion of the said legal agreement to the satisfaction of the Director of Development Services, the matter be remitted to the Director of Development Services to grant planning permission, subject to the other appropriate conditions as determined by her including a condition requiring access to the three properties being taken from one point of access and egress from Glen Road; and
- (2) to delegate to the Chief Governance Officer the preparation of the decision notice.

Planning Review Committee Review Decision Notice

Decision by the Falkirk Council Planning Review Committee (the Planning Review Committee) on an application for review against the decision by an appointed officer of Falkirk Council

Site Address	Land To The South East Of Byways, Glen Road, Torwood
Application No.	P/13/0513/FUL
	Application for Review Against the Decision by an Appointed Officer of Falkirk Council
Development	Erection of Detached Dwellinghouse and Detached Domestic Double Garage (Plot 1)
Date of Decision Notice	8 December 2014

Decision

The Planning Review Committee overturns the decision reviewed by them and is minded to grant planning permission for the reasons set out in this notice.

Preliminary

This notice constitutes the formal decision notice of the Planning Review Committee as required by the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008 ("the 2008 Regulations").

The Planning Review Committee has also reviewed the decisions on two other applications at this location, both also for the erection of a detached dwellinghouse and detached domestic double garage. Their references are P/13/0514/FUL (Plot 2) and P/13/0509/FUL (Plot 3). The Planning Review Committee reviewed the decisions on all three applications at the same meeting. Each application is subject to a separate decision notice. Each decision notice is the same in terms of content and findings.

The above application was first considered by the Planning Review Committee at its meeting on 9 April 2014. The Planning Review Committee comprised Councillor John McLuckie (Convener), Councillor Craig Martin, Councillor Colin Chalmers and Councillor Sandy Turner. At this meeting, the Planning Review Committee decided, prior to consideration of the application, to conduct, in accordance with Regulation 16 of the 2013 Regulations, an unaccompanied inspection of the site.

The site visit by the Planning Review Committee was undertaken on the morning of 9 April 2014 and the meeting was reconvened in the afternoon of the same day. The Planning Review Committee, at both the site visit and the meeting in the afternoon, comprised Councillor John McLuckie (Convener), Councillor Craig Martin, Councillor Colin Chalmers and Councillor Sandy Turner.

At the meeting, the Planning Review Committee decided that they did not have enough information to determine the application and requested, in accordance with Regulation 15 of the 2013 Regulations, that further information, in the form of written submissions, be provided to the Planning Review Committee by the Forestry Commission and the Director of Development Services, Falkirk Council.

The application was further considered by the Planning Review Committee at its meeting on 9 June 2014. The Planning Review Committee at this meeting comprised Councillor John McLuckie (Convener), Councillor Craig Martin, Councillor Colin Chalmers and Councillor Sandy Turner. At the meeting, the Planning Review Committee decided that it still did not have enough information to determine the application and requested, in accordance with Regulation 15 of the 2013 Regulations, that further information in the form of written submissions be provided to the Planning Review Committee by the Forestry Commission, Scottish Ministers and the Director of Development Services, Falkirk Council.

The application was due to be considered further by the Planning Review Committee at its meeting on 22 September 2014. Due to the lack of a quorum the application together with applications P/13/0514/FUL (Plot 2) and P/13/0509/FUL (Plot 3) and was continued to a future meeting.

The application was considered further by the Planning Review Committee at its meeting on 29 September 2014 and comprised Councillor John McLuckie (Convener), Councillor Craig Martin, Councillor Colin Chalmers and Councillor Sandy Turner. At the meeting, the Planning Review Committee noted that the decision of the Scottish Ministers on an appeal against an Enforcement Notice served by the Forestry Commission under the Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999 was not yet issued and could take up to another three months to be issued.

The Planning Review Committee decided that they now had sufficient information to allow a decision to be taken. In taking this decision, the Planning Review Committee was mindful that the decision of the Scottish Ministers in relation to the Enforcement Notice was not yet known but considered that a planning decision should be taken and it is not unusual for other statutory regimes and processes to run in parallel to the planning process.

At the meeting on 9 June 2014, the Planning Review Committee had requested further information from the Director of Development Services, Falkirk Council, in the form of a screening opinion as to whether or not an Environmental Impact Assessment was required for the development in terms of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011. The Planning Review Committee considered this screening opinion at their meeting on 29 September 2014 and accepted the opinion of the Director of Development Services that an Environmental Impact Assessment was not required, given the extent of the three application sites in combination (just 1 hectare), the relatively localised impacts of the proposed developments and the sites not being within a 'sensitive area' as defined in the Environmental Impact Assessment Regulations.

Reasoning

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

The determining issues in this review are compliance with the Development Plan (comprising the approved Falkirk Council Structure Plan and the adopted Falkirk Council Local Plan). Material considerations are the Falkirk Local Development Plan (Proposed Plan), the consultation responses, the representations received and the planning history for the application site and surrounding land. The Planning Review

Committee noted that the Forestry Commission had objected to the application (on the grounds of loss of woodland) and six objections from local Torwood residents had been received, and that the Forestry Commission and local residents had made further written submissions in respect of this application under review.

The Planning Review Committee noted that the application site lies outwith the urban limits for Torwood, within the countryside, as defined in both the Falkirk Council Local Plan and the Falkirk Local Development Plan (Proposed Plan).

Policy ENV.1 of the Falkirk Council Structure Plan presumes against development within the countryside, unless it can be demonstrated that a countryside location is essential or the development is an appropriate form of agricultural diversification. The Planning Review Committee noted the generality of this policy and that the specific criteria against which housing in the countryside is assessed are contained in Policies EQ19, SC3 and SC8 of the Falkirk Council Local Plan.

Policy EQ19 of the Falkirk Council Local Plan states that the urban and village limits represent the desirable limit to the expansion of settlements for the period of the Local Plan. Policy SC3 of the Falkirk Council Local Plan sets out the circumstances in which housing in the countryside may be permitted. The relevant circumstance in this instance is contained in Part 3 of the policy and provides for *"appropriate infill opportunities within the envelope of an existing group of residential buildings, where the development would not result in ribbon, backland or sporadic development, and the proposal satisfies Policy SC8"*. Policy SC8 of the Falkirk Council Local Plan provides for infill development and subdivision of plots where certain criteria are satisfied.

The Planning Review Committee acknowledged that the terms "infill development" or "gap site" are not defined in the Development Plan and are a matter of interpretation. It noted that the relevant planning history offered different views on this matter, including the notion that the land between the residential properties to the east (Aonach-Mor) and to the west (Byways) represented an "extended gap site".

The Planning Review Committee considered that the application site provided an appropriate infill opportunity for the proposed development. It was content that the application site formed part of an extended gap site between existing residential properties and that development of this extended gap could not be considered ribbon development, as it was in keeping with the well established settlement pattern along both sides of Glen Road and would not involve development beyond the outer edges of the village. It noted that the proposal would not extend further to the south than the existing residential properties, which it considered further supported that the development was "filling in a gap". It was satisfied that the proposal would not result in backland or sporadic development.

In respect of the criteria of Policy SC8, the Planning Review Committee was satisfied that the design of the proposed development would respect the character of the area and that adequate garden ground would be provided and there would be no privacy impacts. In respect of vehicular access, the Planning Review Committee considered that a single means of access, rather than a separate access to each of the three plots, would be in the best interests of road safety.

Policy EQ26 of the Falkirk Council Local Plan recognises the ecological, landscape, economic and recreational importance of trees, woodland and hedgerows and discourages felling detrimental to landscape, amenity, nature conservation or recreational interests. The policy states that ancient, long established and semi-natural woodlands will be protected as a habitat resource of irreplaceable value. The Planning

Review Committee noted the advice of the Forestry Commission and the Council's Biodiversity Officer that the proposed development would result in the permanent loss of a semi-natural woodland of Long Established Plantation Origin, including its soils and seedbank. However, it also noted the contrary advice of the agent that the woodland soils and seedbank were removed in 2002 when the initial tree felling occurred, to assist with the formation of a haul area associated with the removal of the commercial forest plantation.

Policy EQ26 provides for replacement planting in association with new development. The Planning Review Committee noted that the applicant had outlined compensatory planting approaches and the Council's biodiversity and landscape officers had set out detailed mitigation approaches should the application be approved. On balance, the Planning Review Committee considered that the applicant's proposal to create a native broadleaved woodland elsewhere within Whinnie Muir would adequately compensate for the permanent loss of woodland habitat as a consequence of the proposed development. In addition, the Planning Review Committee supported the detailed advice of the Council's biodiversity and landscape officers which it considered would adequately mitigate the impact of the proposed development on the landscape setting and amenity of the area. In general terms, it supported replanting as much woodland cover as possible within the application site. In accordance with the advice of the Council's Landscape Officer, this would include the provision of a 20 metre depth of native broadleaf species tree planting along the Glen Road frontage.

The Planning Review Committee noted that the relevant policies of the Falkirk Local Development Plan (Proposed Plan) are Policies CG01, CG03, HSG05 and GN04. They noted that these policies are similar to the corresponding policies of the Falkirk Council Local Plan. The relevant policies of the Falkirk Council Local Plan are considered in this decision.

Conclusion

The Planning Review Committee decided that it is minded to grant planning permission subject to:-

- (a) The satisfactory conclusion of an appropriate legal agreement/planning obligation in respect of:-
 - (i) The replacement of a conifer woodland elsewhere at Whinnie Muir with a native broadleaved woodland over an area twice the size of the application site.
- (b) Thereafter, subject to the satisfactory conclusion of the foregoing matter, to remit to the Director of Development Services to grant planning permission subject to the following conditions:-
 - (1) The development hereby approved shall be implemented in accordance with the plan(s) itemised in the informative below and forming part of this permission unless a variation is required by a condition of the permission or a non-material variation has been agreed in writing by Falkirk Council as Planning Authority.
 - (2) Before the development commences, details of the location of the works compound and construction vehicle parking areas, and measures to suppress dust and mitigate the carrying of mud and other debris onto the public road, shall be submitted to and approved in writing by this Planning

Authority. Thereafter, the development shall be carried out in accordance with the approved details.

- (3) Before the development commences, full details of the colour and specification of all proposed external finishing materials shall be submitted to and approved in writing by this Planning Authority. Thereafter, the development shall be completed in accordance with the approved details.
- (4) Before the development commences, full details of the height, location and construction of all proposed fences, walls and any other means of enclosure shall be submitted to and approved in writing by this Planning Authority. Thereafter, the development shall be completed in accordance with the approved details.
- (5) Before the development commences, full details of a scheme of soft landscaping shall be submitted to and approved in writing by this Planning Authority. The details of the scheme shall include (as appropriate):-
 - (i) Existing and proposed finished levels in relation to a fixed datum, preferably ordnance;
 - (ii) An indication of all existing trees, shrubs and hedges to be removed, those to be retained, and proposals for the restoration of any that are damaged;
 - (iii) The location of all proposed trees, shrubs, hedges and grassed areas;
 - (iv) A schedule of plants comprising species, plant size and proposed numbers/density; and
 - (v) A programme for completion and subsequent maintenance.

Thereafter, the landscaping shall be fully implemented in accordance with the approved scheme. No existing planting shall be removed prior to the scheme of landscaping being approved in writing by this Planning Authority.

- (6) Further to condition 5 of this permission, the scheme of soft landscaping shall include the provision of a 20 metre depth of native broadleaf species tree planting along the Glen Road frontage of the site, in accordance with full details to be approved in writing by this Planning Authority.
- (7) Before the development commences, full details of the proposed foul and surface water drainage arrangements shall be submitted to and approved in writing by this Planning Authority. Thereafter, the development shall be completed in accordance with the approved details.
- (8) The proposed dwellinghouse shall be provided with in-curtilage parking facilities for at least two vehicles and an in-curtilage turning area, in accordance with details to be approved in writing by this Planning Authority. Thereafter, the development shall be completed in accordance with the approved details.

- (9) Notwithstanding the approved plans, no development shall commence until full details of the proposed vehicular access to serve the proposed dwellinghouse have been submitted to and approved in writing by this Planning Authority.

Reason(s):-

- (1) As these drawings and details constitute the approved development.
- (2) To minimise any disruption during the construction period.
- (3) To safeguard the visual amenity of the area.
- (4) To safeguard the visual amenity of the area.
- (5) To safeguard the visual amenity of the area, integrate the development into its surroundings and assist to compensate for the permanent loss of woodland at the site.
- (6) To safeguard the visual amenity of the area, integrate the development into its surroundings and assist to compensate for the permanent loss of woodland at the site.
- (7) To ensure that adequate drainage is provided.
- (8) To ensure that adequate car parking is provided.
- (9) To safeguard the interest of the users of the highway.

Informative(s):-

- (1) The applicant shall ensure that noisy work which is audible at the site boundary is only conducted between the following hours:

Monday to Friday	08:00 - 18:00 Hours
Saturday	09:00 - 17:00 Hours
Sunday / Bank Holidays	10:00 - 16:00 Hours

Deviation from these hours of work will only be permitted in emergency circumstances and with the prior approval of the Environmental Health Unit.

- (2) In the event that any made ground, suspect substances or odours are encountered during any site works/operations following the commencement of development, the applicant is advised to ensure that all works on the affected part of the site cease, and that the Planning Authority is notified immediately and a contaminated land assessment is carried out and any necessary remediation works are undertaken. In such circumstances, development will only be permitted to recommence with the prior written approval of the Planning Authority.
- (3) The applicant is advised that the following requirements will apply in order to gain the approval of the Planning Authority within the terms of condition 9 of this permission:-

- (a) A shared access will be provided to the three plots granted planning permission under reference numbers P/13/0513/FUL, P/13/0514/FUL and P/13/0509/FUL. The shared access will have a minimum width of 5.5 metre for a distance of at least 10 metres and be constructed at a gradient no greater than 1 in 10 and in a manner to ensure that no surface water or loose material is discharged onto the public carriageway;
 - (b) Any gate on the shared access will open inwards;
 - (c) There will be clear sightlines of 2.4 metres x 70 metres, in both direction from the shared access, within which there will be no obstruction to visibility greater than 1 metre in height above carriageway level; and
 - (d) The shared access will require to be constructed across a drainage ditch running parallel with Glen Road. Culvert provision within the driveway structure will need to accommodate the maximum storm flow within the drainage ditch, to prevent localised flooding, and be designed to allow access for maintenance purposes to ensure they remain free of debris. Drainage calculations will need to be submitted in respect of any attenuation, treatment and flow rate to prove that the culvert can accommodate the flow.
- (4) The applicant is advised that the formation of a new driveway access to Glen Road to serve the proposed dwellinghouse would require a Minor Roadworks Consent, issued and approved by Development Services, Roads, Earls Road, Grangemouth.
- (5) The applicant is advised that the scope of works to construct a driveway structure across the drainage ditch will fall within SEPA's remit therefore the applicant will need to consult SEPA in respect of The Water Environment (Controlled Activities) (Scotland) Regulations 2011.
- (6) Scottish Water have advised that the Turret Water Treatment Works may have capacity to serve the proposed development and that Torwood Wastewater Treatment Works at present has limited capacity to serve the new demand. The applicant is advised to discuss their development directly with Scottish Water.

Chief Governance Officer

8 December 2014

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Notification to be sent to applicant on determination by the planning authority of an application following a review conducted under section 43A(8)

Notice Under Regulation 22 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.

- 1 If the applicant is aggrieved by the decision of the planning authority:-
 - a. to refuse permission for the proposed development;
 - b. to refuse approval, consent or agreement required by a condition imposed on a grant of planning permission; or
 - c. to grant permission or approval, consent or agreement subject to conditions,the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.
- 2 If permission to develop land is refused or granted subject to conditions 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, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.

THE DECISION ON YOUR APPLICATION

Please read these notes carefully and retain. This general guidance forms part of your decision notice.

Notification of Initiation of Development (NID)

Once planning permission has been granted and a date has been set on which work on the development will start, the person intending to carry out the development must inform the planning authority of that date. The notice must be submitted before work starts – failure to do so would be a breach of planning control. The form is included in the decision pack and is also available to download from the Councils website.

You should read your planning permission carefully, before notifying the planning authority of your intention to start the development as it may contain conditions which have to be fulfilled before development can commence.

Notification of Completion of Development (NCD)

On completion of a development for which planning permission has been given, the person completing the development must, as soon as practicable, submit a notice of completion to the planning authority. Where development is carried out in phases there is a requirement for a notice to be submitted at the conclusion of each phase. The form is included in the decision pack and is also available to download from the Council website.

Display of Notice while development is carried out

For 'bad neighbour' developments (e.g. hot food takeaways or licensed premises), the developer must, for the duration of the development, display a sign or signs containing prescribed information. The notice must be:

- Displayed in a prominent place at or in the vicinity of the site of the development;
- Readily visible to the public;
- Printed on durable material.

A model display notice is available for download from the Council website.

OTHER INFORMATION

Renewal of Consent or Change to Conditions

Where an application is made before the duration of a planning permission expires for the same development or to change conditions associated with the planning permission, only certain requirements on content of applications apply:

- Applications must be in writing and shall give sufficient information to identify the previous grant of planning permission;
- The appropriate fee must be paid;
- A land ownership certificate must be submitted;
- Where the application relates to the relaxation of conditions under section 42 of the Planning etc (Scotland) Act 2006, a statement to that effect.

The proposal will be assessed against the Development Plan and if the policy position has changed the application may be refused or new conditions applied. If approved, a new consent is issued.

Listed Building Consent and Advertisement Consent cannot be renewed and new applications must be made for these if the time limit has expired.

Variation of Planning Permission

Applications may be varied provided there is not a substantial change in the description of the development. In these cases, a new application for planning permission will be required.

Two sets of amended plans should be submitted to the planning authority seeking a non-material variation of the development. A decision letter will be issued with a determination.

Listed Building Consent and Advertisement Consent cannot be varied and new applications may be required.

Conditions Monitoring

Any conditions attached to your consent require to be met. Some of these may require to be discharged before the development commences. Failure to do so may affect the legality of your development.

Please submit appropriate details to the planning authority for determination if the condition(s) can be discharged.

Contact Details

Falkirk Council
Development Services
Abbotsford House
David's Loan
Falkirk
FK2 7YZ

Planning Review Committee Review Decision Notice

Decision by the Falkirk Council Planning Review Committee (the Planning Review Committee) on an application for review against the decision by an appointed officer of Falkirk Council

Site Address	Land To The South East Of Byways, Glen Road, Torwood
Application No.	P/13/0514/FUL Application for Review Against the Decision by an Appointed Officer of Falkirk Council
Development	Erection of Detached Dwellinghouse and Detached Domestic Double Garage (Plot 2)
Date of Decision Notice	8 December 2014

Decision

The Planning Review Committee overturns the decision reviewed by it and is minded to grant planning permission for the reasons set out in this notice.

Preliminary

This notice constitutes the formal decision notice of the Planning Review Committee as required by the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008 ("the 2008 Regulations").

The Planning Review Committee has also reviewed the decisions on two other applications at this location, both also for the erection of a detached dwellinghouse and detached domestic double garage. Their references are P/13/0513/FUL (Plot 1) and P/13/0509/FUL (Plot 3). The Planning Review Committee reviewed the decisions on all three applications at the same meeting. Each application is subject to a separate decision notice. Each decision notice is the same in terms of content and findings.

The above application was first considered by the Planning Review Committee at its meeting on 9 April 2014. The Planning Review Committee comprised Councillor John McLuckie (Convener), Councillor Craig Martin, Councillor Colin Chalmers and Councillor Sandy Turner. At this meeting, the Planning Review Committee decided, prior to consideration of the application, to conduct, in accordance with Regulation 16 of the 2013 Regulations, an unaccompanied inspection of the site.

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At the meeting, the Planning Review Committee decided that it did not have enough information to determine the application and requested, in accordance with Regulation 15 of the 2013 Regulations, that further information, in the form of written submissions, be provided to the Planning Review Committee by the Forestry Commission and the Director of Development Services, Falkirk Council.

The application was further considered by the Planning Review Committee at its meeting on 9 June 2014 which comprised Councillor John McLuckie (Convener), Councillor Craig Martin, Councillor Colin Chalmers and Councillor Sandy Turner. At the meeting, the Planning Review Committee decided that it still did not have enough information to determine the application and requested, in accordance with Regulation 15 of the 2013 Regulations, that further information in the form of written submissions be provided to the Planning Review Committee by the Forestry Commission, Scottish Ministers and the Director of Development Services, Falkirk Council.

The application was due to be considered further by the Planning Review Committee at its meeting on 22 September 2014. Due to the lack of a quorum the application together with applications P/13/0513/FUL (Plot 1) and P/13/0509/FUL (Plot 3) and was continued to a future meeting.

The application was considered further by the Planning Review Committee at its meeting on 29 September 2014. The Planning Review Committee at this meeting comprised Councillor John McLuckie (Convener), Councillor Craig Martin, Councillor Colin Chalmers and Councillor Sandy Turner. At the meeting, the Planning Review Committee noted that the decision of the Scottish Ministers on an appeal against an Enforcement Notice served by the Forestry Commission under the Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999 was not yet issued and could take up to another three months to be issued.

The Planning Review Committee decided that it now had sufficient information to allow a decision to be taken. In taking this decision, the Planning Review Committee was mindful that the decision of the Scottish Ministers in relation to the Enforcement Notice was not yet known but considered that a planning decision should be taken and it is not unusual for other statutory regimes and processes to run in parallel to the planning process.

At the meeting on 9 June 2014, the Planning Review Committee had requested further information from the Director of Development Services, Falkirk Council, in the form of a screening opinion as to whether or not an Environmental Impact Assessment was required for the development in terms of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011. The Planning Review Committee considered this screening opinion at their meeting on 29 September 2014 and accepted the opinion of the Director of Development Services that an Environmental Impact Assessment was not required, given the extent of the three application sites in combination (just 1 hectare), the relatively localised impacts of the proposed developments and the sites not being within a 'sensitive area' as defined in the Environmental Impact Assessment Regulations.

Reasoning

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

The determining issues in this review are compliance with the Development Plan (comprising the approved Falkirk Council Structure Plan and the adopted Falkirk Council Local Plan). Material considerations are the Falkirk Local Development Plan (Proposed Plan), the consultation responses, the representations received and the planning history for the application site and surrounding land. The Planning Review

Committee noted that the Forestry Commission had objected to the application (on the grounds of loss of woodland) and six objections from local Torwood residents had been received, and that the Forestry Commission and local residents had made further written submissions in respect of this application under review.

The Planning Review Committee noted that the application site lies outwith the urban limits for Torwood, within the countryside, as defined in both the Falkirk Council Local Plan and the Falkirk Local Development Plan (Proposed Plan).

Policy ENV.1 of the Falkirk Council Structure Plan presumes against development within the countryside, unless it can be demonstrated that a countryside location is essential or the development is an appropriate form of agricultural diversification. The Planning Review Committee noted the generality of this policy and that the specific criteria against which housing in the countryside is assessed are contained in Policies EQ19, SC3 and SC8 of the Falkirk Council Local Plan.

Policy EQ19 of the Falkirk Council Local Plan states that the urban and village limits represent the desirable limit to the expansion of settlements for the period of the Local Plan. Policy SC3 of the Falkirk Council Local Plan sets out the circumstances in which housing in the countryside may be permitted. The relevant circumstance in this instance is contained in Part 3 of the policy and provides for *"appropriate infill opportunities within the envelope of an existing group of residential buildings, where the development would not result in ribbon, backland or sporadic development, and the proposal satisfies Policy SC8"*. Policy SC8 of the Falkirk Council Local Plan provides for infill development and subdivision of plots where certain criteria are satisfied.

The Planning Review Committee acknowledged that the terms "infill development" or "gap site" are not defined in the Development Plan and are a matter of interpretation. It noted that the relevant planning history offered different views on this matter, including the notion that the land between the residential properties to the east (Aonach-Mor) and to the west (Byways) represented an "extended gap site".

The Planning Review Committee considered that the application site provided an appropriate infill opportunity for the proposed development. It was content that the application site formed part of an extended gap site between existing residential properties and that development of this extended gap could not be considered ribbon development, as it was in keeping with the well established settlement pattern along both sides of Glen Road and would not involve development beyond the outer edges of the village. It noted that the proposal would not extend further to the south than the existing residential properties, which it considered further supported that the development was "filling in a gap". It was satisfied that the proposal would not result in backland or sporadic development.

In respect of the criteria of Policy SC8, the Planning Review Committee was satisfied that the design of the proposed development would respect the character of the area and that adequate garden ground would be provided and there would be no privacy impacts. In respect of vehicular access, the Planning Review Committee considered that a single means of access, rather than a separate access to each of the three plots, would be in the best interests of road safety.

Policy EQ26 of the Falkirk Council Local Plan recognises the ecological, landscape, economic and recreational importance of trees, woodland and hedgerows and discourages felling detrimental to landscape, amenity, nature conservation or recreational interests. The policy states that ancient, long established and semi-natural woodlands will be protected as a habitat resource of irreplaceable value. The Planning

Review Committee noted the advice of the Forestry Commission and the Council's Biodiversity Officer that the proposed development would result in the permanent loss of a semi-natural woodland of Long Established Plantation Origin, including its soils and seedbank. However, it also noted the contrary advice of the agent that the woodland soils and seedbank were removed in 2002 when the initial tree felling occurred, to assist with the formation of a haul area associated with the removal of the commercial forest plantation.

Policy EQ26 provides for replacement planting in association with new development. The Planning Review Committee noted that the applicant had outlined compensatory planting approaches and the Council's biodiversity and landscape officers had set out detailed mitigation approaches should the application be approved. On balance, the Planning Review Committee considered that the applicant's proposal to create a native broadleaved woodland elsewhere within Whinnie Muir would adequately compensate for the permanent loss of woodland habitat as a consequence of the proposed development. In addition, the Planning Review Committee supported the detailed advice of the Council's biodiversity and landscape officers which it considered would adequately mitigate the impact of the proposed development on the landscape setting and amenity of the area. In general terms, it supported replanting as much woodland cover as possible within the application site. In accordance with the advice of the Council's Landscape Officer, this would include the provision of a 20 metre depth of native broadleaf species tree planting along the Glen Road frontage.

The Planning Review Committee noted that the relevant policies of the Falkirk Local Development Plan (Proposed Plan) are Policies CG01, CG03, HSG05 and GN04. It noted that these policies are similar to the corresponding policies of the Falkirk Council Local Plan. The relevant policies of the Falkirk Council Local Plan are considered in this decision.

Conclusion

The Planning Review Committee decided that it is minded to grant planning permission subject to:-

- (a) The satisfactory conclusion of an appropriate legal agreement/planning obligation in respect of:-
 - (i) The replacement of a conifer woodland elsewhere at Whinnie Muir with a native broadleaved woodland over an area twice the size of the application site.
- (b) Thereafter, subject to the satisfactory conclusion of the foregoing matter, to remit to the Director of Development Services to grant planning permission subject to the following conditions:-
 - (1) The development hereby approved shall be implemented in accordance with the plan(s) itemised in the informative below and forming part of this permission unless a variation is required by a condition of the permission or a non-material variation has been agreed in writing by Falkirk Council as Planning Authority.
 - (2) Before the development commences, details of the location of the works compound and construction vehicle parking areas, and measures to suppress dust and mitigate the carrying of mud and other debris onto the public road, shall be submitted to and approved in writing by this Planning

Authority. Thereafter, the development shall be carried out in accordance with the approved details.

- (3) Before the development commences, full details of the colour and specification of all proposed external finishing materials shall be submitted to and approved in writing by this Planning Authority. Thereafter, the development shall be completed in accordance with the approved details.
- (4) Before the development commences, full details of the height, location and construction of all proposed fences, walls and any other means of enclosure shall be submitted to and approved in writing by this Planning Authority. Thereafter, the development shall be completed in accordance with the approved details.
- (5) Before the development commences, full details of a scheme of soft landscaping shall be submitted to and approved in writing by this Planning Authority. The details of the scheme shall include (as appropriate):-
 - (i) Existing and proposed finished levels in relation to a fixed datum, preferably ordnance;
 - (ii) An indication of all existing trees, shrubs and hedges to be removed, those to be retained, and proposals for the restoration of any that are damaged;
 - (iii) The location of all proposed trees, shrubs, hedges and grassed areas;
 - (iv) A schedule of plants comprising species, plant size and proposed numbers/density; and
 - (v) A programme for completion and subsequent maintenance.

Thereafter, the landscaping shall be fully implemented in accordance with the approved scheme. No existing planting shall be removed prior to the scheme of landscaping being approved in writing by this Planning Authority.

- (6) Further to condition 5 of this permission, the scheme of soft landscaping shall include the provision of a 20 metre depth of native broadleaf species tree planting along the Glen Road frontage of the site, in accordance with full details to be approved in writing by this Planning Authority.
- (7) Before the development commences, full details of the proposed foul and surface water drainage arrangements shall be submitted to and approved in writing by this Planning Authority. Thereafter, the development shall be completed in accordance with the approved details.
- (8) The proposed dwellinghouse shall be provided with in-curtilage parking facilities for at least two vehicles and an in-curtilage turning area, in accordance with details to be approved in writing by this Planning Authority. Thereafter, the development shall be completed in accordance with the approved details.

- (9) Notwithstanding the approved plans, no development shall commence until full details of the proposed vehicular access to serve the proposed dwellinghouse have been submitted to and approved in writing by this Planning Authority.

Reason(s):-

- (1) As these drawings and details constitute the approved development.
- (2) To minimise any disruption during the construction period.
- (3) To safeguard the visual amenity of the area.
- (4) To safeguard the visual amenity of the area.
- (5) To safeguard the visual amenity of the area, integrate the development into its surroundings and assist to compensate for the permanent loss of woodland at the site.
- (6) To safeguard the visual amenity of the area, integrate the development into its surroundings and assist to compensate for the permanent loss of woodland at the site.
- (7) To ensure that adequate drainage is provided.
- (8) To ensure that adequate car parking is provided.
- (9) To safeguard the interest of the users of the highway.

Informative(s):-

- (1) The applicant shall ensure that noisy work which is audible at the site boundary is only conducted between the following hours:

Monday to Friday	08:00 - 18:00 Hours
Saturday	09:00 - 17:00 Hours
Sunday / Bank Holidays	10:00 - 16:00 Hours

Deviation from these hours of work will only be permitted in emergency circumstances and with the prior approval of the Environmental Health Unit.

- (2) In the event that any made ground, suspect substances or odours are encountered during any site works/operations following the commencement of development, the applicant is advised to ensure that all works on the affected part of the site cease, and that the Planning Authority is notified immediately and a contaminated land assessment is carried out and any necessary remediation works are undertaken. In such circumstances, development will only be permitted to recommence with the prior written approval of the Planning Authority.
- (3) The applicant is advised that the following requirements will apply in order to gain the approval of the Planning Authority within the terms of condition 9 of this permission:-

- (a) A shared access will be provided to the three plots granted planning permission under reference numbers P/13/0513/FUL, P/13/0514/FUL and P/13/0509/FUL. The shared access will have a minimum width of 5.5 metre for a distance of at least 10 metres and be constructed at a gradient no greater than 1 in 10 and in a manner to ensure that no surface water or loose material is discharged onto the public carriageway;
 - (b) Any gate on the shared access will open inwards;
 - (c) There will be clear sightlines of 2.4 metres x 70 metres, in both direction from the shared access, within which there will be no obstruction to visibility greater than 1 metre in height above carriageway level; and
 - (d) The shared access will require to be constructed across a drainage ditch running parallel with Glen Road. Culvert provision within the driveway structure will need to accommodate the maximum storm flow within the drainage ditch, to prevent localised flooding, and be designed to allow access for maintenance purposes to ensure they remain free of debris. Drainage calculations will need to be submitted in respect of any attenuation, treatment and flow rate to prove that the culvert can accommodate the flow.
- (4) The applicant is advised that the formation of a new driveway access to Glen Road to serve the proposed dwellinghouse would require a Minor Roadworks Consent, issued and approved by Development Services, Roads, Earls Road, Grangemouth.
- (5) The applicant is advised that the scope of works to construct a driveway structure across the drainage ditch will fall within SEPA's remit therefore the applicant will need to consult SEPA in respect of The Water Environment (Controlled Activities) (Scotland) Regulations 2011.
- (6) Scottish Water have advised that the Turret Water Treatment Works may have capacity to serve the proposed development and that Torwood Wastewater Treatment Works at present has limited capacity to serve the new demand. The applicant is advised to discuss their development directly with Scottish Water.

Chief Governance Officer

8 December 2014

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Notification to be sent to applicant on determination by the planning authority of an application following a review conducted under section 43A(8)

Notice Under Regulation 22 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.

1. If the applicant is aggrieved by the decision of the planning authority:
 - a. to refuse permission for the proposed development;
 - b. to refuse approval, consent or agreement required by a condition imposed on a grant of planning permission; or
 - c. to grant permission or approval, consent or agreement subject to conditions,the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.
2. If permission to develop land is refused or granted subject to conditions 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, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.

THE DECISION ON YOUR APPLICATION

Please read these notes carefully and retain. This general guidance forms part of your decision notice.

Notification of Initiation of Development (NID)

Once planning permission has been granted and a date has been set on which work on the development will start, the person intending to carry out the development must inform the planning authority of that date. The notice must be submitted before work starts – failure to do so would be a breach of planning control. The form is included in the decision pack and is also available to download from the Councils website.

You should read your planning permission carefully, before notifying the planning authority of your intention to start the development as it may contain conditions which have to be fulfilled before development can commence.

Notification of Completion of Development (NCD)

On completion of a development for which planning permission has been given, the person completing the development must, as soon as practicable, submit a notice of completion to the planning authority. Where development is carried out in phases there is a requirement for a notice to be submitted at the conclusion of each phase. The form is included in the decision pack and is also available to download from the Council website.

Display of Notice while development is carried out

For 'bad neighbour' developments (e.g. hot food takeaways or licensed premises), the developer must, for the duration of the development, display a sign or signs containing prescribed information. The notice must be:

- Displayed in a prominent place at or in the vicinity of the site of the development;
- Readily visible to the public;
- Printed on durable material.

A model display notice is available for download from the Council website.

OTHER INFORMATION

Renewal of Consent or Change to Conditions

Where an application is made before the duration of a planning permission expires for the same development or to change conditions associated with the planning permission, only certain requirements on content of applications apply:

- Applications must be in writing and shall give sufficient information to identify the previous grant of planning permission;
- The appropriate fee must be paid;
- A land ownership certificate must be submitted;
- Where the application relates to the relaxation of conditions under section 42 of the Planning etc (Scotland) Act 2006, a statement to that effect.

The proposal will be assessed against the Development Plan and if the policy position has changed the application may be refused or new conditions applied. If approved, a new consent is issued.

Listed Building Consent and Advertisement Consent cannot be renewed and new applications must be made for these if the time limit has expired.

Variation of Planning Permission

Applications may be varied provided there is not a substantial change in the description of the development. In these cases, a new application for planning permission will be required.

Two sets of amended plans should be submitted to the planning authority seeking a non-material variation of the development. A decision letter will be issued with a determination.

Listed Building Consent and Advertisement Consent cannot be varied and new applications may be required.

Conditions Monitoring

Any conditions attached to your consent require to be met. Some of these may require to be discharged before the development commences. Failure to do so may affect the legality of your development.

Please submit appropriate details to the planning authority for determination if the condition(s) can be discharged.

Contact Details

Falkirk Council
Development Services
Abbotsford House
David's Loan
Falkirk
FK2 7YZ

Planning Review Committee Review Decision Notice

Decision by the Falkirk Council Planning Review Committee (the Planning Review Committee) on an application for review against the decision by an appointed officer of Falkirk Council

Site Address	Land To The South East Of Byways, Glen Road, Torwood
Application No.	P/13/0509/FUL Application for Review Against the Decision by an Appointed Officer of Falkirk Council
Development	Erection of Detached Dwellinghouse and Detached Domestic Double Garage (Plot 3)
Date of Decision Notice	8 December 2014

Decision

The Planning Review Committee overturns the decision reviewed by it and is minded to grant planning permission for the reasons set out in this notice.

Preliminary

This notice constitutes the formal decision notice of the Planning Review Committee as required by the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008 ("the 2008 Regulations").

The Planning Review Committee has also reviewed the decisions on two other applications at this location, both also for the erection of a detached dwellinghouse and detached domestic double garage. Their references are P/13/0513/FUL (Plot 1) and P/13/0514/FUL (Plot 2). The Planning Review Committee reviewed the decisions on all three applications at the same meeting. Each application is subject to a separate decision notice. Each decision notice is the same in terms of content and findings.

The above application was first considered by the Planning Review Committee at its meeting on 9 April 2014. The Planning Review Committee comprised Councillor John McLuckie (Convener), Councillor Craig Martin, Councillor Colin Chalmers and Councillor Sandy Turner. At this meeting, the Planning Review Committee decided, prior to consideration of the application, to conduct, in accordance with Regulation 16 of the 2013 Regulations, an unaccompanied inspection of the site.

The site visit by the Planning Review Committee was undertaken on the morning of 9 April 2014 and the meeting was reconvened in the afternoon of the same day. The Planning Review Committee, at both the site visit and the meeting in the afternoon, comprised Councillor John McLuckie (Convener), Councillor Craig Martin, Councillor Colin Chalmers and Councillor Sandy Turner.

At the meeting, the Planning Review Committee decided that it did not have enough information to determine the application and requested, in accordance with Regulation 15 of the 2013 Regulations, that further information, in the form of written submissions, be provided to the Planning Review Committee by the Forestry Commission and the Director of Development Services, Falkirk Council.

The application was further considered by the Planning Review Committee at its meeting on 9 June 2014. The Planning Review Committee at this meeting comprised Councillor John McLuckie (Convener), Councillor Craig Martin, Councillor Colin Chalmers and Councillor Sandy Turner. At the meeting, the Planning Review Committee decided that it still did not have enough information to determine the application and requested, in accordance with Regulation 15 of the 2013 Regulations, that further information in the form of written submissions be provided to the Planning Review Committee by the Forestry Commission, Scottish Ministers and the Director of Development Services, Falkirk Council.

The application was due to be considered further by the Planning Review Committee at its meeting on 22 September 2014. Due to the lack of a quorum the application together with applications P/13/0513/FUL (Plot 1) and P/13/0514/FUL (Plot 2) was continued to a future meeting.

The application was considered further by the Planning Review Committee at its meeting on 29 September 2014 and comprised Councillor John McLuckie (Convener), Councillor Craig Martin, Councillor Colin Chalmers and Councillor Sandy Turner. At the meeting, the Planning Review Committee noted that the decision of the Scottish Ministers on an appeal against an Enforcement Notice served by the Forestry Commission under the Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999 was not yet issued and could take up to another three months to be issued.

The Planning Review Committee decided that it now had sufficient information to allow a decision to be taken. In taking this decision, the Planning Review Committee were mindful that the decision of the Scottish Ministers in relation to the Enforcement Notice was not yet known but considered that a planning decision should be taken and it is not unusual for other statutory regimes and processes to run in parallel to the planning process.

At the meeting on 9 June 2014, the Planning Review Committee had requested further information from the Director of Development Services, Falkirk Council, in the form of a screening opinion as to whether or not an Environmental Impact Assessment was required for the development in terms of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011. The Planning Review Committee considered this screening opinion at their meeting on 29 September 2014 and accepted the opinion of the Director of Development Services that an Environmental Impact Assessment was not required, given the extent of the three application sites in combination (just 1 hectare), the relatively localised impacts of the proposed developments and the sites not being within a 'sensitive area' as defined in the Environmental Impact Assessment Regulations.

Reasoning

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

The determining issues in this review are compliance with the Development Plan (comprising the approved Falkirk Council Structure Plan and the adopted Falkirk Council Local Plan). Material considerations are the Falkirk Local Development Plan (Proposed Plan), the consultation responses, the representations received and the

planning history for the application site and surrounding land. The Planning Review Committee noted that the Forestry Commission had objected to the application (on the grounds of loss of woodland) and six objections from local Torwood residents had been received, and that the Forestry Commission and local residents had made further written submissions in respect of this application under review.

The Planning Review Committee noted that the application site lies outwith the urban limits for Torwood, within the countryside, as defined in both the Falkirk Council Local Plan and the Falkirk Local Development Plan (Proposed Plan).

Policy ENV.1 of the Falkirk Council Structure Plan presumes against development within the countryside, unless it can be demonstrated that a countryside location is essential or the development is an appropriate form of agricultural diversification. The Planning Review Committee noted the generality of this policy and that the specific criteria against which housing in the countryside is assessed are contained in Policies EQ19, SC3 and SC8 of the Falkirk Council Local Plan.

Policy EQ19 of the Falkirk Council Local Plan states that the urban and village limits represent the desirable limit to the expansion of settlements for the period of the Local Plan. Policy SC3 of the Falkirk Council Local Plan sets out the circumstances in which housing in the countryside may be permitted. The relevant circumstance in this instance is contained in Part 3 of the policy and provides for *"appropriate infill opportunities within the envelope of an existing group of residential buildings, where the development would not result in ribbon, backland or sporadic development, and the proposal satisfies Policy SC8"*. Policy SC8 of the Falkirk Council Local Plan provides for infill development and subdivision of plots where certain criteria are satisfied.

The Planning Review Committee acknowledged that the terms "infill development" or "gap site" are not defined in the Development Plan and are a matter of interpretation. They noted that the relevant planning history offered different views on this matter, including the notion that the land between the residential properties to the east (Aonach-Mor) and to the west (Byways) represented an "extended gap site".

The Planning Review Committee considered that the application site provided an appropriate infill opportunity for the proposed development. It was content that the application site formed part of an extended gap site between existing residential properties and that development of this extended gap could not be considered ribbon development, as it was in keeping with the well established settlement pattern along both sides of Glen Road and would not involve development beyond the outer edges of the village. It noted that the proposal would not extend further to the south than the existing residential properties, which they considered further supported that the development was "filling in a gap". It was satisfied that the proposal would not result in backland or sporadic development.

In respect of the criteria of Policy SC8, the Planning Review Committee was satisfied that the design of the proposed development would respect the character of the area and that adequate garden ground would be provided and there would be no privacy impacts. In respect of vehicular access, the Planning Review Committee considered that a single means of access, rather than a separate access to each of the three plots, would be in the best interests of road safety.

Policy EQ26 of the Falkirk Council Local Plan recognises the ecological, landscape, economic and recreational importance of trees, woodland and hedgerows and discourages felling detrimental to landscape, amenity, nature conservation or recreational interests. The policy states that ancient, long established and semi-natural

woodlands will be protected as a habitat resource of irreplaceable value. The Planning Review Committee noted the advice of the Forestry Commission and the Council's Biodiversity Officer that the proposed development would result in the permanent loss of a semi-natural woodland of Long Established Plantation Origin, including its soils and seedbank. However, it also noted the contrary advice of the agent that the woodland soils and seedbank were removed in 2002 when the initial tree felling occurred, to assist with the formation of a haul area associated with the removal of the commercial forest plantation.

Policy EQ26 provides for replacement planting in association with new development. The Planning Review Committee noted that the applicant had outlined compensatory planting approaches and the Council's biodiversity and landscape officers had set out detailed mitigation approaches should the application be approved. On balance, the Planning Review Committee considered that the applicant's proposal to create a native broadleaved woodland elsewhere within Whinnie Muir would adequately compensate for the permanent loss of woodland habitat as a consequence of the proposed development. In addition, the Planning Review Committee supported the detailed advice of the Council's biodiversity and landscape officers which it considered would adequately mitigate the impact of the proposed development on the landscape setting and amenity of the area. In general terms, it supported replanting as much woodland cover as possible within the application site. In accordance with the advice of the Council's Landscape Officer, this would include the provision of a 20 metre depth of native broadleaf species tree planting along the Glen Road frontage.

The Planning Review Committee noted that the relevant policies of the Falkirk Local Development Plan (Proposed Plan) are Policies CG01, CG03, HSG05 and GN04. It noted that these policies are similar to the corresponding policies of the Falkirk Council Local Plan. The relevant policies of the Falkirk Council Local Plan are considered in this decision.

Conclusion

The Planning Review Committee decided that it is minded to grant planning permission subject to:-

- (a) The satisfactory conclusion of an appropriate legal agreement/planning obligation in respect of:-
 - (i) The replacement of a conifer woodland elsewhere at Whinnie Muir with a native broadleaved woodland over an area twice the size of the application site; and
- (b) Thereafter, subject to the satisfactory conclusion of the foregoing matter, to remit to the Director of Development Services to grant planning permission subject to the following conditions:-
 - (1) The development hereby approved shall be implemented in accordance with the plan(s) itemised in the informative below and forming part of this permission unless a variation is required by a condition of the permission or a non-material variation has been agreed in writing by Falkirk Council as Planning Authority.
 - (2) Before the development commences, details of the location of the works compound and construction vehicle parking areas, and measures to suppress dust and mitigate the carrying of mud and other debris onto the

public road, shall be submitted to and approved in writing by this Planning Authority. Thereafter, the development shall be carried out in accordance with the approved details.

- (3) Before the development commences, full details of the colour and specification of all proposed external finishing materials shall be submitted to and approved in writing by this Planning Authority. Thereafter, the development shall be completed in accordance with the approved details.
- (4) Before the development commences, full details of the height, location and construction of all proposed fences, walls and any other means of enclosure shall be submitted to and approved in writing by this Planning Authority. Thereafter, the development shall be completed in accordance with the approved details.
- (5) Before the development commences, full details of a scheme of soft landscaping shall be submitted to and approved in writing by this Planning Authority. The details of the scheme shall include (as appropriate):-
 - (i) Existing and proposed finished levels in relation to a fixed datum, preferably ordnance;
 - (ii) An indication of all existing trees, shrubs and hedges to be removed, those to be retained, and proposals for the restoration of any that are damaged;
 - (iii) The location of all proposed trees, shrubs, hedges and grassed areas;
 - (iv) A schedule of plants comprising species, plant size and proposed numbers/density; and
 - (v) A programme for completion and subsequent maintenance.

Thereafter, the landscaping shall be fully implemented in accordance with the approved scheme. No existing planting shall be removed prior to the scheme of landscaping being approved in writing by this Planning Authority.

- (6) Further to condition 5 of this permission, the scheme of soft landscaping shall include the provision of a 20 metre depth of native broadleaf species tree planting along the Glen Road frontage of the site, in accordance with full details to be approved in writing by this Planning Authority.
- (7) Before the development commences, full details of the proposed foul and surface water drainage arrangements shall be submitted to and approved in writing by this Planning Authority. Thereafter, the development shall be completed in accordance with the approved details.
- (8) The proposed dwellinghouse shall be provided with in-curtilage parking facilities for at least two vehicles and an in-curtilage turning area, in accordance with details to be approved in writing by this Planning Authority. Thereafter, the development shall be completed in accordance with the approved details.

- (9) Notwithstanding the approved plans, no development shall commence until full details of the proposed vehicular access to serve the proposed dwellinghouse have been submitted to and approved in writing by this Planning Authority.

Reason(s):-

- (1) As these drawings and details constitute the approved development.
- (2) To minimise any disruption during the construction period.
- (3) To safeguard the visual amenity of the area.
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- (6) To safeguard the visual amenity of the area, integrate the development into its surroundings and assist to compensate for the permanent loss of woodland at the site.
- (7) To ensure that adequate drainage is provided.
- (8) To ensure that adequate car parking is provided.
- (9) To safeguard the interest of the users of the highway.

Informative(s):-

- (1) The applicant shall ensure that noisy work which is audible at the site boundary is only conducted between the following hours:

Monday to Friday	08:00 - 18:00 Hours
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Deviation from these hours of work will only be permitted in emergency circumstances and with the prior approval of the Environmental Health Unit.

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- (3) The applicant is advised that the following requirements will apply in order to gain the approval of the Planning Authority within the terms of condition 9 of this permission:-

- (a) A shared access will be provided to the three plots granted planning permission under reference numbers P/13/0513/FUL, P/13/0514/FUL and P/13/0509/FUL. The shared access will have a minimum width of 5.5 metre for a distance of at least 10 metres and be constructed at a gradient no greater than 1 in 10 and in a manner to ensure that no surface water or loose material is discharged onto the public carriageway;
 - (b) Any gate on the shared access will open inwards;
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 - (d) The shared access will require to be constructed across a drainage ditch running parallel with Glen Road. Culvert provision within the driveway structure will need to accommodate the maximum storm flow within the drainage ditch, to prevent localised flooding, and be designed to allow access for maintenance purposes to ensure they remain free of debris. Drainage calculations will need to be submitted in respect of any attenuation, treatment and flow rate to prove that the culvert can accommodate the flow.
- (4) The applicant is advised that the formation of a new driveway access to Glen Road to serve the proposed dwellinghouse would require a Minor Roadworks Consent, issued and approved by Development Services, Roads, Earls Road, Grangemouth.
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- (6) Scottish Water have advised that the Turret Water Treatment Works may have capacity to serve the proposed development and that Torwood Wastewater Treatment Works at present has limited capacity to serve the new demand. The applicant is advised to discuss their development directly with Scottish Water.

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8 December 2014

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 - c. to grant permission or approval, consent or agreement subject to conditions,the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.

- 2 If permission to develop land is refused or granted subject to conditions 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, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.

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You should read your planning permission carefully, before notifying the planning authority of your intention to start the development as it may contain conditions which have to be fulfilled before development can commence.

Notification of Completion of Development (NCD)

On completion of a development for which planning permission has been given, the person completing the development must, as soon as practicable, submit a notice of completion to the planning authority. Where development is carried out in phases there is a requirement for a notice to be submitted at the conclusion of each phase. The form is included in the decision pack and is also available to download from the Council website.

Display of Notice while development is carried out

For ‘bad neighbour’ developments (e.g. hot food takeaways or licensed premises), the developer must, for the duration of the development, display a sign or signs containing prescribed information. The notice must be:

- Displayed in a prominent place at or in the vicinity of the site of the development;
- Readily visible to the public;
- Printed on durable material.

A model display notice is available for download from the Council website.

OTHER INFORMATION

Renewal of Consent or Change to Conditions

Where an application is made before the duration of a planning permission expires for the same development or to change conditions associated with the planning permission, only certain requirements on content of applications apply:

- Applications must be in writing and shall give sufficient information to identify the previous grant of planning permission;
- The appropriate fee must be paid;
- A land ownership certificate must be submitted;
- Where the application relates to the relaxation of conditions under section 42 of the Planning etc (Scotland) Act 2006, a statement to that effect.

The proposal will be assessed against the Development Plan and if the policy position has changed the application may be refused or new conditions applied. If approved, a new consent is issued.

Listed Building Consent and Advertisement Consent cannot be renewed and new applications must be made for these if the time limit has expired.

Variation of Planning Permission

Applications may be varied provided there is not a substantial change in the description of the development. In these cases, a new application for planning permission will be required.

Two sets of amended plans should be submitted to the planning authority seeking a non-material variation of the development. A decision letter will be issued with a determination.

Listed Building Consent and Advertisement Consent cannot be varied and new applications may be required.

Conditions Monitoring

Any conditions attached to your consent require to be met. Some of these may require to be discharged before the development commences. Failure to do so may affect the legality of your development.

Please submit appropriate details to the planning authority for determination if the condition(s) can be discharged.

Contact Details

Falkirk Council
Development Services
Abbotsford House
David's Loan
Falkirk
FK2 7YZ

**The Town and Country Planning (Environmental Impact Assessment)
(Scotland) Regulations 2011
Screening Opinion**

Development:	Erection of 3 Detached Dwellinghouses with Detached Double Garages
Location:	Land to the South East of Byways Glen Road Torwood
Reference No:	P/13/0509/FUL; P/13/0513/FUL; P/13/0514/FUL
<p>Reason for classification as Schedule 2 Development (see Schedule 2 of EIA Regulations) Description of development from Column 1: 10. Infrastructure projects (b) Urban development projects, including the construction of shopping centres and car parks, sports stadiums, leisure centres and multiplex cinemas;</p> <p>Applicable Thresholds/Criteria from Column 2 The area of works exceeds 0.5 hectare. The proposal has been submitted as three separate applications. Although individually these are below the threshold, for the purposes of EIA, should be seen collectively as a single proposal for 3 houses.</p>	
<p>Consideration of Whether Development has Significant Environmental Effects (see Schedule 3 of EIA Regulations) <u>1. Characteristics of development</u> (having regard to: size; cumulative effects; use of natural resources; production of waste; pollution and nuisances; risk of accidents)</p> <p>The proposal is relatively limited in extent, extending to around 1 hectare. It is currently a greenfield site on the edge of Torwood village, and part of a wider mixed woodland which envelopes the village. Semi-mature naturally regenerated trees on the north east boundary to the road and naturally regenerated younger trees on the site have been removed. The three proposed houses are 1½ storey with large footprint. They will have some landscape impact on the setting of the village, but the visual impact will be very localised and restricted to a short section of Glen Road. There will be minor short term construction-related impacts on adjacent residential properties.</p> <p><u>2. Location of development</u> (having regard to: existing land use; relative abundance, quality and regenerative capacity of natural resources in the area; absorption capacity of the natural environment; areas in which the environmental quality standards laid down in community legislation have already been exceeded; densely populated areas; landscapes of historical, cultural or archaeological significance)</p> <p>The site is part of an area listed as a long established woodland of plantation origin in SNH's Inventory of Ancient, Long Established and Semi-Natural Woodland. Although the area was cleared of trees in 2013, and so the proposal does not involve further</p>	

loss of trees per se, the site remains part of the woodland, and is of local ecological value given the presence of woodland soils and seed bank developed over a long period. If left, it would regenerate again into broadleaved woodland habitat, which is a priority habitat in the Local Biodiversity Action Plan.

3. Characteristics of the potential impact

(having regard to: the extent of the impact; the transfrontier nature of the impact; the magnitude and complexity of the impact; the probability of the impact; the duration, frequency and reversibility of the impact.

The visual and ecological impact of development of this area will be localised, but will be permanent and irreversible.

EIA required? (i.e. is development likely to have significant environmental effects?	No
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Reasons: The proposal will have a landscape impact on the setting of the village and a very localised visual impact as viewed from a short section of Glen Road. It will result in the loss of an area listed in the Inventory of Ancient, Long Established and Semi-Natural Woodland of plantation origin which, although it has previously been felled, has the potential for regeneration. However, the proposal is just 1 hectare in extent and the landscape, visual and ecological impacts will be relatively localised. Although the site is part of a wider area of local ecological value, it is not a 'sensitive area' as defined by the EIA Regulations, For these reasons, it is considered that the proposal is not likely to have significant environmental effects.

Directorate for Planning and Environmental Appeals

Report to the Scottish Ministers



Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999

Report by Katrina Rice, a Reporter appointed by the Scottish Ministers

- Case references: TENA-009-1 and 2 and 3
- Site Address: land adjacent Glen Road, Torwood, Larbert
- Appeals by Peter and Janet Hoggan, Roy Mitchell and Allan Gilmour against the 3 enforcement notices dated 14 February 2014 served by Forestry Commission Scotland
- The alleged breach of control: work carried out in relation to a relevant project, namely deforestation without consent, where consent is required by Regulation 4
- Date of hearing session by reporter: 9 July 2014
- Date of accompanied site inspection: 9 July 2014

Date of this report and recommendation: 8 October 2014



INVESTOR IN PEOPLE



Directorate for Planning and Environmental Appeals

Report of 3 appeals made against Forestry Commission Scotland for the serving of 3 enforcement notices under regulation 20 of the Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999



Alleged felling without consent of the Forestry Commission on land adjacent to Glen Road, Torwood, Larbert

• Case references	TENA-009-1, TENA-009-2 and TENA-009-3
• Reporter	Katrina Rice
• Appellants	Peter and Janet Hoggan, Roy Mitchell and Allan Gilmour
• Competent authority	Forestry Commission Scotland
• Date of enforcement notices	14 February 2014
• Date cases received by DPEA	13 March 2014
• Method of consideration and date	Further written submissions, hearing session on 9 July 2014, accompanied site inspection on 9 July 2014, unaccompanied site inspection before the hearing session
• Date of report	8 October 2014
• Reporter's recommendation	Dismiss the appeals and uphold the enforcement notices dated 14 February 2014



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Preamble

Directorate for Planning and Environmental
Appeals
4 The Courtyard
Callendar Business Park
Callendar Road
Falkirk
FK1 1XR

File references: TENA-009-1, 2 and 3

8 October 2014

The Scottish Ministers
Edinburgh

Report following 3 appeals made against Forestry Commission Scotland for the serving of 3 enforcement notices under regulation 20 of the Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999 on land adjacent to Glen Road, Torwood, Larbert

1. In accordance with my minute of appointment dated 29 April 2014, I held a hearing session on 9 July 2014 within Stenhousemuir Football Club, Ochilview Park, Gladstone Road, Stenhousemuir, in connection with 3 appeals under regulation 20 of the Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999. The appeals were lodged on 13 March 2014 by Roy Mitchell on behalf of himself, Peter and Janet Hoggan and Allan Gilmour against the service of 3 enforcement notices by Forestry Commission Scotland. The enforcement notices alleged that work had been carried out in relation to a "relevant project" without consent, namely deforestation on 3 adjoining plots of land totalling approximately 0.96 hectares adjacent to Glen Road, Torwood, Larbert, where consent was required by regulation 4 of the 1999 Regulations. I have dealt with the 3 appeals conjointly, as agreed by all parties.

2. Forestry Commission Scotland and Roy Mitchell (on behalf of all of the plot owners), lodged written statements and documents before the hearing session. The hearing session covered the following topics which were identified in the agenda circulated in advance:

- The background to the enforcement notices
- Has deforestation occurred in terms of the 1999 Regulations
- Whether the tree felling (woodland removal) is likely to have significant effects on the environment
- Whether the tree felling (woodland removal) is a relevant project as defined in the 1999 Regulations
- Proposed mitigation

4 The Courtyard, Callendar Business Park, Falkirk, FK1 1XR
DX 557005 Falkirk www.scotland.gov.uk/Topics/Planning/Appeals



3. Two of the plot owners, Roy Mitchell (Director at Roy Mitchell Design Limited) and Peter Hoggan, presented evidence at the hearing session. Forestry Commission Scotland was represented by Peter Ferguson - Partner at Harper MacLeod LLP, Neil White – Woodland Officer, Keith Wishart – Conservator and Gordon Patterson – Biodiversity Adviser.

4. Further written submissions were also lodged in response to 2 procedure notices, one on the consultation responses received by Forestry Commission Scotland as part of the screening process and one on legal submissions.

5. I have summarised the introduction to the case in chapter 1 of this report. The evidence of parties is summarised in chapters 2 and 3. Chapter 4 sets out my conclusions and recommendations. The documents lodged by parties are listed at appendix 1.

6. Following the hearing session and the period for further written submissions, an email was received from Mr Mitchell on 11 August 2014. It has been placed on the case files and copied to Forestry Commission Scotland for information. I have referred to its contents in the relevant sections of my report.



Chapter 1 – Introduction

1.1 The appeals relate to 3 adjoining plots of land of 0.34 hectares (plot 1 owners – Peter and Janet Hoggan), 0.314 hectares (plot 2 owner - Roy Mitchell) and 0.301 hectares (plot 3 owner - Allan Gilmour), located to the south-west of Glen Road, Torwood. On 28 June 2013, Forestry Commission Scotland became aware that felling was taking place on this area of land and that no felling licence was in place. An officer from Forestry Commission Scotland attended the site to investigate on that day. It was concluded that no offence was being committed under the Forestry Act 1967.

1.2 Shortly after, the 3 plot owners submitted 3 planning applications to Falkirk Council seeking consent to develop the felled area for 3 houses. As a consequence, Forestry Commission Scotland took the view that the plot owners did not intend to restock the felled area and subsequently formed the opinion under regulation 6(5) that the deforestation carried out was a “relevant project” under the Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999 and that consent would have been required. As the work had already taken place, formal notice of the opinion was given to the 3 plot owners and 3 enforcement notices were issued on 14 February 2014.

1.3 The enforcement notices, which were issued under regulation 20 of the 1999 Act, required the plot owners to take the following measures:

“Before 30 June 2015 carry out on the land the works specified in the Schedule hereto (which is part of this notice), which in the opinion of the Commissioners are reasonably necessary to secure compliance with any condition subject to which consent was granted or to remove or alleviate any injury to the environment which has been caused by the relevant project.”

1.4 The schedule of works required the following:

1. The land on which the felling/mulching took place will be adequately cleared, drained and prepared.
2. The land on which the felling/mulching took place will be planted with a native woodland mix reflecting that which was felled consisting of 20 percent Downy birch, 20 percent Silver birch, 20 percent Gean, 10 percent Oak, 10 percent Rowan, 10 percent Holly and 10 percent designed open ground, at a density not less than 1100 stems per hectare protected by 1.2 metre tree shelters.
3. For a period of 10 years from the planting, the plants must be protected against damage and be adequately weeded.
4. Any failure or losses must be replaced where necessary to provide satisfactory stocking.
5. Any drains, tree shelters must be properly maintained, all in accordance with the rules and practice of good forestry.

1.5 The appellants submitted appeals against the 3 enforcement notices on 13 March 2014.

Chapter 2 – Summary of evidence for the appellants

Background

2.1 The first written communication received from Forestry Commission Scotland was dated 3 October 2013 indicating that an investigation was carried out following reports of alleged illegal felling. It was indicated that as the appellants did not intend to replant the area of woodland that was felled and Forestry Commission Scotland was unaware of any plans to restock the felled woodland, it was considered that the felling was deforestation under the terms of the Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999.

2.2 The appellants responded on the 24 October 2013, confirming that prior to felling operations commencing, they had sought arboricultural advice. The Forestry Commission guidance on Environmental Impact Assessment of forestry projects states that if the area falls below the relevant threshold noted within the table at appendix 1 (1 hectare), then it is not likely to be a "relevant project" and consent under the Environmental Impact Assessment Regulations would not be required. Furthermore, as the woodland was not defined as one of the ten "sensitive areas" and the site area was 0.96 hectares (under the 1 hectare threshold); it was assumed that no permission was required. The letter also asked Forestry Commission Scotland to confirm that the appellants' interpretation was correct and that consent was not required.

2.3 Forestry Commission Scotland responded in a letter dated 11 November 2013 stating that circumstances existed that made it likely that the project would have a significant effect on the environment and that the appellants' interpretation was incorrect and consent might be required, due to the reasons previously given in the letter dated 3 October 2013. The appellants then received a letter from Forestry Commission Scotland on the 13 November 2013, regarding the Environmental Impact Assessment screening covering the project area at Glen Road, Torwood. This stated:

"Towards the end of June 2013, it was reported to us that an area of woodland adjacent to Glen Road, Torwood was being cleared without the presence of a felling licence. We investigated and found that because the land was split into three ownerships, the felling activity was exempt given that the quantities were inside the threshold for licensable timber. Subsequent felling also took place at the beginning of July 2013 and at the beginning of October 2013. The total area cleared is in the region of 0.95 hectares.

Subsequently it was brought to our attention that the three land owners intended to develop the site (see attached plans) and planning applications for housing were submitted. This has led us to conclude that the land owners do not intend to restock the cleared area and have therefore deforested the site."

2.4 The third paragraph goes on to comment that at the beginning of October 2013, the three land owners were written to and asked to provide details of the project in order to

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assist in determining whether this was a “relevant project”. Forestry Commission Scotland states that no further information was provided. This statement is untrue. The letter dated 24 October 2013 was in direct response to the Forestry Commission Scotland letter dated 3 October 2013.

2.5 The Forestry Commission Scotland letter dated 3 October 2013 catalogues the events from June 2013 and states that the woodland is considered of medium to high nature conservation value and recorded as being of “long established plantation origin”. In terms of Scottish Government's policy on the control of woodland removal, such woodlands are to be offered a high level of protection and there is a strong presumption against the removal of any such woodland for whatever reason. Yet the Forestry Commission Scotland officer confirmed on site on 28 June 2013, that the felling was perfectly legal. If there were any concerns or doubts over the environmental impact, a “stop notice” should have been issued to cease works immediately until it was established if there was any over-riding issue. Instead, on the day of felling operations commencing, the Forestry Commission Scotland officer was in full agreement that the tree removal was lawful and was made aware that planning applications were going to be made at some point in the near future to Falkirk Council for residential use.

2.6 The appellants responded to the Forestry Commission letter dated 13 November 2013 on 29 November 2013. The appellants confirmed that three individual planning applications had been submitted to Falkirk Council and stated that if the applications were unsuccessful, then an area would be planted, so at that point in time, deforestation had not taken place. The letter stated that the information circulated to consultees was incomplete and over-stated the environmental value of the woodland. The majority of the area was previously covered by sparsely regenerating birch and bracken. The area had been cleared of mature trees in 2003 following which, the roots and soil were grubbed up, all prior to acquisition by the 3 present landowners. There was only a narrow fringe, 10 metres deep (approximately 0.07 hectares) of mature birch woodland. This area of woodland was heavily biased towards Glen Road and constituted a distinct hazard through branch drop, shading of frost on the public road and physical interference with overhead telephone wires. In the final part of the letter, Forestry Commission Scotland was asked to obtain a screening opinion from all of the residents of the dwellings located on either side of the project area and directly opposite, in order to obtain the opinion of the most affected residents. Unfortunately, this request was ignored.

2.7 On 14 February 2014, Forestry Commission Scotland issued 3 enforcement notices under regulation 20 requiring replanting measures to be undertaken. On 13 March 2014, the appellants registered their appeals against the enforcement notices.

Has deforestation occurred in terms of the 1999 Regulations

2.8 The works on site should not be classed as a “relevant project” as, at present, there has not been any permanent change of use, deforestation has not occurred. The definition of deforestation is the permanent loss of woodland cover. At this moment in time, the land is not being converted into another land-use and the appellants have never intimated to Forestry Commission Scotland that the situation on-site is permanent. Trees have been