

- 7 The deadline in Forestry Commission Scotland's enforcement notice for replanting to be carried out is 30th June 2015. If the planning applications are to be put once again before the Planning Review Body, they cannot now be determined before that date. Given this position, we suggest that Forestry Commission Scotland might consider exercising its powers under Regulation 20(6)(a) of the 1999 Regulations to vary the enforcement notice so as to allow further time for the planning process to run its course.
- 8 The Council will provide a copy of this letter to the applicant and the interested parties along with a copy of a letter to the applicant (attached for your information). Comments are invited from all of these parties within 21 days of the date of this letter which will be put before the Planning Review Committee. If you have any comments you wish put before the Planning Review Body, please provide both me and Antonia Sobieraj, Committee Assistant, Falkirk Council, Municipal Buildings, Falkirk, FK1 5RS with them within the 21 days period.

Yours sincerely



Neil Collar
Partner
On behalf of Brodies LLP
Direct Line: 0131 656 0125
E-mail: neil.collar@brodies.com

Copy to Mr Peter Ferguson, Harper Macleod

OUR REF RHS/FAL0014.00039
YOUR REF

Mr Rory Milne
Milne & Co WS
7 Hopetoun Crescent
Edinburgh
EH7 4AY

25 June 2015

Dear Mr Milne

TORWOOD: PLANNING APPLICATIONS P/13/0509/FUL, P/13/0513/FUL AND P/13/0514/FUL

- 1 Falkirk Council have appointed Brodies to advise them in respect of the above planning applications and the implications of the Scottish Ministers' recent decision to refuse appeals in respect of enforcement notices issued under the Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999 ("the 1999 Regulations").
- 2 My understanding is that the purpose of the 1999 Regulations is to ensure that the requirements of the Environmental Impact Assessment Directive are complied with in respect of forestry projects where such projects do not form part of a development that falls within one of the classes in schedule 1 or 2 (disregarding the thresholds in schedule 2) of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 ("the 2011 Regulations").
- 3 On 8 December 2014, the Council's Planning Review Body decided that it was minded to grant planning permission on the basis of the above planning applications by your client, Mr Roy Mitchell, and the owners of the neighbouring land. The Planning Review Body sought and received a screening opinion from Council officers which concluded that environmental impact assessment (EIA) was not required. The Planning Review Body accepted that opinion although it was aware that Forestry Commission Scotland had previously issued an enforcement notice under the 1999 Regulations in respect of deforestation of the site for the purpose of change of land use to housing. The Planning Review Body's assessment, following its consideration of the screening opinion, was that EIA was not required even though deforestation of the application site (in the sense of a change of use from forestry to housing) was part of the three housing developments. Planning permission was to be issued upon the conclusion of a planning agreement securing replanting elsewhere on Whinnie Muir.
- 4 The Planning Review Body is required to take account of any material change in circumstances between

the submission of the appeal and the grant of permission (even if a minded-to-grant decision has previously been issued – see *John G Russell (Transport) Ltd v Strathkelvin DC* 1992 SLT 1001). In our view, the Scottish Ministers' decision to refuse the appeals against the enforcement notices issued under the 1999 Regulations is a circumstance that the Council are required to take into account.

- 5 We have therefore advised the Council's officers that they should bring the applications back before the Planning Review Body so that it can consider the Scottish Ministers' decision. It appears to us that the Planning Review Body would then have three options:
 - 5.1 To determine that, notwithstanding the Scottish Ministers' decision, it was still minded to grant planning permission without EIA;
 - 5.2 To determine itself, in the light of the Scottish Ministers' decision, that EIA is required;
 - 5.3 To request a screening direction from the Scottish Ministers under the 2011 Regulations.

It would of course be possible for any person other than the Council to request a screening direction from the Scottish Ministers before planning permission is granted, even if the Planning Review Body took the first option. Since we know of no relevant circumstance that has changed other than the Scottish Ministers' decision on the 1999 Regulations enforcement appeal, it does not appear to us that the Planning Review Body could at this stage lawfully refuse permission except on the basis of new environmental information supplied should it be determined either by the Council or the Scottish Ministers that an environmental impact assessment is required. The proposed replanting near Torwood Castle might properly be seen as part of the overall project for EIA purposes, and therefore to be taken into account in any screening decision.

- 6 For your information, our advice to the Council on the relationship between the enforcement action under the 1999 Regulations and the planning applications is that grant of the applications would supersede the enforcement notices. The matter is far from straightforward, but our reasons for taking this view are: that grant of planning permission will include permission for change of the land use at the site from forestry to housing; that the planning applications do fall within a description in the 2011 Regulations (urban development project); that (in the absence of the enforcement notices) operation of the 1999 Regulations would therefore be displaced by the planning applications; the purpose of enforcement action under the 1999 Regulations is solely to ensure compliance with EIA requirements (and is not to be conceived as a punishment); EIA requirements would have been met under the 2011 Regulations; there would be no further purpose in the enforcement notices if EIA requirements had been met. Therefore, although the 1999 Regulations do not state expressly that an enforcement notice under the 1999 Regulations ceases to have effect upon grant of planning permission, it appears to us that this is the effect such a grant must have (just as a planning enforcement notice would cease to have effect on grant of planning permission). Even if we are wrong in this, we cannot see that it would be in the public interest to prosecute a breach of an enforcement notice issued under the 1999 Regulations where the planning authority, to whom Parliament has given the authority for such decisions (rather than Forestry Commission Scotland), has granted planning permission that includes a change of use from forestry. It appears to us it would be appropriate in those circumstances for Forestry Commission Scotland to withdraw the enforcement notices.

- 7 At the same time as writing to you, we are writing to Forestry Commission Scotland to let them know what the Council's view and what it proposes to do. We will also suggest that Forestry Commission Scotland considers exercising its powers under Regulation 20(6)(a) of the 1999 Regulations to vary the enforcement notice so as to allow further time for the planning process to run its course.
- 8 The Council will provide a copy of this letter to Forestry Commission Scotland and other interested parties along with a copy of a letter to Forestry Commission Scotland (attached for your information). Comments are invited from all of these parties within 21 days of the date of this letter which will be put before the Planning Review Committee. If you have any comments you wish put before the Planning Review Body, please provide both me and Antonia Sobieraj, Committee Assistant, Falkirk Council, Municipal Buildings, Falkirk, FK1 5RS with them within the 21 days period.

Yours sincerely



Neil Collar
Partner
On behalf of Brodies LLP
Direct Line: 0131 656 0125
E-mail: neil.collar@brodies.com

Sobieraj, Antonia

From: [REDACTED] in behalf of LST Community Council [lst-cc@virginmedia.com]
Sent: 14 July 2015 23:44
To: Sobieraj, Antonia
Cc: Lauralin Scott; Eric Appelbe
Subject: Fwd: Local Review Body - Additional Comments: P/13/0513/FUL, P/13/0514/FUL, and P/13/0509/FUL by Larbert, Stenhousemuir & Torwood Community Council

Dear Antonia

Many thanks for your letter of 29 June 2015 advising us of the legal advice the Council has sought in relation to the outcome of the Forestry Commission enforcement notice appeal and the impact of this on the 3 planning applications. We note that the application is now due to go back to the Local Review Body.

We discussed the position at our meeting on Monday 29 June 2015 upon receipt of your letter. Our position of objecting to the applications remains unaltered and we see no material considerations that would alter our position.

We would also advise that we are concerned over the decision making processes within this case. We note that the decision to grant planning permission was taken by the Local Review Body and required a casting vote by the Chair. We note that the Chair used their casting vote to grant planning permission to the 3 planning applications. We would have expected that a Chair with a casting vote would be expected to vote to retain the status quo. Given the substantial case history at this site, the recommendations of officers and at the time the Forestry Commission appeal process, we were surprised that this course of action was taken and the applications granted permission.

We would therefore ask that careful consideration is given by the Local Review Body to this case and the outcome of the Forestry Commission enforcement notice appeal.

Yours sincerely

--
 Yvonne Weir
 Secretary
 Larbert, Stenhousemuir & Torwood Community Council

C/O 92 Stirling Road, Larbert, FK5 4NF
 Tel: [REDACTED]

E-Mail: lst-cc@virginmedia.com
 Website: www.lstcommunitycouncil.org.uk
 Facebook: www.facebook.com/LSTCommunityCouncil
 Twitter: @LST_CC

----- Forwarded message -----

From: **Sobieraj, Antonia** <antonia.sobieraj@falkirk.gov.uk>
 Date: 17 February 2015 at 14:57
 Subject: RE: Planning Review - Additional Comments: P/13/0513/FUL, P/13/0514/FUL, and P/13/0509/FUL Comment by Larbert, Stenhousemuir & Torwood Community Council
 To: LST Community Council <lst-cc@virginmedia.com>
 Cc: [REDACTED] "Morris, John" <john.morris@falkirk.gov.uk>

Thank you for your email.

I attach the decision notices for the three applications and a copy of the minute of the meeting of the Local Review Body on 29 September 2014 when the decision was taken.

As you will note from the decision notices the Planning Review Committee **AGREED** that it was **MINDED** to **GRANT** planning permission in relation to applications P/13/0509/FUL, P/13/0513/FUL and P/13/0514/FUL 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 detailed conditions within the decision notice.

I hope this is helpful and should you require any further information do not hesitate to contact me.

Tonia

Antonia Sobieraj

Committee Services Officer

Chief Executive Office

Governance

Falkirk Council

Municipal Buildings

Falkirk FK1 5RS

Email:antonia.sobieraj@falkirk.gov.uk

Telephone:01324 501277

From: [REDACTED] | On Behalf Of LST Community Council

Sent: 16 February 2015 19:35

To: Morris, John: Sobieraj, Antonia

Cc: [REDACTED]

Subject: Re: Planning Review - Additional Comments: P/13/0513/FUL, P/13/0514/FUL, and P/13/0509/FUL Comment by Larbert, Stenhousemuir & Torwood Community Council

01/10/2015

Hi John/Antonia

I note that we have still not received a response in relation to the Local Planning Review Body meeting for these applications.

Can you please arrange for a copy of the outcome letter and minutes from the meeting to be forwarded to us. Our next meeting is on Monday 23 February and we would be grateful for a response before then.

In light of the Forestry Commission enforcement notice appeal at the site, can you please also advise if the planning applications are sisted until the outcome of the appeal's process.

Kind regards

Yvonne

--

Yvonne Weir

Secretary

Larbert, Stenhousemuir & Torwood Community Council


Tel: 

E-Mail: lst-cc@virginmedia.com

Website: www.lstcommunitycouncil.org.uk

Facebook: www.facebook.com/LSTCommunityCouncil

Twitter: @LST_CC

On 21 January 2015 at 21:43, LST Community Council <lst-cc@virginmedia.com> wrote:

Hi John

I have checked our records and note we do not appear to have received an update on this planning review.

Can you please forward a copy of the outcome or provide an update on the review.

Kind regards

Yvonne

Yvonne Weir

Secretary

Larbert, Stenhousemuir & Torwood Community Council

C/O 92 Stirling Road, Larbert, FK5 4NF

Tel: 01324 513402

E-Mail: lst-cc@virginmedia.com

Website: www.lstcommunitycouncil.org.uk

Facebook: www.facebook.com/LSTCommunityCouncil

Twitter: @LST_CC

On 26 February 2014 at 10:03, Morris, John <john.morris@falkirk.gov.uk> wrote:

Dear Yvonne

Thank you for your comments in respect of the above. A copy has been place on each individual file. In accordance with procedures, these will be passed to the applicant for comment. Committee Services will be in touch with details of any further developments in the process.

Sobieraj, Antonia

From: [REDACTED]
Sent: 20 July 2015 22:40
To: Sobieraj, Antonia
Subject: Planning Review Committee submission P/13/5014 / 0509 / 0513

I would wish the following comments made to the Planning Review Committee.

Brodies advice aside, I am pleased the Council have decided to review their decision of 'minded-to-grant,' planning permission after what in our opinion was a flawed decision ultimately taken by one committee member which has resulted in an embarrassing set of circumstances for the Council.

The conditions attached to the 'minded to grant' planning permission included the planting of a defined area of the Whinnie Muir site, a provision which we believe was out with the jurisdiction of the Council. The Forestry Commission would have had to provide a felling licence? I understand this is a licence the Forestry Commission are not minded to provide. On this same point, I would have thought that if the Council after its review meeting decide to proceed to grant planning, the site now re-stocked would require a felling licence ?

I am again dismayed at the apparent waste of public resource give to this case over a sustained period of time. As residents of Torwood, we have observed numerous planning applications on this site, objections, site visit after site visit, and we were further frustrated to read the recent legal advice offered to the Council by Brodies, which has no doubt cost the tax payer additional unnecessary expense. After two in-depth reports and subsequent decisions by Scottish Ministers both concluding the same outcome, the strong position taken by the Forestry Commission, The Woodland Trust, the local Community Council and the local Woodland Group, I would ask the Committee to consider to make the right decision and reject the decision to grant planning.

The basic facts of the case remain unchanged this site is out with the local plan, there is already a brown field site identified in Torwood for development, there is therefore no further requirement for housing.

Mrs & Mrs J Bell
 Netherlee
 Glen Road
 Torwood
 Larbert
 FK5 4 SN

Sobieraj, Antonia

From: [REDACTED]
Sent: 20 July 2015 23:15
To: Sobieraj, Antonia
Subject: Planning Review Committee Submission P/13 0513 / 0514 & 0509

I am providing the following submission on behalf of Torwood Community Woodlands Ltd further to your letter dated 29th June 2015.

Firstly, the Torwood Community Woodlands Group Ltd are delighted the site has once again been restocked with native broadleaved woodland as required by the Forestry Commissions enforcement notices. As the Committee will be aware our local woodland group have campaigned for the site to be returned to its natural habitat since 2002 when it was illegally felled.

We duly note the advice received by Brodies dated 25th June 2015. We are pleased that the Council have decided to review their decision of 'minded-to-grant,' planning permission. It is our opinion that this decision was fundamentally flawed in the first instance. The provisions attached to the 'minded to grant' planning permission included the planting of a defined area of the Whinnie Muir site twice the size of the application site, a provision which we believe the Council did not have the authority to enforce. It would have been the Forestry Commission decision to ultimately provide a felling licence in order for this provision to have been fulfilled. We understand from our communications with the Forestry Commission that this is a licence they would not have minded to grant. On this same point, we also believe that should the Council after its review meeting decide to proceed to grant planning, the site now re-stocked would also now require a felling licence. We can only assume the Forestry Commissions position would remain consistent with their earlier position.

The fundamental facts of the case have remain unchanged over a significant period of time as in this site is out with the local plan, there is already a brown field site identified in Torwood for development, there is therefore no further requirement for housing.

The local Community Woodland Group have worked in partnership with the residents of Torwood, Stenhousemuir and Larbert over a number of years along with the Forestry Commission, The Woodland Trust, Larbert, Stenhousemuir and Torwood Community Council to name only a few. We are confident we speak for all those who have been involved in our on going commitment to protect our local natural environment and ask the Planning Review Committee move to reject the previous decision of minded to grant.

Elaine Bell (Mrs)

Trustee

On behalf of Torwood Community Woodlands Ltd

Registered Office: Willowdene, Glen Road, Torwood, Larbert FK5 4SN
 Torwood

-Our ref: PFE/383851
Your ref: RHS/FAL0014.00039

FAO Neil Collar
Brodies
DX ED10
EDINBURGH 1

28 August 2015

Dear Mr Collar

**Falkirk Council
Forestry Commission Scotland
Torwood
Applications: P/13/0509/FUL, P/13/0513/FUL and P/13/0514/FUL**

I refer to your letter of 25 June 2015 addressed to Neil White of Forestry Commission Scotland. Your colleague Robert Seaton sent me a copy of the letter on 25 June and subsequently provided a copy of the Screening Opinion provided to the Local Review Body.

Forestry Commission Scotland has considered this matter very carefully and asked me to respond on their behalf.

Two key issues emerge from your letter which I will consider in turn below. There is however a substantial degree of overlap between the issues.

Relationship between Enforcement under 1999 Regulations and Permission Granted under the 1997 Act

The first issue is the relationship between the enforcement action taken under the Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999 ("the 1999 Regulations"), which were engaged by the site owners' unauthorised deforestation of Torwood, and the potential grant of planning permission for a residential development on the Torwood site under the Town and Country Planning (Scotland) Act 1997 ("the 1997 Act.") Environmental impact assessment in relation to applications for planning permission is ordinarily, but not always, dealt with under the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 ("the 2011 Regulations").

Both the 1999 Regulations and the 1997 Act establish assessment, consenting and enforcement regimes in relation to certain activities. While in the majority of cases the same activities would only engage one of the regimes, it is perfectly possible that both regimes could be simultaneously engaged by the same proposed activity. For example, both regimes would be engaged in relation to projects to which the 1999 Regulations potentially apply (most obviously deforestation) which involve development not mentioned in Schedule 1 or column 1 of Schedule 2 of the 2011 Regulations. Such development would be covered by Regulation 3(1)(c)(ii) of the 1999 Regulations.

In such a situation, the grant of planning permission would not on its own be sufficient to allow the proposed development to go ahead. Consent would also be required under the 1999 Regulations (if it was considered that the project was likely to have significant effects on the environment.) If consent was refused but works nevertheless commenced, enforcement action under the 1999 Regulations would still be competent and appropriate notwithstanding the grant of planning permission.

That was not of course the exact situation at Torwood. As no planning permission for housing development had been granted at the time of determination of the Enforcement Notice appeal, and no actual building works had commenced, the appeal was decided on the basis that there was deforestation not involving development (i.e. under Regulation 3(1)(c)(i) of the 1999 Regulations) as opposed to deforestation involving development not mentioned in Schedule 1 or 2 of the 2011 Regulations.

Once the 1999 Regulations have been engaged with a project, in this case through deforestation actually being carried out, a developer cannot disengage the regulations by subsequently adding to or altering the nature of the project. Any subsequent changes or additions to the original project would also need to be considered under the 1999 Regulations as the potential environmental impacts of the changes or additions would be cumulative to the environmental impacts of the initial deforestation project. If a subsequent change or addition to the project were to be considered separately then there would be a risk of missing the cumulative environmental impacts of the changes or additions. That risk is clearly highlighted in the present case where the screening carried out by the Council has concluded no likelihood of significant environmental effects which would mean no further environmental impact assessment of the housing proposals. Splitting the assessment of EIA projects in this way is colloquially referred to as 'salami slicing' and extensive case law makes clear that this is prohibited.

The Council's position is that the grant of planning permission would be for a development covered by Column 1 of Schedule 2 of the 2011 Regulations (para 10(b)). As such development would not be covered by the 1999 Regulations, the grant of planning permission should supersede enforcement notices served in the context of a Regulation 3(1)(c)(i) situation.

You have acknowledged that the 1999 Regulations do not expressly state that would be the case. Likewise, there doesn't appear to be anything in the 1997 Act to that effect.

You will appreciate that the enforcement notices have been subject to extensive procedure. The landowners appealed the enforcement notices and the appeal was dealt with by way of a hearing and written submissions. It was ultimately determined by the Scottish Ministers and the enforcement notices were upheld. As noted below, the initial replanting works required under the enforcement notices have now been carried out. In these circumstances, in the absence of any specific statutory provisions, there would need to be a very compelling case for Forestry Commission Scotland to accept that the enforcement notices should be superseded and that the 1999 Regulations were not engaged by changes or additions to the original project. We are not persuaded that such a case has been made. On the contrary, we are of the view that once engaged the 1999 Regulations would require Forestry Commission Scotland to assess and take account of cumulative impacts in the event that changes were made to the project originally considered.

brought to the attention of the Local Review Body and considered as part of their decision making process.

The screening opinion given to the LRB concludes that the proposal is not likely to have significant environmental effects and as a consequence EIA is not required. You will appreciate that the Reporter reached the opposite conclusion after a detailed consideration of the available evidence including hearing oral evidence from parties during a hearing session, written submissions and carrying out site inspections. The Scottish Ministers accepted the Reporter's reasoning and recommendation and concluded that *"...the environmental factors around the character of the woodland felled constituted exceptional circumstances to the effect that there were likely to be significant effects on the environment."* Although the Scottish Ministers decision was in relation to what was then a deforestation project not involving development, the environmental effects of that deforestation project would likely be the same or very similar to the development covered by pending planning applications.

The Scottish Ministers' decision seems analogous to a screening direction and post dates the Council's screening opinion. In addition, the screening opinion is arguably out of date in that it contemplates the prevention of regeneration as opposed to the disturbance of the newly replanted woodland.

Forestry Commission Scotland would question whether the proposed replanting at Whinnie Muir, which is proposed to be secured by way of a planning obligation, is really 'mitigation' of the environmental effects of the development. Firstly, the re-planting proposals have been described as "compensatory planting" which would indicate that they will not directly mitigate the environmental effects of the Torwood proposal. Secondly, as Forestry Commission Scotland pointed out to Falkirk Council in an e-mail of 23 June from Simon Amor to Brent Vivian, the proposed replanting scheme doesn't appear to offer any more than the owners of that site would be obliged to do under the Forestry Act and UK Forestry Standard. Thirdly, Forestry Commission Scotland have expressed concerns regarding silvicultural and technical forestry issues and impacts of the proposals and have indicated that the proposals themselves could give rise to adverse environmental impacts.

Conclusion and Recommendation

For the reasons set out above, Forestry Commission Scotland does not accept that the grant of planning permission, or the implementation thereof, would supersede the enforcement notices previously served.

Moreover, Forestry Commission Scotland's view is that the proposed housing development would require consent under the 1999 Regulations on the basis that it is an amendment to or a follow on project to the a project which has already engaged the 1999 Regulations.

If consent were to be granted under the 1999 Regulations, and all conditions of such consent complied with, then the enforcement notices previously served would be rendered obsolete and would at that stage be withdrawn.

I have explained briefly below some of Forestry Commission Scotland's related concerns about the situation which has developed.

The decision and approach to screening the planning application under the 2011 Regulations appears to be flawed as it clearly ignores the deforestation impacts assessed by the Forestry Commission, does not consider the cumulative nature of the project, and effectively allows the salami slicing of an EIA project.

It is not entirely clear that the proposed development is covered by column 1 of Schedule 2 of the 2011 Regulations (and therefore doesn't fall within Regulation 3(1)(c)(ii) of the 1999 Regulations.) While the screening opinion given to the LRB proceeds on the basis that the development is covered by Infrastructure projects – urban development (10(b) of Schedule 2), the Council appears not to have considered the development to be covered by Schedule 2 at the time the applications were originally made and determined. If the development had been regarded as Infrastructure Projects under para 10(b) of Schedule 2 then Regulation 8 of the 2011 Regulations would have applied and the applications would have been deemed to be a request for a screening opinion under Regulation 6. As no such screening opinion was issued, that would suggest the Council originally treated the applications as relating to development not mentioned in Schedule 2. There doesn't appear to be any material changes to the development proposals which would account for this change of treatment.

Given that the issue of whether the deforestation carried out at the site would be likely to have significant environmental effects was one of the key issues in the enforcement notice appeal, Forestry Commission Scotland would be very reluctant to accept that the enforcement notices should be superseded by planning permission granted on the basis of a screening opinion which indicated no likely significant environmental effects. Doing so would result in the development being carried out without a proper assessment of the environmental impacts which is potentially contrary to the EIA Directive.

Even if there was a case for the enforcement notices being superseded, which we don't think there is, the *grant* of planning permission would not appear to be an appropriate trigger point for supersession to take place as this could result in enforcement notices being superseded even though the planning permission was never implemented. The trigger point, if there was to be one, would be completion of the development to which the planning permission relates including completion of all environmental mitigation work specified in the planning permission and/or any related planning agreements.

Material Considerations for Determination of Reviews by Local Review Body

It is appropriate to consider whether any of the events which have occurred since the 1999 Regulations were first engaged are material considerations which should be taken account of by the Local Review Body when determining the Reviews.

On 1 July 2015 Forestry Commission Scotland's officers inspected the Torwood site and established that the majority of the re-stocking and associated works required by the Enforcement Notices had been carried out to a high standard. If the proposed development were to go ahead it would now involve extensive disturbance of the replanted woodland (as opposed to preventing natural re-growth which would have been the position prior to re-stocking.) I think this is a material change of circumstances which should be

While the existence of the enforcement notices is not in itself an impediment to planning permission being granted, a number of matters have been identified above which our clients believe should be brought to the attention of and taken account of by the LRB prior to their determination of the pending reviews.

If the LRB decides to grant planning permission at this stage, we would suggest that it would be appropriate for the planning permissions to include an informative advising that consent should also be obtained under the 1999 Regulations prior to works commencing.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'P. Ferguson', is written over a thick, dark horizontal line that serves as a separator.

Peter Ferguson
Partner
Harper Macleod LLP

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E-mail: peter.ferguson@harpermacleod.co.uk

Milne & Co

S O L I C I T O R S

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DATE 5 October 2015
OUR REF RM.SF
YOUR REF

The Director of Planning
Falkirk Council
Municipal Buildings
FALKIRK
FK1 5RS

Dear Sir

TORWOOD : PLANNING APPLICATIONS P/13/0509/FUL, P/13/0509/FUL and P/13/0509/FUL

We refer to the above Planning Applications and in particular to the letter from Brodies LLP to our Rory Milne dated 25 June 2015.

We confirm that we share Brodies opinion in relation to this matter and have nothing to add to the terms of their letter dated 25 June 2015..

We have also seen a much later letter from Harper Macleod LLP dated 28 August 2015 to Brodies on the same matter. We respectfully disagree with Harper Macleod's comments and opinion on the matters at hand. Beyond that, it is noted that Brodies sought a response from Forestry Commission Scotland within 21 days of their letter dated 25 June 2015. It is noted that the response was submitted almost exactly two months later.

Yours faithfully

Milne & Co

DRAFT

FALKIRK COUNCIL

MINUTE of MEETING of the PLANNING REVIEW COMMITTEE held in the MUNICIPAL BUILDINGS, FALKIRK on FRIDAY 9 OCTOBER 2015 at 1.00 P.M.

COUNCILLORS: Baillie William Buchanan (for application P/14/0046/FUL (minute PRC15))
Craig Martin
John McLuckie (for applications P/13/0513/FUL, P/13/0514/FUL and P/13/0509/FUL (minute PRC12, PRC 13 and PRC14))
Sandy Turner

OFFICERS: Donald Campbell, Development Management Co-ordinator (for application P/14/0046/PPP (minute PRC15))
Kevin Collins, Transport Planning Co-ordinator
Iain Henderson, Legal Services Manager
Brian Pirie, Democratic Services Manager
Brent Vivian, Senior Planning Officer (for applications P/13/0513/FUL, P/13/0514/FUL and P/13/0509/FUL (minute PRC12, PRC13 and PRC 14))

PRC9. APOLOGIES

Apologies were intimated on behalf of Councillor Chalmers.

PRC10. DECLARATIONS OF INTEREST

No declarations were made.

PRC11. OPENING REMARKS

The Convener, Baillie Buchanan, welcomed everyone in attendance to this meeting of the Planning Review Committee and indicated that he would not be in attendance during consideration of the first three agenda items (minute PRC12, PRC13 and PRC14) as he had not originally considered the matters at previous Committees. He thereafter left the meeting and Councillor McLuckie assumed the role of Convener for consideration of those items of business.

Councillor McLuckie, as Convener, 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 considered at the meeting on 29 September 2014 (Paragraphs PRC12, PRC13 and PRC14 refer) and were of a similar nature and referred to immediately adjoining sites.

- PRC12. 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)
- PRC13. 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)
- PRC14. 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 2014 (Paragraphs PRC8, PRC9 and PRC10 refer), 9 June 2014 (Paragraphs PRC15, PRC16 and PRC17 refer) and 29 September 2014 (Paragraphs PRC35, PRC36 and PRC37 refer), the Committee considered a report by the Director of Corporate and Housing Services and 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 presentation from Mr Henderson who provided a summary of the report updating the Committee on developments following its minded to grant decision on 29 September 2014.

After discussion, and having sought and heard advice from Mr Henderson and Mr Vivian, the Committee considered the report and the Appendices 1 to 6 attached thereto in detail.

Accordingly, the Committee **AGREED** to make a request to Scottish Ministers pursuant to Regulation 5(10)(b) of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 (“the 2011 Regulations”) for the issue of a screening direction, to determine whether Environmental Impact Assessment (EIA) is required in connection with the above planning applications.

Baillie Buchanan re-entered the meeting following consideration of the foregoing matter and resumed the Convenership of the meeting

PRC15. PLANNING APPLICATION - P/14/0046/PPP - DISTRIBUTOR ROAD AND ASSOCIATED EARTH WORKS, MILNQUARTER FARM, ROMAN ROAD, BONNYBRIDGE

With reference to the Minute of Meeting of the Planning Review Committee held on 17 November 2014 (Paragraphs PRC53 and PRC55 refer), the Committee considered documents which related to the Application for Review for planning application P/14/0046/PPP for a distributor road and associated earthworks at Milnquarter Farm, Roman Road, Bonnybridge. The Committee at the previous meeting was minded to grant planning permission in principle subject to referral to Scottish Ministers under the terms of the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009 and thereafter, on satisfactory conclusion of said notification, to grant planning permission in principle subject to such conditions as the Director of Development Services deemed appropriate.

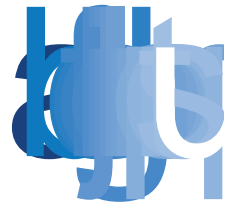
The Committee heard a presentation on the matter from Mr Campbell, who provided a summary of the report by the Director of Development Services and explained the request by the Reporter appointed by the Scottish Ministers to make a decision on the application following a calling in as such request is set out in the procedure notice.

After discussion, and having sought and heard advice from Mr Henderson and Mr Campbell, the Committee **AGREED:-**

- (1) that (a) the relevant policies of the Falkirk Local Development Plan were: D02 - Sustainable Design Principles, D07 - Antonine Wall, D08 - Sites of Archaeological Interest and INF10 - Transport Assessments, (b) the proposed development was considered to be in accordance with these policies; (c) having balanced the material considerations as required by Section 25 of the Town and Country Planning (Scotland) Act 1997, the proposed development was acceptable in terms of its design and layout impacts on the surrounding area, including those relating to traffic impacts and cultural heritage and was therefore in accordance with the development Plan, and (d) there were no material considerations which would justify refusal of the proposed development;
- (2) to instruct officers to provide copies of the relevant policies of the Local Development Plan, including the proposals map for Bonnybridge to the Reporter by 30 October 2015; and
- (3) that (a) there was no need for a Transport Assessment and the proposed distributor road required to be assessed on its own merits; (b) other planning proposals, including the residential development proposed by P/11/0142/PPP, (DPEA ref CIN-FLK-001), and issues relating to them should not be taken into account in relation to the determination of the application which is for a distributor road, and (c) the consultation replies received from Historic Scotland and the Keeper of Archaeology and Local History referring to the proposed housing were not sufficiently specific on the matter of the road subject to the application under consideration and there was sufficient information available to allow a determination to be made.

Directorate for Local Government and Communities
Planning and Architecture Division
Planning Decisions

T: 0131-244 7073 F: 0131-244 7555
E: Alex.kerr@scotland.gsi.gov.uk



By email to: Iain.henderson@falkirk.gov.uk

Our ref: EIA/FLK/025
1 March 2016

Dear Mr Henderson

**THE TOWN AND COUNTRY PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT)
(SCOTLAND) REGULATIONS 2011: SCREENING DIRECTION
SINGLE HOUSES ON PLOTS 1, 2 & 3 SOUTH EAST OF BYWAYS, GLEN ROAD,
TORWOOD (APPLICATIONS P/13/0513/FUL, P/13/0514/FUL, P/13/0509/FUL)**

I refer to your letter of 24 November 2015 and to your request pursuant to regulation 5(10)(b) of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 ("the 2011 Regulations") that Scottish Ministers issue a screening direction, to determine whether Environmental Impact Assessment (EIA) is required in connection with the above planning applications.

Scottish Ministers are of the view that the development which is the subject of each individual planning application should be treated as a separate development. Even on the assumption that such development may comprise an "urban development project" under paragraph 10(b) of Column 1 of Schedule 2 to the 2011 Regulations, each separate development does not exceed the relevant threshold criterion in Column 2 of Schedule 2 to the 2011 Regulations and consequently is not Schedule 2 development. As such, no further screening or Environmental Impact Assessment is required.

Accordingly the Scottish Ministers hereby direct that each of the above developments are not 'EIA Development' within the meaning of the 2011 regulations and an EIA will not be required.

Scottish Ministers note that the sites identified in the planning applications for the proposed developments are subject to Enforcement Notices issued by the Forestry Commissioners, under regulation 20 of the Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999 requiring planting and subsequent maintenance of trees on the sites for a

period of 10 years.

Yours sincerely

ALEX KERR



AGENDA ITEM

8

**PLANNING APPLICATION P/15/0022/FUL -
DEVELOPMENT OF LAND TO FORM HOLIDAY
PARK WITH RAISED DECK MOUNTED
CHALETS, CAMPING PODS, DECK MOUNTED
RECEPTION BUILDING AND ANCILLARY
ROADS AND DRAINAGE AT LAND TO THE
SOUTH WEST OF DENOVAN HOUSE
(CONTINUATION)**

List of Enclosures – Agenda Item 8

- | | | |
|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| 1. | Request for written submission to Applicant dated 21 December 2015. | 135-137 |
| 2. | Response to request for written submission from Applicant dated March 2016 and submitted on 29 March 2016. | 138-192 |
| 3. | Emailed response to Applicant's written submission from Lawrence Fletcher dated 24 April 2016. | 193-194 |
| 4. | Letter of response to Applicant's written submission from Roddy Macdonald dated 25 April 2016. | 195-197 |
| 5. | Emailed response to Applicant's written submission from Clarke Faichnie dated 25 April 2016. | 198-200 |
| 6. | Emailed response to Applicant's written submission from Letitia Graham dated 25 April 2016. | 201-204 |
| 7. | Emailed response to Applicant's written submission from Donna Heaney dated 25 April 2016. | 205-208 |
| 8. | Emailed response to Applicant's written submission from Kirsten McGhee dated 26 April 2016. | 209 |
| 9. | Emailed response to Applicant's written submission from Aileen McGhee dated 26 April 2016. | 210-211 |
| 10. | Emailed response to Applicant's written submission from Geoff Swift (original representation via agent Sandy Smith) dated April 2016. | 212-213 |
| 11. | Letter/mailed response from Applicant to representations dated 30 May 2016. | 214-220 |
| 12. | <u>Important Note:</u> - the previous papers on this item were submitted to the meetings of the Planning Review Committee on 27 November 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

Enquiries to: Antonia Sobieraj
Direct Dial: (01324) 501277
Email - antonia.sobieraj@falkirk.gov.uk
Our Ref: AS
Date: 21 December 2015

Ist Class Post

Dr Wesley Edmund
Denovan Park
Denovan Road
Dunipace
Denny
FK6 6BJ

Dear Dr Edmund,

PLANNING APPLICATION - P/15/0022/FUL - DEVELOPMENT OF LAND TO FORM HOLIDAY PARK WITH RAISED DECK MOUNTED CHALETs, CAMPING PODS, DECK MOUNTED RECEPTION BUILDING AND ANCILLARY ROADS AND DRAINAGE AT LAND TO THE SOUTH WEST OF DENOVAN HOUSE, DENNY

NOTICE OF REQUEST FOR WRITTEN SUBMISSIONS

The Planning Review Committee met on 27 November 2015 to consider the above application for review. Following an adjournment and subsequent site inspection, the Committee determined that it still did not have enough information to determine the application, and requested, in accordance with Regulation 15 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 ("the 2013 Regulations"), that further representations or information by way of written submissions be provided by the applicant.

The Committee asked that the applicant provide:-

- (1) Information in relation to justification as to why the proposed development in terms of matters such as its scale, siting and design is appropriate at this countryside location;
- (2) An ecological assessment including a Phase 1 habitat survey and protected species survey;
- (3) An assessment of the proposal's effect on the designed landscape of Denovan including a desk top assessment/survey to provide baseline information of Denovan Estate/original historic features;
- (4) An assessment of the proposal's effect on Denovan House as a listed building including a desk top assessment/survey to provide baseline information of Denovan Estate/original historic features;

- (5) A visual landscape assessment, including an assessment of the visual effects from the adjacent road, nearby dwellings and the wider countryside to the south;
- (6) Clarification in respect of aspects of the submitted Tree Report in terms of demonstrating environmental sustainability and impact on local landscape, amenity and nature conservation interests;
- (7) A landscape planting plan with specification of planting to demonstrate mitigation of the identified visual effects of the proposed building/works (screening) and to ensure a diverse woodland character is retained and enhanced in the long term;
- (8) A management plan/statement for the woodland to demonstrate that the newly planted native trees and under-storey shrubs will be maintained in initial years to aid rapid establishment and to detail any replacements required and general tree surgery/maintenance;
- (9) Superimposing of the final layout (and ideally utility routes) on the plan of the tree root protection areas to fully illustrate the avoidance of damage to tree roots;
- (10) A basic tree protection plan showing the position of temporary protective fencing around the root protection areas of trees nearest to working areas during the construction process and showing the trees to be removed;
- (11) A drainage strategy;
- (12) Information on the design, construction and location of the pods, how they integrate into the proposed development and what services would be required by them such as electricity; and
- (13) The status of the timber cabin located on the site of the proposed development.

As the Committee agreed to a timescale of 3 months from receipt of the request for provision of this information, I should be grateful if you would forward to me any appropriate information on or before **Tuesday 29 March 2016**.

The Committee also requested that interested parties be allowed a period of 14 days to provide comments following receipt of the information provided by you. The information will be made available by the Council for inspection by interested parties at the relevant time of receipt from you. You will thereafter be allowed a period of 14 days to respond to any such comments received.

Should you require any further clarification do not hesitate to contact me.

Yours sincerely,

Removed signature

Committee Services Officer
for Chief Governance Officer

DENOVAN VILLAGE HOLIDAY PARK



**FURTHER INFORMATION REQUEST BY THE
PLANNING REVIEW COMMITTEE**

**SUBMISSION ON BEHALF OF
DENOVAN VILLAGE LIMITED**

March 2016

BACKGROUND TO REPORT

The Planning Review Committee met on 27 November 2015 to consider the above application for review. Following an adjournment and subsequent site inspection, the Committee determined that it still did not have enough information to determine the application, and requested, in accordance with Regulation 15 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 ("the 2013 Regulations"), that further representations or information by way of written submissions be provided by the applicant. The Committee asked that the applicant provide:-

- (1) Information in relation to justification as to why the proposed development in terms of matters such as its scale, siting and design is appropriate at this countryside location;
- (2) An ecological assessment including a Phase 1 habitat survey and protected species survey;
- (3) An assessment of the proposal's effect on the designed landscape of Denovan including a desk top assessment/survey to provide baseline information of Denovan Estate/original historic features;
- (4) An assessment of the proposal's effect on Denovan House as a listed building including a desk top assessment/survey to provide baseline information of Denovan Estate/original historic features;
- (5) A visual landscape assessment, including an assessment of the visual effects from the adjacent road, nearby dwellings and the wider countryside to the south;
- (6) Clarification in respect of aspects of the submitted Tree Report in terms of demonstrating environmental sustainability and impact on local landscape, amenity and nature conservation interests;
- (7) A landscape planting plan with specification of planting to demonstrate mitigation of the identified visual effects of the proposed building/works (screening) and to ensure a diverse woodland character is retained and enhanced in the long term;
- (8) A management plan/statement for the woodland to demonstrate that the newly planted native trees and under-storey shrubs will be maintained in initial years to aid rapid establishment and to detail any replacements required and general tree surgery/maintenance;
- (9) Superimposing of the final layout (and ideally utility routes) on the plan of the tree root protection areas to fully illustrate the avoidance of damage to tree roots;

(10) A basic tree protection plan showing the position of temporary protective fencing around the root protection areas of trees nearest to working areas during the construction process and showing the trees to be removed;

(11) A drainage strategy;

(12) Information on the design, construction and location of the pods, how they integrate into the proposed development and what services would be required by them such as electricity; and

(13) The status of the timber cabin located on the site of the proposed development.

This report, its appendices and the related documents/reports submitted are the applicants response to the additional information requested. The response is considered to be proportionate with respect to the nature and related impacts of the proposals. The applicant is happy to provide any further information deemed necessary by the Planning Review Committee or to explain any part of the additional information/proposal as required.

(1) Information in relation to justification as to why the proposed development in terms of matters such as its scale, siting and design is appropriate at this countryside location;

1.1 Falkirk Council is an area with a range of tourist/visitor related facilities and is well located for travel to a wide variety of points of interest in central Scotland. Falkirk Council is committed corporately and through its Local Development Plan to the enhancement of visitor facilities, including accommodation, with an overall objective of making the district a *“prime destination for day and short-break visitors drawn by an attractive and accessible network of heritage, cultural and outdoor activities”* (LDP Strategic Objective). With respect to the present planning application it is noted that there have been supporting and positive comments from Falkirk Council’s Economic Development Service and support in principle from VisitScotland for the benefits that would arise from the proposed development. The development will bring significant additional investment in tourism infrastructure in the local area in addition to employment opportunities and further spending in the local economy arising from the additional visitors. There is a sound business plan underpinning the proposals and funding can be secured in order to deliver the development and its related benefits.

1.2 Aside from the general locational benefits of the Falkirk Council area, the Denovan Village site lies in an accessible location for the main motorway network, the array of visitor attractions in the Falkirk Council area and, more locally, for the extensive Core Path networks (core paths 012/260, 012/359, and 012/246) including links throughout the Denny area and to the John Muir Way (south). The site is suited to a rural style holiday experience (woodland setting, attractive views, etc) but with all necessary facilities and points of interest in close proximity.

1.3 Some concern related to the potential impact of the proposed development on the site/woodland is noted from the assessment of the planning application to date. In

light of this, and further assessment of the potential site constraints, **some alterations to the original proposals are tabled for consideration.** These changes do not materially alter the development concept, the potential benefits or the underlying justification for the development, rather they seek to respond to issues raised and address these in a positive and responsible manner.

1.4 The amended proposals (refer Mc Farlane Curran plan reference 4953.d.06j “*All Layouts*”, 4953.d.07e “*Site Section Locations*”, and 4953.d.08a “*Site Sections*”: - electronic copies of each drawing is provided with this statement and paper copies are also provided separately to Falkirk Council for ease of reference) retain the reception building and the site access/parking arrangements but reduce in number (from 10 to 8) and re-site some of the chalets in order to reduce their visibility from Denovan Road and to allow areas of additional new woodland planting. It is also proposed to reduce the number of camping pods from 17 to 10. The pods remain movable structures albeit their indicative siting is detailed on the amended site layout plan. The car park shape has been altered to reduce the impact on vegetation and provision for parking for the disabled chalets adjacent to the north site boundary is also provided for on the adjacent access road. The camping pods can also now be stored on the top road (west section) when not in use.

1.5 The site access from Denovan Road is proposed at a point where the existing wall has collapsed and where visibility of on-coming traffic is good. To form the access some excavation is required as is the removal of some generally poor quality trees. The access road then links to the site parking area and to the upper roadway (existing) that provides level access to the chalets (essential for disabled access). The access road requires to negotiate an increase in site levels from south to north, passing through a section of the woodland. The applicant recognises the need to protect the good quality trees in the formation of the roadway and to this end it is intended to limit excavation and to build up the road as required in order to protect tree roots (using geotextile netting to protect the tree roots covered with tar planings – a typical agricultural road detail). Where excavation is required this will be guided by a method statement in accordance with appropriate Arboricultural practice. Root protection for the retained trees would be in place throughout the construction phases of the development under Arboricultural guidance.

1.6 While the development will necessitate the removal of a number of trees (many of poor quality), as outlined in the tree report previously submitted, Section 7 below clearly establishes positive plans to plant 150 new native trees in order to diversify and enhance the long term quality and appearance of the woodland in addition to the introduction of positive management. In short, this somewhat neglected and deteriorating woodland resource would benefit from targeted and beneficial new planting and maintenance in order to sustain its long term contribution, visually and ecologically, to the local area. It is accepted that the loss of some mature trees will be required in order to facilitate the proposed development but the replanting of a range of native species and the active future management of the woodland resource (creating a bluebell woodland) has to be seen as a significant benefit of the development.

1.7 The development of this tourist facility is also being done with careful thought to the development form and the construction/appearance of the individual components

within the identified site constraints (levels being a significant factor to address). The chalets are of modest scale, constructed in timber with good insulation, each is provided with a log burning stove, and they are set within rather than dominating the woodland. The elevation of the chalets on stilts addresses the sloping site while allowing vegetation and animals to flourish in sections below the structure on the woodland floor. This mitigates any impacts on flora and fauna. The construction is also designed to be more sustainable by using timber supports directly into the ground requiring no concrete or other sub-base/foundations. The chalets will be provided with electricity and water/drainage connections. The routes of all utilities is designed to minimise impacts on existing trees/vegetation. The reception building is larger than the chalets but constructed in the same manner using the same materials. The camping pods are mobile structures and will not have any service connections. They are, in effect, wooden tents.

1.8 In conclusion, it is therefore considered that the proposed development, in terms of matters such as its scale, siting and design and the related economic and ecological benefits is wholly appropriate to this countryside location.

(2) An ecological assessment including a Phase 1 habitat survey and protected species survey;

2.1 A report addressing the stated requirements was carried out by Paul Baker and is appended to this report – *“Extended Phase 1 Habitat Survey”*. This concludes that none of the habitats within the study area were notable for their rarity, quality, or extent, and the woodland was dominated by common lime, and non-native species such as sycamore and horse chestnut. In effect, the woodland is unremarkable and lacking in native diversity appropriate to this area, although the woodland ground flora is worthy of protection and management to ensure its long-term future. A strategy related to the further assessment of the potential impact on bats was also outlined as are related mitigation proposals (bat boxes).

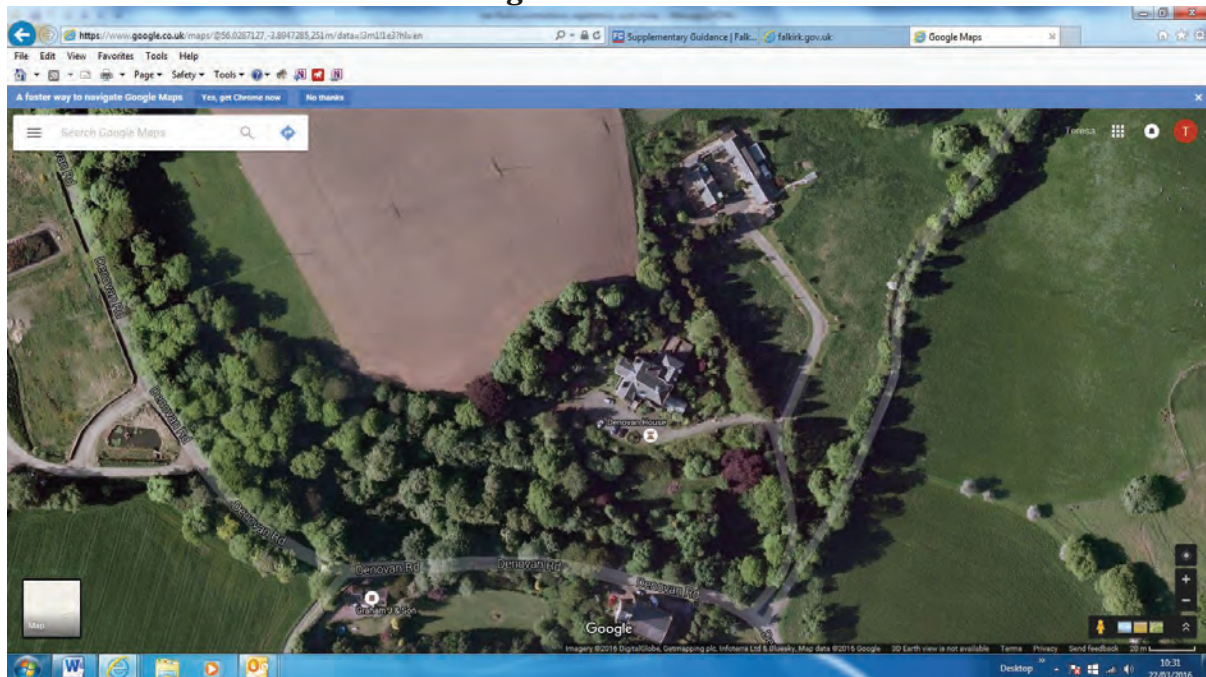
2.2 A number of changes to the development form have been informed by the ecological assessment. The retention of the bluebells and other ground cover plants has been addressed as far as practicable and the applicant remains open to looking at further strategies to enhance the bluebell woodland (including translocation). The construction of the chalets on stilts will allow ground cover plants to spread into/be retained in these areas. All in all, the positive management and replanting of the woodland is seen as a positive outcome with some further mitigation of ecological impact also recommended in the report for consideration/agreement, as appropriate, with Falkirk Council as part of the positive future provision/management of the site.

(3) An assessment of the proposal’s effect on the designed landscape of Denovan including a desk top assessment/survey to provide baseline information of Denovan Estate/original historic features;

3.1 It is accepted that Falkirk Council policy sets out to ensure protection of the all the local ‘Non-Inventory’ designed landscapes in the Falkirk Council area and sets out

guidelines intended “to help conserve original features and ensure development and land management practices do not have an adverse effect on the character and setting of these sites and their remaining features”. Historic records indicate that there may have been, in the mid 1800s, a landscape setting for Denovan House with the house at the centre of radiating formal avenues to each point of the compass and diagonally like a saltire cross. Available evidence at present, including that gained from the Google Earth aerial photograph below, indicates that there is no demonstrable evidence of this designed landscape remaining and certainly no impact on any part of this “feature” would result from the current development proposals which relate to land outwith the main historic site core. In summary, it can be concluded that the proposed development would not have an adverse effect on the character and setting of the site or remaining features related to the designed landscape as this, if it existed historically, has been lost over time (not recently) and is no longer a feature of the site or potentially impacted by the proposed development.

Denovan House and Grounds: Google Earth Extract



3.2 In the event that Falkirk Council has other evidence of the designed landscape then the applicant would be happy to assess this as part of a future submission.

(4) An assessment of the proposal’s effect on Denovan House as a listed building including a desk top assessment/survey to provide baseline information of Denovan Estate/original historic features

4.1 Reference to the listing description for Denovan House (category B listed) held by Historic Environment Scotland (appendix 1 refers) relates largely to the house itself (exterior and interior), and to the gatepiers at Denovan Road (the main entrance). It is noted that the house was “*hugely extended*” in 1843-45 with reference also to the designed landscape (referred to in part 3 above) being made and to a bleachfield to the

East. The issue with the designed landscape is addressed in section 3 above. It can be readily concluded that the proposed development would have no impact on any of the items contained in the listing description for Denovan House.

4.2 Denovan House sits within extensive woodland grounds. From the surrounding public areas (including Denovan Road) the house sits elevated and is largely screened by the woodland within its remaining grounds. The proposed built form within the Denovan Village development is relatively remote from the house, modest in scale, and largely separated by the respective woodland areas. With all these factors taken into account and in light of the retained/enhanced woodland, it is reasonable to conclude that individually, or as a whole, that the new structures would not have any material impact on the setting, character or appearance of the listed Denovan House. The largest structure within the proposed Denovan Village is the Reception building. This lies at a significantly lower level than Denovan House with intervisibility between the structures limited by distance, landscaping and topography. The chalet style appearance also reduces the impact/relative appearance of the structure within the woodland context.

4.3 No views of the elevations of the listed building would be materially impacted as a result of the development. The proposals lie outwith the retained curtilage of the listed building and, as noted, would have no impact on any feature set out in the listing description. It is therefore considered that no detrimental impact on the listed building would arise from the proposed development. Of significance, it is noted that Historic Environment Scotland has raised no objection to the development.

(5) A visual landscape assessment, including an assessment of the visual effects from the adjacent road, nearby dwellings and the wider countryside to the south;

5.1 The further information here is guided by discussion between Dr Wesley Edmund on behalf of Denovan Village Limited and Philp Harris of Falkirk Council. Appendix 4 contains a photographic record of the planning application site. This photographic record (in addition to the planning application drawings and site sections) details the level changes from south to north (rising from Denovan Road) and the general visual containment of the site provided by the topography/woodland when viewed from surrounding public areas (including Denovan Road). The positioning of the reception building at the south-east corner of the site, in light of the surrounding topography and road alignment (Denovan Road), renders this, the largest structure proposed within the site, visible only from the immediately surrounding area and therefore with very limited impact on the appearance of the local landscape.

5.2 The chalets are proposed at levels well above the adjacent Denovan Road. They are however set against the rising landform and within a woodland setting (which would be enhanced over time) and therefore are considered to have relatively local impacts on the landscape individually and collectively.

5.3 The other feature of note is the proposed car park. Again, for the reasons already rehearsed, this will have limited landscape impact. The camping pods are movable structures which will be set in the woodland rather than appearing prominent within it.

5.4 The development will have a localised impact from Denovan Road. Being set within the rising landform and established (to be enhanced) woodland such visual impact is considered to be within acceptable limits especially when factoring in the landscape improvements being proposed as part of the development and the overall declining appearance of the woodland resource at present.

(6) Clarification in respect of aspects of the submitted Tree Report in terms of demonstrating environmental sustainability and impact on local landscape, amenity and nature conservation interests;

6.1 Key to the underlying character of the site and its attraction as a tourist/visitor location is the woodland setting. It is accepted, as with most development, that there will be some initial negative impacts on the application site but the development prompted and underlying strategy to improve the woodland resource over time (as these things take time) by a mixture of positive planting of native tree species and active management of the woodland as a visual and ecological resource. The planting of 150 native trees over an appropriate period and with ongoing management will allow the rejuvenation of the woodland from its existing declining condition to one sustainable for future generations. A Woodland Planting Plan is attached as Appendix 2 to this report. It is anticipated that the precise location of the new planting will be agreed with Falkirk Council prior to works commencing. A detailed management plan will also be agreed as part of this process.

(7) A landscape planting plan with specification of planting to demonstrate mitigation of the identified visual effects of the proposed building/works (screening) and to ensure a diverse woodland character is retained and enhanced in the long term;

7.1 This is addressed in Section 6 above and in Appendix 2 Woodland Planting Plan. In the event that Falkirk Council wishes to see alterations to the proposed planting plan then the applicant is happy to agree this at the appropriate stage.

(8) A management plan/statement for the woodland to demonstrate that the newly planted native trees and under-storey shrubs will be maintained in initial years to aid rapid establishment and to detail any replacements required and general tree surgery/maintenance;

8.1 Details of the management of the newly planted trees and under-story scrub are set out in the Woodland Planting Plan and the Woodland Management Plan (refer Appendices 2 and 3). The establishment of a long term management plan would benefit from further discussion/agreement with Falkirk Council following the initial establishment of the new planting and the applicant is happy to agree to this in whatever form would satisfy Falkirk Council's requirements.

(9) Superimposing of the final layout (and ideally utility routes) on the plan of the tree root protection areas to fully illustrate the avoidance of damage to tree roots;

9.1 The details of the tree root protection areas and the service/utility routes proposed to serve the development are shown on the revised site layout (copy attached). Where there is any potential for damage to tree roots a mitigation strategy will be agreed with the applicant's arboriculturist (agreed with Falkirk Council as required) in order to mitigate any impacts. Any potential impacts will be minimised and localised and require to be considered in the context of the significant new replanting within the woodland and its long term management as proposed as part of the development.

(10) A basic tree protection plan showing the position of temporary protective fencing around the root protection areas of trees nearest to working areas during the construction process and showing the trees to be removed;

10.1 Tree protection measures detailed in Appendix 5. This can be supplemented where required by Falkirk Council.

(11) A drainage strategy;

11.1 Foul drainage will be treated via a septic tank/package treatment facility prior to discharge to a soakaway with an outlet to an adjacent burn. The route of the related pipework and the position of the treatment facility are detailed on the site layout plan.

11.2 Surface water attenuation requirements will be limited with respect to the nature/scale of the proposed development. The crossfall on, and construction of, the access road will allow for natural site absorption, with each chalet envisaged as having a French drain to collect rain water. The car park surface area will be porous. The reception building is planned to have rain water harvesting built in thereby removing much of the surface water related to this structure. This will reduce water use and add to the eco credentials of the site – see example below (albeit from a domestic context).

**Non-replaceable
drinking water**

Bath / showers: 50 litres

Washing dishes: 10 litre

Personal hygiene: 10 litres

Cooking / drinking: 6 litres

Others: 9 litres

**Can be replaced by
rainwater**

WC flushing: 50 litres

Washing clothes: 20 litres

Watering the garden: 14 litres

Car washing, cleaning: 6 litres

Average water
consumption in
household (Total of
approx. 175 litres /
Europe)

11.3 A fully detailed drainage strategy (size/location of treatment facility, etc) can be prepared once the final layout is agreed and the mitigation works related to site trees and other flora has been determined. The applicant is fully prepared to provide all necessary information on all aspects of the development's/site's drainage to Falkirk Council as required.

(12) Information on the design, construction and location of the pods, how they integrate into the proposed development and what services would be required by them such as electricity; and

12.1 The pods are movable timber structures, in many ways they are wooden tents. They have no services and would be located as per the revised site layout plan. They are small and sit well within the woodland setting, they are in no way intrusive or prominent structures.

(13) The status of the timber cabin located on the site of the proposed development.

13.1 The shed is recorded by the Valuation Office - property reference 183157 and rated as shed. Falkirk Council, by virtue of non-domestic rates reference 40029212 for Denovan Village Ltd, Denovan Park, Denovan Road; FK6 6BJ, also records the property. The shed was built as storage for Denovan House when it was still owned by the Edmund family and it is presently being used for storage purposes.

CONCLUSIONS

There is underlying support for this innovative tourist based proposal from Falkirk Council's Economic Development Service and from VisitScotland. This is a well located site to "tap into" the range of visitor attractions in the Falkirk Council area and to support the Council's Local Development Plan strategic objective of making the Falkirk Council area a "*prime destination for day and short-break visitors drawn by an attractive and accessible network of heritage, cultural and outdoor activities*".

The site has some built heritage (Denovan House) and natural heritage (woodland and landscape impact) issues to be addressed as part of the development. It has been demonstrated above that there would be no adverse impact on Denovan House or its setting, including its non-inventory designed landscape. Additionally, landscape impact is limited and certainly minimal compared with some existing uses/sites within the immediate vicinity. The woodland is largely non-native, dominated by common lime, and non-native species such as sycamore and horse chestnut, and none of the habitats within the site were notable for their rarity, quality, or extent. While the woodland is unremarkable and lacking in native diversity appropriate to this area, it is accepted that the woodland ground flora is worthy of protection and management to ensure its long-term future. Plans to address this are contained within the current proposals and the applicant is happy to address this further with Falkirk Council as appropriate, including further mitigation arrangements. Some impacts are likely but these can be suitably mitigated by the location and form of development within the site in addition to the inclusion of positive measures to support flora and fauna (including bat and bird boxes). Some further assessment of identified trees for bat potential is required albeit it is not anticipated that this will preclude development within the site. A significant proportion of trees within the site are outwith the area to be developed in any event.

Based on all of the identified factors, the development has been altered in order to mitigate perceived impacts. Fundamentally this has been done without undermining the overall value of the development to the local economy or the potential for securing the related investment to deliver the proposals. Invariably, all development will have some impact but, in this case, the positives significantly outweigh any negative impacts. As indicated, the applicant remain fully prepared to engage with Falkirk Council to mitigate any legitimate concerns but this cannot be done at the expense of the deliverability of the project otherwise it becomes a pointless exercise. A reasonable interpretation of the issues impacting the site, an assessment of the detailed proposals, and the benefits of the proposals, including with suitable mitigation, indicate that the grant of planning permission is appropriate for the nature/scale of development being proposed subject to suitable safeguards being put into place.

APPENDICES

- 1 Denovan House Listing Description - Historic Environment Scotland
- 2 Woodland Planting Plan
- 3 Woodland Management Plan
4. Denovan Village Site – Photographic record
5. Tree Protection Measures

Listed Building



The legal part of the listing is the address/name of site only. All other information in the record is not statutory.

DENOVAN HOUSE, DUNIPACE

Reference: LB6631

Status: Designated

Documents

There are no additional online documents for this record.

Summary

Information	Location	National Grid Reference
Category: B	Local Authority: Falkirk	NGR NS 82036 83372
Date Added: 06/02/1992	Planning Authority: Falkirk	Coordinates 282036, 683372
	Parish: Denny	

Description

2-storey and basement villa, with complex building sequence, largely of mid 19th century appearance, but incorporating periods of earlier and later work. Circa mid-later 18th century Georgian villa, possibly of 2 different dates at core, substantially recast in 1843-45 in the manner of Burn and Bryce (Jacobethan style), with entirely new S front and partial interior remodelling. Large 1911 additions to rear (N).

1840'S ELEVATIONS: cream polished ashlar with channelled rustication at ground floor, long and short rusticated quoins, plinth and basecourse, cornice between ground and 1st floors; plain frieze swept to dentilled cornice, with vigorously moulded consoles in frieze above windows, advanced bays pedimented or with blocking courses, plain parapet elsewhere; side (E and W) elevations of 1840's period of finely-

tooled squared sandstone with ashlar dressings. Architraved single and tripartite windows; projecting window bays with openwork strapwork parapets. Timber sash and case windows, each sash in 1840's windows divided horizontally into 2 panes. Shallow-pitched slated roofs; grouped, square-shafted ashlar stacks.

S (ENTRANCE) ELEVATION: 3-bay, full-height pedimented projecting bay to left, 2-window set-back centre, overlaid to left with entrance porch; advanced full-height rectangular bay to right. Porch with lugged and cured 'baroque' style architraved doorpiece, moulded keystone and openwork parapet; ashlar seat within porch to left.

Georgian elevations visible only to left of side (W) elevation and to right of rear (N) elevation; large harled additions of 1911 period mask rear elevation to left.

CONSERVATORY: to right of S front, attached to E gable. Circa later 19th century, built over site of side wing: timber and cast-iron with mullioned windows with leaded upper lights. Pitched roof, with pitched-roofed clerestory with cast-iron cresting at ridge; apex finial to SW gable.

INTERIOR: 3 unaltered principal rooms at ground floor: to E a DRAWING ROOM with Caroline-style interior, including moulded door architraves with curved and corniced Caroline-style interior, including moulded door architraves with curved and corniced Caroline-style over-doors, doors and cupboard doors panelled below, glazed over dado in geometrical designs; baroque marble chimneypiece with ionic fluted column stiles with canted volutes, pulvinated frieze, dentilled and corniced entablature, and relief carvings to slip, central tablet with high-relief mask carving, floral swags flanking, original brass of grate and gilt rococo mirror overmantel (painted); cornice and gilt plasterwork border to ceiling; 4 original pendant lights; 19th century curtains with pelmets.

To W, BILLIARD and DINING ROOMS, both with very elaborate Jacobethan-style interior schemes, remodelled during 1840s period. DINING ROOM: very elaborate Jacobethan strapwork cornice and vigorously moulded plasterwork ceiling; chimneypiece circa 1800, recast in 1840's with large consoles and mouldings in Jacobethan manner, original circa 1800 brass grate; 19th century curtains with pelmets; black and gold paint scheme. BILLIARD ROOM: similar to dining room, with strapwork plasterwork cornice; some alterations.

STAIR HALL: remodelled in 1840's: half-height wainscot, panelled 2-leaf doors, architraves and Caroline-style overdoors; Jacobethan-style plasterwork ceiling. Timber staircase with 6-light stained glass windows at half-landing. Chimneypiece removed to steading (1992).

Large cast-iron safe in (modernised kitchen adjacent to dining room. FIRST FLOOR bedrooms simpler, proportions and joinery revealing 2 different periods: circa 1840's remodelling largely at W rooms, with floor stepping down and ceiling-heights reduced in Georgian rooms to E. Georgian kitchen in basement to E, and ex situ pieces of Georgian grates.

GATEPIERS: pair short cream polished ashlar piers of 1843-45 period on entrance to house, square-plan with arched recessed planes to each elevation, arches with keyblocks at apices, and rounded corniced caps.

Statement of Special Interest

Lands belongs to James Johnstone of Denovan until Mr James Grahsm Adam acquired a portion of the estate, with a bleachfield, and altered and hugely extended the house in 1843-5. The Mitchells of Carron Iron Co also once lived here.

Mid 19th century stables and offices to N now altered.

Plan RHP 1497A shows a house at the centre of radiating formal avenues to each point on the compass, and diagonally, like a saltire cross, and with a bleachfield to the E.

References

Bibliography

GRH RHP 1497A, plan of properties on the River Carron, circa 1755-68, showing plan of Denovan house prior to 19th century alterations, set at the centre of formal avenues.

GRH RHP 48933, plan of part of Denovan estate, as proposed to be entailed 1797 (traced 1859).

LARBERT AND DUNIPACE, John C Gibson, 1908, pp165, 166.

About Designations

Listed Buildings

We list buildings of special architectural or historic interest and these are selected according to criteria published in the www.historic-scotland.gov.uk/shep-dec2011.pdf, Annex 2, pp74-76.

The information in the listed building record gives an indication of the special architectural or historic interest of the listed building(s). It is not a definitive historical account or a complete description of the building(s). The format of the listed building record has changed over time. Earlier records may be brief and some information will not have been recorded.

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Listing covers both the exterior and the interior. Listing can cover structures not mentioned which are part of the curtilage of the building, such as boundary walls, gates, gatepiers, ancillary buildings etc. The local authority is responsible for advising on what is covered by the listing including the curtilage of a listed building. For information about curtilage see www.historic-scotland.gov.uk.

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