

The background of the slide features the coat of arms of the City of Edinburgh. It consists of a shield divided into four quarters. The top-left quarter is blue with a white saltire (X-shaped cross). The top-right quarter is red with a white lion passant guardant. The bottom-left quarter is green with a white tree. The bottom-right quarter is white with a red tree. Above the shield is a crown with four fleurs-de-lis. Below the shield is a scroll with the motto 'AENE FOR A' in Latin.

# **AGENDA ITEM**

**7**

**Change of Use of Public Open  
Space to Garden Ground and  
Erection of Boundary Fence  
(Retrospective) at 32 Howieson  
Avenue, Bo'ness EH51 9JG for Mr  
David Stewart - P/16/0393/FUL  
(Continuation)**

**FALKIRK COUNCIL**

**Subject:** CHANGE OF USE OF PUBLIC OPEN SPACE TO GARDEN  
GROUND AND ERECTION OF BOUNDARY FENCE  
(RETROSPECTIVE) AT 32 HOWIESON AVENUE, BO'NESS,  
EH51 9JG FOR MR DAVID STEWART - P/16/0393/FUL

**Meeting:** PLANNING COMMITTEE

**Date:** 26 October 2016

**Author:** DIRECTOR OF DEVELOPMENT SERVICES

**Local Members:** Ward – Bo'ness and Blackness

Councillor Adrian Mahoney  
Councillor Ann Ritchie  
Councillor Sandy Turner

**Community Council:** Bo'ness

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

**UPDATE REPORT**

1. Members will recall that this application was presented to the Planning Committee on 14 September (copy of previous report appended - Appendix 1), when it was agreed to continue the application for a site visit. The site visit took place on 26 September 2016.
2. At the site visit the case officer summarised the report and the applicant, objector, Members of the Planning Committee and Local Members were heard. Members viewed the application site from within the rear garden of 32 Howieson Avenue, from within the garden of the objector's property at 40 Howieson Avenue and from Linlithgow Road.
3. The applicant outlined the background to the application in support of the retrospective development, advising that the original fence and trees were dangerous. The applicant explained the steps taken to contact the owner of the land and their intention to buy the site.
4. The objector spoke, commenting that the proposed development and felling of the trees has resulted in a loss of residential amenity and a visually intrusive fence line (when viewed from Linlithgow Road). The objector claimed that the proposed development has resulted in the theft of land and is contrary to the Title Deeds of the property and area. The objector also claimed that the development impacted on her human rights, specifically in relation to noise nuisance.

5. The processes and practices of the planning system are compatible with the European Convention on Human Rights. The planning system by its very nature respects the rights of the individual, whilst acting in the interests of the wider community. In this instance the impact on residential amenity of the area can be considered.
6. There is a 2 metre high boundary fence and mature hedge (approximately 3 metres high), between the objector's property and application site. It is considered that there is not a significant impact on the residential amenity of the neighbouring property as a result of development. In relation to noise, it is considered that the development does not significantly impact the neighbouring property, as the proposal relates to a modest extension to an existing adjoining garden and there is an existing backdrop of transport noise from Linlithgow Road.
7. Members asked general questions in relation to maintenance and ownership of the application site and suggested that the applicant should have spoken to her neighbours before commencing development.
8. The Local Members sought clarification on the line of the original fence and commented on the risk in carrying out development, without first owning the site. Local Members also discussed the ownership of the application site and planning history for the surrounding area. The impact of the loss of an area of open space (at a key entrance to Bo'ness) was noted and it was considered that the development could lead to other properties carrying out similar development in the local.
9. Officers advised that there was no Tree Preservation Order on the land and as such no planning consent was required to fell trees. Officers also commented that ownership of the site is not a material planning consideration.
10. At the meeting, Members requested details of planning applications for similar development in the area. The following applications are relevant:
  - In 2003 (Ref: F/2003/0174), planning permission was granted for a change of use of open space to garden ground at 28 Howieson Avenue;
  - In 2006 (Ref: 06/0175/FUL) planning permission was granted for a change of use of open space to garden ground at 44 Crosshill Drive (please note that this application followed an earlier refusal for the same development Ref: 05/1129/FUL); and
  - In 2006 (Ref: 06/0311/FUL) planning permission was granted for a change of use of open space to garden ground at 42 Crosshill Drive.
11. All of the above applications relate to wedge shaped areas of open space fronting Linlithgow Road, south of the application site.
12. Since the site visit, the applicant has made the following comments in writing to the Council:
  - There has been an extensive search to locate the owner of the land and purchase the site. Various methods have been used including through a solicitor, social media, via the internet and in person. The next step is to hire a private investigator;
  - The owner of the site has sold other areas of land in the area, and it is assumed, would be willing to sell the application site;
  - The trees caused damage to the old fence. The Council do not own the land and were unwilling to maintain or prune the trees;

- The trees were only felled and fence moved, as the Council do not own the site and therefore the applicant did not realise that planning permission was required; and
- The planning process has been fully complied with since realising the mistake and the applicant is happy to meet any legal requirements and make a financial contribution to offset the loss of the area of open space.

13. No new issues were raised at the site visit that would amend the previous recommendation of minded to grant planning permission.

#### **14. RECOMMENDATION**

**14.1 It is therefore recommended that Committee indicate that it is minded to Grant Planning Permission subject to:-**

- (a) The satisfactory completion, within 6 months, of a Legal Agreement within the terms Section 69 of the Local Government (Scotland) Act 1973 or Section 75 of the Town and Country Planning (Scotland) Act 1997 in terms satisfactory to the Director of Development Services in respect of:-**
  - (i) the payment of a financial contribution towards qualitative improvements in other parts of the green network, to offset the loss of an area of open space, to the sum of £1,323;**
- (b) And thereafter, on the conclusion of the foregoing matters, remit to the Director of Development Services to grant planning permission subject to the following informative.**

**Informative(s):-**

- 1. For the avoidance of doubt, the plan(s) to which this decision refer(s) bear our online reference number(s) 01 - 03.**

**pp**

.....  
**Director of Development Services**

**Date: 17 October 2016**

#### **LIST OF BACKGROUND PAPERS**

- 1. The Falkirk Local Development Plan.**
- 2. Objection received from Mr and Mrs Catherine and David Elliot, 40 Howieson Avenue, Bo'ness, EH51 9JG on 11 August 2016.**

3. Objection received from Mrs Edna Davidson, 5 Constable Court, Bo'ness, EH51 9EY on 19 August 2016.

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

**FALKIRK COUNCIL**

**Subject:** CHANGE OF USE OF PUBLIC OPEN SPACE TO GARDEN  
GROUND AND ERECTION OF BOUNDARY FENCE  
(RETROSPECTIVE) AT 32 HOWIESON AVENUE, BO'NESS,  
EH51 9JG FOR MR DAVID STEWART - P/16/0393/FUL

**Meeting:** PLANNING COMMITTEE

**Date:** 14 September 2016

**Author:** DIRECTOR OF DEVELOPMENT SERVICES

**Local Members:** Ward - Bo'ness and Blackness

Councillor Adrian Mahoney  
Councillor Ann Ritchie  
Councillor Sandy Turner

**Community Council:** Bo'ness

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

**1. DESCRIPTION OF PROPOSAL / SITE LOCATION**

- 1.1 This application relates to the retrospective change of use of an area of open space to garden ground and the erection of a 1.8 metre high boundary fence at Howieson Avenue, Bo'ness.
- 1.2 The area of open space forms a grassed, irregular shaped verge, between properties at Crosshill Drive / Howieson Avenue and Linlithgow Road.

**2. REASON FOR COMMITTEE CONSIDERATION**

- 2.1 The application requires consideration by the Planning Committee as it has been called in by Councillor Turner, for the following reason:
- Loss of amenity.

**3. SITE HISTORY**

- 3.1 ENF/2016/0039 - Enforcement complaint in relation to the unauthorised change of use of public open space to garden ground and the erection of a boundary fence - sisted pending outcome of planning application.
- 3.2 F/2003/0174 - Change of Use of Amenity Open Space to Private Garden Ground and Erection of 1.8 metre Boundary Fency at 28 Howieson Avenue (south of the application site) - granted on 16 April 2003, planning permission implemented.

#### **4. CONSULTATIONS**

- 4.1 The Council's Roads Development Unit has no objection.
- 4.2 The Council's Environmental Protection Unit has no objection.

#### **5. COMMUNITY COUNCIL**

- 5.1 The Bo'ness Community Council has not made any representation in respect of the application.

#### **6. PUBLIC REPRESENTATION**

- 6.1 In the course of the application, two letters of objection were received. The salient issues are summarised below.
- Major loss of amenity;
  - The development is a theft of land and the applicant has illegally vandalised trees by felling them;
  - The applicant has blocked off an area of open space used by dog walkers;
  - The plans are inaccurate as they do not show the full extent of the neighbouring property. As such, the relationship and impact on the neighbouring property cannot be assessed;
  - The development is contrary to paragraphs 5.22 and policy INF03 of the Falkirk Local Development Plan (FLDP), as the development does not respect the local context and street pattern, scale or character of the area and is to the detriment of the local environment. The development results in the loss of valuable open space; and
  - The application is contrary to policy D03 of the (Falkirk Local Development Plan).

#### **7. DETAILED APPRAISAL**

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

Accordingly,

##### **7a The Development Plan**

- 7a.1 The Falkirk Local Development Plan was adopted on 16 July 2015. It includes a number of supplementary guidance documents which also have statutory status as part of the Development Plan. The proposed development was assessed against the following policy or policies:

7a.2 INF03 - "Protection of Open Space" states:-

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

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



- 7a.3 The application site forms part of a wide grass verge, that is an irregular shaped buffer, between the rear of properties at Crosshill Drive and Howieson Avenue and Linlithgow Road (the main access route into Bo'ness from the south). The application site and wider open verge area fronting Linlithgow Road is identified in the Draft Open Space Strategy (Figure BNS.1) as an area of amenity green space. The area is roughly grassed and there are a few trees positioned intermittently along its entire length. The area appears to be unmaintained and the grass is growing long, with weeds present. It should be noted that Falkirk Council maintain a narrow strip of grass, in Council ownership, running the full length of Linlithgow Road.
- 7a.4 The Council seeks to protect all urban open space considered to have landscape, amenity, recreational or ecological value. In this instance it is considered that there is no adverse effect or impact upon the character or appearance of the area as a result of this development. The development concerns the loss of a small area of grass verge, which will have a minimal impact on the character and appearance of the area. It is also noted that there has been similar development in the area (see planning history). It is considered that the site is of no recreational or ecological value and of limited connectivity and functionality within the wider green network. The application accords with policy INF03 'Open Space and New Development'.

### ***Supplementary Guidance forming part of Local Development Plan***

- 7a.5 Supplementary Guidance SG13 'Open Space and New Development' advises that where a proposed development involves the loss of existing open space, compensation should be sought at a level equivalent to the type of open space lost. In this instance the application relates to passive open space and a contribution of £1,323 is sought (63 metres squared x £21) to be spent on qualitative improvements to the green network within the local area. The applicant has confirmed their willingness to compensate for the loss of open space by payment of the contribution and as such SG13 is satisfied.
- 7a.6 Accordingly the application accords with the Falkirk Local Development Plan.

### **7b Material Considerations**

- 7b.1 The material considerations to be assessed are the representations received and the consideration of the site in relation to coal mining legacy.

### ***Assessment of Public Representations***

- 7b.2 The application is not considered to result in a major loss of amenity. The area of land forms a grass verge between residential properties and Linlithgow Road. It is considered to be of relatively low amenity value and is unmaintained. The application relates to the loss of a small area of open space and the associated screen fence line, resulting from the development, links well with other original and altered fence lines adjacent to the application site.

- 7b.3 The location and block plan are based on an ordnance survey plan and are accurate. The neighbour is dissatisfied as an extension to their property is not shown on the application submission. There is no requirement for applicants to survey surrounding properties as part of an application process. The relationship and impact on the neighbouring property was assessed on site. There is a 2 metre high fence and mature hedge (approximately 3 metres high) between the proposed development and neighbouring property. As such, it is considered that there would not be a significant impact on the privacy of the neighbouring property as a result of development, to merit refusal of this planning application.
- 7b.4 The application is assessed as being in accordance with policy INF03 'Protection of Urban Space' of the Falkirk Local Development Plan.
- 7b.5 Policy D03 'Urban Design' is not considered relevant to the assessment of this application as it relates to key design principles for development site planning.
- 7b.6 It is noted that the applicant does not own the application site and the correct section of the Land Ownership Certificate has been completed accordingly. The area is not covered by a Tree Preservation Order, and therefore no consent was required for the felling of trees.
- 7b.7 It is noted that the application is retrospective and as such the public can no longer gain access to the application site. However the area of land that has been removed is not considered significant and the functional area as a whole in this locality has not been undermined.

### ***Consideration of the Site in relation to Coal Mining Legacy***

- 7b.6 The application site falls within or is partially within the Development High Risk Area as defined by the Coal Authority. The Coal Authority advise that because the application is solely for the change of use of the land to garden ground and the erection of a fence, a coal mining risk assessment is not required.
- 7b.7 Where planning permission is to be granted, an appropriate informative note appears on the Decision Notice.

### **7c Conclusion**

- 7c.1 The application is assessed as being in accordance with the Development Plan. Comments received through representation are assessed and addressed in the body of this report. There are no material planning considerations that would warrant refusal of the application.

## **8. RECOMMENDATION**

- 8.1 **It is therefore recommended that Committee indicate that it is minded to Grant Planning Permission subject to:-**
- (a) **The satisfactory completion, within 6 months, of a Legal Agreement within the terms Section 69 of the Local Government (Scotland) Act 1973 or Section 75 of the Town and Country Planning (Scotland) Act 1997 in terms satisfactory to the Director of Development Services in respect of:-**

- (i) The payment of a financial contribution towards qualitative improvements in other parts of the green network, to offset the loss of an area of open space, to the sum of £1,323; and
- (b) And thereafter, on the conclusion of the foregoing matters, remit to the Director of Development Services to grant planning permission subject to the following informative.

**Informative(s):-**

1. For the avoidance of doubt, the plan(s) to which this decision refer(s) bear our online reference number(s) 01 - 03.

.....  
**Director of Development Services**

**Date: 2 September 2016**

**LIST OF BACKGROUND PAPERS**

1. The Falkirk Local Development Plan.
2. Objection received from Mr and Mrs Catherine and David Elliot, 40 Howieson Avenue, Bo'ness, EH51 9JG on 11 August 2016.
3. Objection received from Mrs Edna Davidson, 5 Constable Court, Bo'ness, EH51 9EY on 19 August 2016.

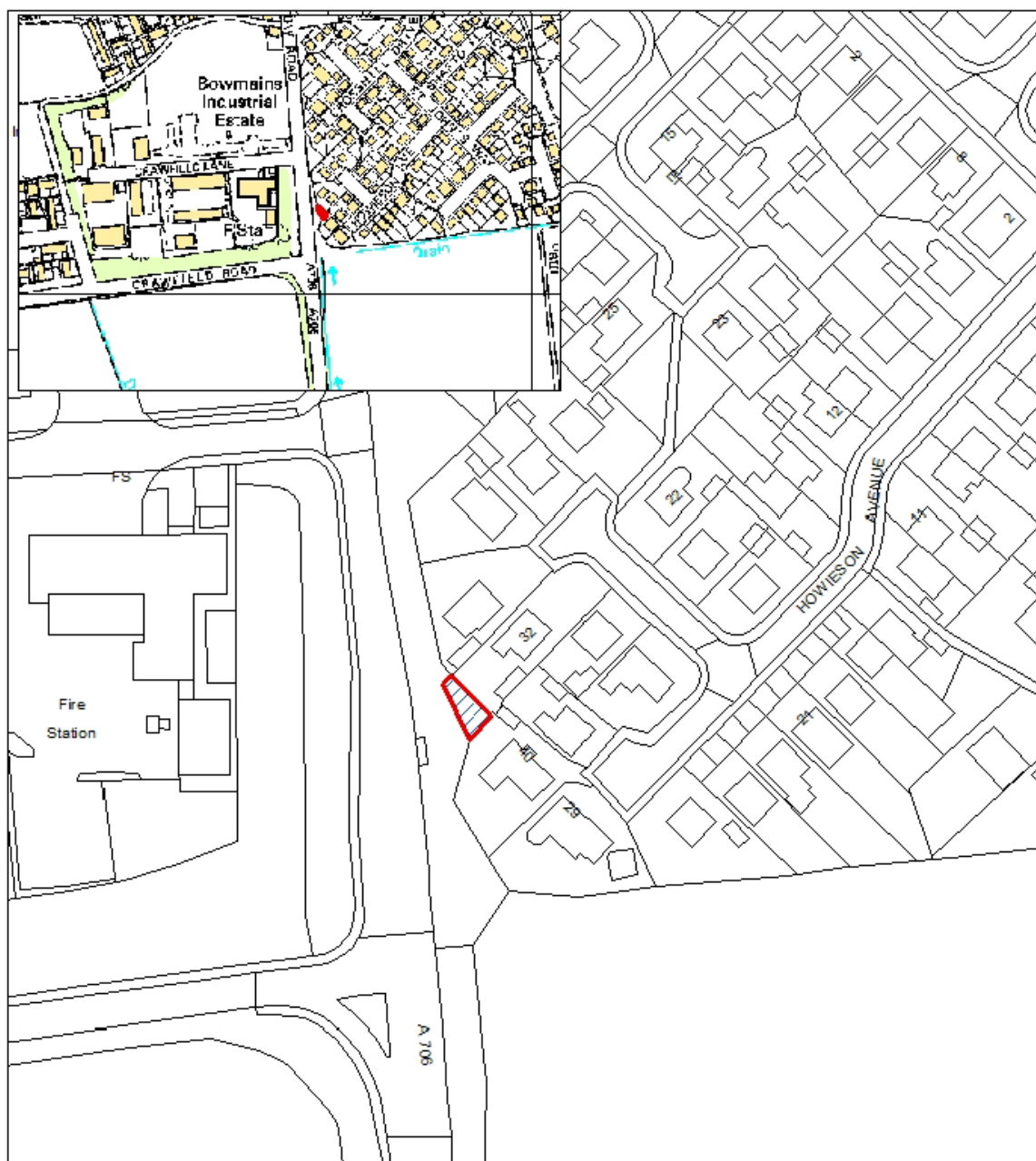
Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504880 and ask for Julie Seidel, Planning Officer.

# Planning Committee

## Planning Application Location Plan

**P/16/0393/FUL**

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



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