

The background of the slide features a large, faint, light blue coat of arms of the City of Edinburgh. It includes a crown at the top with four thistles, a shield with a castle and a lion, and a motto scroll at the bottom.

AGENDA ITEM

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**Erection of 2 Storey
Dwellinghouse with Ancillary
Detached Garage at Land to
the East of 31 Kilsyth Road,
Kilsyth Road, Haggs for Mr &
Mrs Cooper – P/14/0161/FUL**

FALKIRK COUNCIL

Subject: **ERECTION OF 2 STOREY DWELLINGHOUSE WITH
ANCILLARY DETACHED GARAGE AT
LAND TO THE EAST OF 31 KILSYTH ROAD, KILSYTH
ROAD, HAGGS FOR MR AND MRS COOPER -
P/14/0161/FUL**

Meeting: **PLANNING COMMITTEE**

Date: **26 October 2016**

Author: **DIRECTOR OF DEVELOPMENT SERVICES**

Local Members: **Ward - Denny and Banknock**

Councillor Jim Blackwood

Councillor Brian McCabe

Councillor Paul Garner

Councillor Martin David Oliver

Community Council: **Banknock, Haggs and Longcroft**

Case Officer: **Brent Vivian (Senior Planning Officer), Ext. 4935**

1. BACKGROUND

- 1.1 This application was for the erection of a two storey dwellinghouse and detached garage. The application was granted planning permission, under the Council's delegation scheme, on 26 August 2014. The development has now been completed. The purpose of this report is to ask Members to consider a request to refund monies paid to the Council in accordance with a legal agreement under section 69 of the Local Government (Scotland) Act 1973 relating to the above development. It should be noted that this planning application was determined prior to the two applications referred to in paragraphs 1.4 and 1.5 below.
- 1.2 The site of the development was within housing opportunity site HB & B05 under the adopted Local Plan at that time (the Falkirk Council Local Plan, dated December 2010). This housing site had an indicative capacity of 25 units under this Plan. The application (for a single dwellinghouse) was therefore considered as the first increment of a larger housing development of this allocated housing site. Accordingly, the requisite financial contributions were sought. These contributions were in respect of education (£4,700), open space (£1,820) and upgrade of the M80/A803 slip road junctions (£1,120). They were agreed with the applicant and secured by means of a section 69 Legal Agreement. This meant that the total contribution of £7,640 was paid at the time, along with £508 for the Council's legal fees and outlays in concluding the agreement, in order to release the issuing of the planning permission.
- 1.3 Since this application was determined, a new Local Plan has been adopted (the Falkirk Local Development Plan, dated July 2015). This plan carries over this housing opportunity site (as H10) and the indicative capacity of 25 units

- 1.4 A further planning application for a single dwellinghouse within H10 was granted on 4 May 2016 (reference P/15/0583/FUL). This application was determined by the Planning Committee and was approved without a requirement for financial contributions. The reason for this was the following material consideration:-

“The Committee noted the undertaking of the owner of the entire H10 site that she (a) has no intention now or in the future of allowing development of the site with the exception of the self-build house which is the subject of the application and (b) will support removal of the site from the Falkirk Local Development Plan”.

- 1.5 The Committee considered a further application on 17 August 2016 (reference P/16/0359/FUL). This application was to increase the size of the application site and amend the location of the proposed dwellinghouse subject to P/15/0583/FUL. The Committee granted this amended proposal and reaffirmed the previous decision not to take any contributions.

2. REASON FOR COMMITTEE CONSIDERATION

- 2.1 The applicant for P/14/0161/FUL has asked the Council to refund the financial contribution of £7,640. Agreeing to this request, such that no financial contributions are payable, is considered to be contrary to the Falkirk Local Development Plan. The request therefore requires consideration by the Planning Committee.

3. PLANNING ASSESSMENT

- 3.1 The Falkirk Local Development Plan (LDP) was adopted on 16 July 2015. It replaces the previous Structure Plan and Local Plan and includes a number of supplementary guidance documents which now have statutory status.

- 3.2 Policy INF02 – ‘Developer Contributions to Community Infrastructure’ states:

“Developers will be required to contribute towards the provision, upgrading and maintenance of community infrastructure where development will create or exacerbate deficiencies in, or impose significantly increased burdens on, existing infrastructure. The nature and scale of developer contributions will be determined by the following factors:

- 1. Specific requirements identified against proposals in the LDP or in development briefs;*
- 2. In respect of open space, recreational, education and healthcare provision, the general requirements set out in Policies INF04, INF05 and INF06;*
- 3. In respect of physical infrastructure any requirements to ensure that the development meets sustainability criteria;*
- 4. In respect of other community facilities, any relevant standards operated by the Council or other public agency; and*

5. *Where a planning obligation is the intended mechanism for securing contributions, the principles contained in Circular 3/2012.*

In applying the policy, consideration of the overall viability of the development will be taken into account in setting the timing and phasing of payments.

- 3.3 This policy states that developers will be required to contribute towards the provision, upgrading and maintenance of community infrastructure where development will create or exacerbate deficiencies in, or impose significantly increased burdens on, existing infrastructure. The nature and scale of developer contributions will be determined by a number of factors including the specific requirements identified against proposals in the LDP or in development briefs. The specific requirements for H10 include proportionate contributions towards upgrade of the M80 (J7)/ A803 slip road junctions and Bankier Primary School expansion. The general requirements in respect of open space and education are set out in Policies INF04 and INF05 respectively.
- 3.4 Policy INF04 - 'Open Space and New Residential Development' states:

"Proposals for residential development of greater than 3 units will be required to contribute to open space and play provision. Provision should be informed by the Council's open space audit, and accord with the Open Space Strategy and the Supplementary Guidance SG13 on 'Open Space and New Development', based on the following principles:

- 1. New open space should be well designed; appropriately located; functionally sized and suitably diverse to meet different recreational needs in accordance with criteria set out in Supplementary Guidance SG13 'Open Space and New Development'.*
- 2. Where appropriate, financial contributions to off-site provision, upgrading, and maintenance may be sought as a full or partial alternative to direct on-site provision. The circumstances under which financial contributions will be sought and the mechanism for determining the required financial contribution is set out in Supplementary Guidance SG13 'Open Space and New Development'.*
- 3. Arrangements must be made for the appropriate management and maintenance of new open space."*

- 3.5 This policy requires proposals for residential development of greater than three units to contribute to open space and play provision. In this instance, the 'development' is considered to comprise the H10 site, which has a Housing Capacity of 25 units. The dwellinghouse approved under P/14/0161/FUL is therefore one unit of potentially 25 units and not a unit in isolation. It was considered appropriate to take a proportionate financial contribution which could be used towards open space provision within H10 or off-site open space improvements in the local area.

3.6 Policy INF05 - 'Education and New Housing Development' states:

"Where there is insufficient capacity within the catchment school(s) to accommodate children from new housing development, developer contributions will be sought in cases where improvements to the school are capable of being carried out and do not prejudice the Council's education policies. The contribution will be a proportionate one, the basis of which is set out in Supplementary Guidance SG10 'Education and New Housing Development'. Where proposed development impacts adversely on Council nursery provision, the resourcing of improvements is also addressed through the Supplementary Guidance.

In circumstances where a school cannot be improved physically and in a manner consistent with the Council's education policies, the development will not be permitted."

- 3.7 This policy requires proportionate contributions for housing developments that would contribute, cumulatively, to capacity issues at the local catchment schools. The dwellinghouse approved under P/14/0161/FUL lies within H10 which has a Housing Capacity of 25 units. H10 is anticipated to impact on the capacity of local schools and Children's Services identified future capacity issues at Bankier Primary School and Denny High School. Accordingly, proportional contributions at the rates set out in SG10 'Education and New Housing Development' were sought in determining the application.
- 3.8 The Banknock and Hags SIRR Development Framework 1st Alteration identifies H10 as a site impacting on the M80 slip road junctions with the A803. The costs of upgrading these junctions, to accommodate the cumulative impact of new housing in the area, should be met by all parties based on an equitable cost sharing relative to each development's contribution to traffic generation at both junctions. Based on the then cost projections for the work and the relative impact of H10 on the junctions, the Transport Planning Unit calculated a proportional contribution for the proposed dwellinghouse of £1,120.
- 3.9 In conclusion, it is considered that agreeing to the request, such that no financial contributions are payable, would be contrary to the LDP. Under the LDP, this single unit development lies within allocated housing site H10. This housing site has an indicative capacity of 25 units and is identified in the LDP as a site to which financial contributions will apply.
- 3.10 In preparing to determine the later planning application P/15/0583/FUL it was proposed to seek similar developer contributions to those arising from the subject of this report, P/14/0161/FUL. The agent for P/15/0583/FUL queried the legal basis for the request and the Council obtained independent specialist legal advice from Brodies. This reads in part: "In conclusion, it is our view that the contributions sought for these applications are compliant with the LDP policies, compliant with the Circular tests and are reasonable in all other respects."
- 3.11 Elsewhere the advice states: "We do not think that the Council should place significant reliance on the landowner's intention, if indeed that is the current position of the landowner. Circumstances can change. However, if it is the case that there is a lack of reasonable prospects for the site to be developed in the medium term, the Council needs to consider whether it is reasonable to take developer contributions from single unit developers at this time." In the case of P/15/0583/FUL the Planning Committee gave weight to the landowner's stated intentions. In the case of P/14/0161/FUL those

intentions had not been forwarded to the Council (if indeed that was the landowner's view at the time).

4. MATERIAL CONSIDERATIONS

- 4.1 The decisions of the Planning Committee in respect of planning applications P/15/0583/FUL and P/16/0359/FUL are material to consideration of the request. In those instances, the Committee had regard to an undertaking of the owner of H10 that she had no intention now or in the future of allowing further development of the H10 site. Financial contributions do not generally apply if overall development within an allocated housing site consists of 3 units or less. If development of H10 is restricted to the recent approvals, the number of units is 2, which is under the general threshold of 3 where contributions are taken.
- 4.2 The principle of refunding the £7,640 contribution can be seen to be consistent with the decisions on the other applications (P/15/0583/FUL and P/16/0359/FUL).
- 4.3 Children's Services and the Transport Planning Unit have advised that the respective payments of £4,700 and £1,120 have not yet been spent and are therefore available for repayment if necessary. The open space contribution of £1,820 was earmarked for upgrade works at Ash Park, Banknock, as part of a larger pool of money. Some of the proposed upgrade works have been completed using other developer contributions. Although refund of this contribution would reduce the balance of the money ring-fenced for upgrade of this park, additional contributions are expected prior to a master plan for the park being prepared.

5. CONCLUSION

- 5.1 The Council has received a request to refund the financial contribution of £7,640 which was paid in respect of planning application P/14/0161/FUL. Presumably the Committee would wish to be consistent with its decisions in respect of planning applications P/15/0583/FUL and P/16/0359/FUL for part of the same LDP housing site H10 and therefore agree to refund this contribution. In those cases, the Committee gave significant weight to the advice of the landowner of H10 that she had no intention of allowing further housing development within H10. The Committee saw this as a material consideration which justified approving the applications without financial contributions, notwithstanding that to do so would be contrary to the LDP. On the basis of the Committee's previous decisions, the following recommendation is made.

6. RECOMMENDATION

- 6.1 **It is therefore recommended that the Committee, noting the undertaking by the owner of the entire H10 site that she (a) has no intention now or in the future of allowing development of the site with the exception of the self-build house which is the subject of application P/16/0359/FUL; and (b) will support removal of the site from the Falkirk Local Development Plan, agree to refund, with interest and Council legal fees, the financial contribution of £7,640 paid in respect of planning application P/14/0161/FUL.**

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Director of Development Services

Date: 18 October 2016

LIST OF BACKGROUND PAPERS

1. Falkirk Council Local Plan, adopted December 2010.
2. Falkirk Local Development Plan, adopted July 2015.

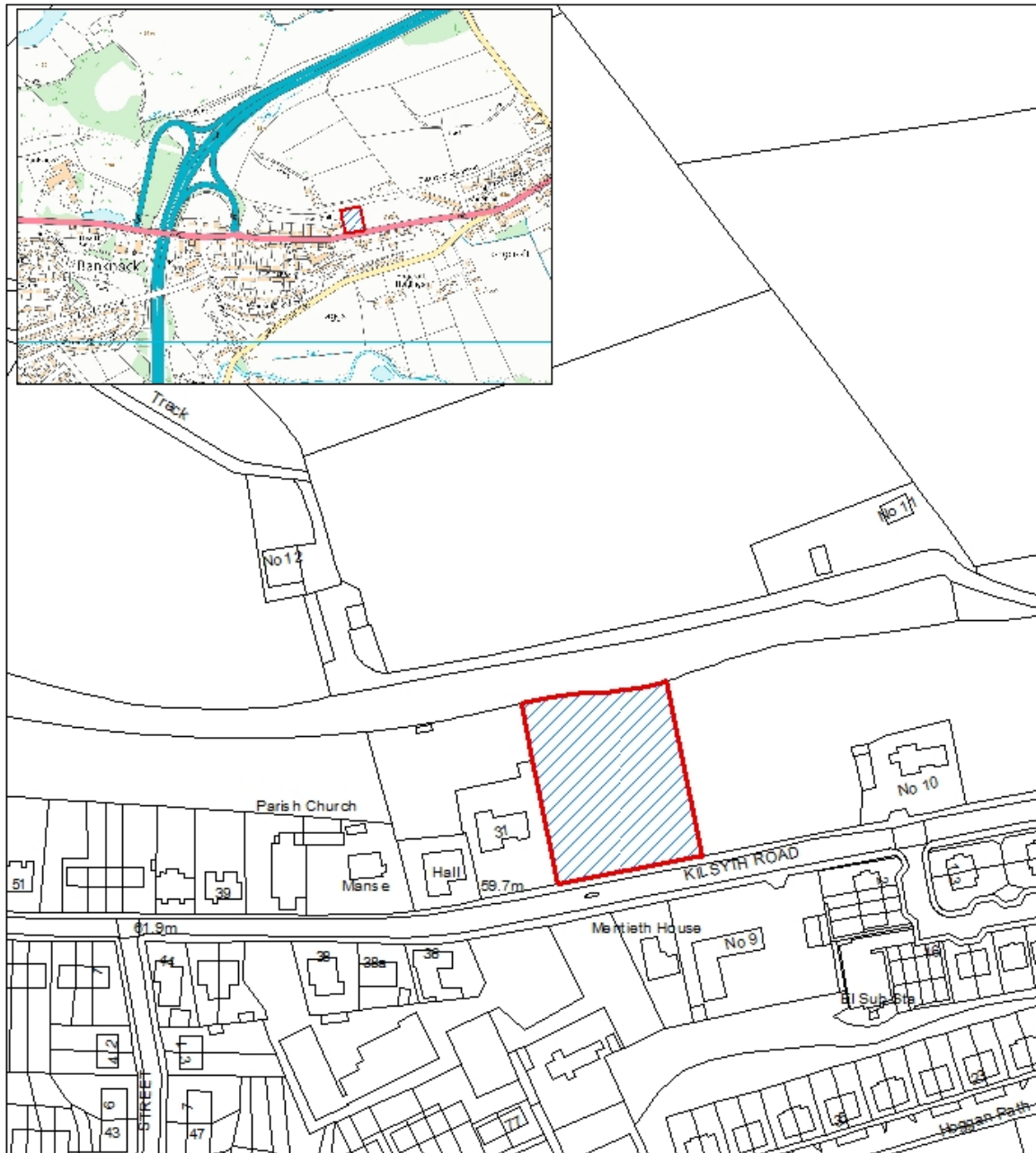
Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504935 and ask for Brent Vivian, Senior Planning Officer.

Planning Committee

Planning Application Location Plan

P/14/0161/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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