



AGENDA ITEM

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**Modification of Planning Obligation
under Section 75 of the Town and
Country Planning (Scotland) Act 1997
attached to Planning Permission
P/12/0124/PPP, adding the following
wording to Clause 1.6 of the said
Obligation at Land to the South of the
Stables, Braeface Road, Banknock for
Mr John Penman - P/16/0778/75M**

FALKIRK COUNCIL

Subject: MODIFICATION OF PLANNING OBLIGATION UNDER SECTION 75 OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 ATTACHED TO PLANNING PERMISSION P/12/0124/PPP, ADDING THE FOLLOWING WORDING TO CLAUSE 1.6 OF THE SAID OBLIGATION:-, "WITHOUT PREJUDICE TO THE FOREGOING GENERALITY, THE PHRASE "OR THE LIKE" INCLUDES ANY PLANNING APPLICATION UNDER SECTION 42 OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 TO DEVELOP LAND WITHOUT COMPLIANCE WITH CONDITIONS PREVIOUSLY ATTACHED" AT LAND TO THE SOUTH OF THE STABLES, BRAEFACE ROAD, BANKNOCK, FOR MR JOHN PENMAN - P/16/0778/75M

Meeting: PLANNING COMMITTEE

Date: 25 January 2017

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. DESCRIPTION OF PROPOSAL / SITE LOCATION

- 1.1 The application seeks to modify the Section 75 planning obligation attached to planning permission P/12/0124/PPP. The reason for this is to ensure that an application currently under consideration to remove / vary conditions of P/12/0124/PPP (reference P/16/0671/VRC) is similarly bound by the terms of the Section 75 planning obligation. The reason for the VRC application is to remove the requirement for the new house plots to be serviced by an adoptable road (so that they can be serviced by a private access).
- 1.2 The application is being considered in tandem with applications P/16/0671/VRC and P/16/0660/MS. This latter application seeks the approval of the matters specified in the conditions of P/12/0124/PPP. The full site history is detailed in Section 3 of this report.
- 1.3 The site to which the planning obligation relates is part of Cloybank Estate and lies at the junction of the Cloybank Estate access road and Braeface Road.

2. REASON FOR COMMITTEE CONSIDERATION

- 2.1 The application requires consideration by the Planning Committee as the application to which the Section 75 planning obligation relates (P/12/0124/PPP) was determined by the Planning Committee.

3. SITE HISTORY

- 3.1 Planning application P/07/0451/FUL for a mixed use development was granted on 29 January 2009. The approved development consists of: a dwellinghouse, estate office, staff facilities, produce handling area, golf academy (indoor), artist studio/ workshop, a hydroponicum; the use of land for fruit production, woodland, archery, clay pigeon shooting, soft fruit production (polytunnels), a bee/honey farm; and the formation of a fishery pond and a golf academy. A Section 75 Planning Obligation attaches to this permission.
- 3.2 Planning application P/10/0524/FUL for the erection of a timber cabin for residential purposes and use of a temporary building as a coffee shop (retrospective) was granted on 17 August 2012.
- 3.3 Planning application P/12/0124/PPP for the development of land for residential purposes was granted on 3 April 2014. The permission in principle provides for six dwellinghouses and is 'enabling development' to cross-fund the development of the approved estate facilities. A Section 75 Planning Obligation attaches to the permission and secures the phased payment of financial contributions in respect of education and open space, as well as a specified amount of the sale proceeds of each of the six house plots to be invested in the Cloybank Estate business.
- 3.4 Advertisement consent P/13/0673/ADV for the display of a freestanding non-illuminated advertisement was approved on 18 November 2013.
- 3.5 Planning application P/13/0674/FUL for an extension to dwellinghouse (retrospective) was granted on 13 December 2013.
- 3.6 Planning application P/16/0428/MSD for the erection of six dwellinghouses was withdrawn on 12 October 2016 pending the submission of further information and amended proposals.
- 3.7 Planning application P/16/0660/MSD for the erection of six dwellinghouses is also under consideration.
- 3.8 Planning application P/16/0671/VRC for the removal of conditions 9 and 11 and variation of condition 12 to remove the wording "and so that no surface water is discharged or loose material carried out onto the public road" (planning conditions 9, 11 and 12 attached to planning permission in principle P/12/0124/PPP) is also under consideration.

4. CONSULTATIONS

- 4.1 No consultations have been carried out in respect of this application.

5. COMMUNITY COUNCIL

- 5.1 The Banknock, Haggs and Longcroft Community Council have not made any representations.

6. PUBLIC REPRESENTATION

- 6.1 No public representations have been received in respect of this application.

7. DETAILED APPRAISAL

- 7.1 Under Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning etc. (Scotland) Act 2006), planning obligations are secured through an appropriate legal document to bind the owners and future owners of particular subjects. They may secure payment of a financial contribution towards infrastructure to support a development proposal subject to a planning application.
- 7.2 Section 75A of the 2006 amendment establishes a formal process by which a party to the planning obligation may apply to discharge or modify the obligation.
- 7.3 Scottish Government Circular 3/2012 (Planning Obligations and Good Neighbour Agreements) set out the circumstances in which planning obligations and good neighbour agreements can be used. The circular states that planning obligations should only be sought where they meet all of the following tests:-
- Necessary to make the proposed development acceptable in planning terms (the necessity test).
 - Serve a planning purpose and, where it is possible to identify infrastructure provision requirements in advance, should relate to Development Plans (the planning purpose test).
 - Relate to the proposed development either as a consequence of the development or arising from the cumulative impact of development in the area (the relationship to proposed development test).
 - Fairly and reasonably relate in scale and kind to the proposed development (the scale and kind test).
 - Be reasonable in all other respects (the reasonable test).
- 7.4 The request to modify the planning obligation is considered to meet all of the tests of the circular. The purpose of the modification is to clarify that any permission for P/16/0671/VRC is similarly bound by the terms of the Section 75 planning obligation attached to P/12/0124/PPP. Otherwise the applicant would, in effect, have a stand-alone planning permission which could allow for the six dwellinghouses to be carried out without the obligations. The planning obligation was considered necessary to make the proposed development acceptable in planning terms. It was also considered to meet the tests of the circular. It therefore follows that the current application to modify the planning obligation is required in order to allow P/16/0671/VRC and P/16/0660/MS to proceed.

8 CONCLUSION

- 8.1 The application seeks to modify the Section 75 Planning Obligation attached to planning permission P/12/0124/PPP, so that planning application P/16/0671/VRC is similarly bound by the terms of the Section 75. As such, the application is considered to meet the policy tests of Scottish Government Planning Circular 3/2012 (Planning Obligation and Good Neighbour Agreements). The proposed modification is therefore considered to be appropriate and it is recommended that Committee agree to modify the planning obligation accordingly.

9. RECOMMENDATION

- 9.1 It is therefore recommended that the Planning Committee agree to modify the Section 75 Planning Obligation attached to planning permission P/12/0124/PPP in accordance with the details as set out within the application subject to the Committee indicating that it is minded to grant planning applications P/16/0671/VRC and P/16/0660/MSD. The reason being that the proposed modification is considered to satisfy all of the policy tests of Scottish Government Planning Circular 3/2012 'Planning Obligations and Good Neighbour Agreements'.

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pp Director of Development Services

Date: 16 January 2017

LIST OF BACKGROUND PAPERS

1. Falkirk Local Development Plan.
2. Scottish Government Planning Circular 3/2012 (Planning Obligations and Good Neighbour Agreements).

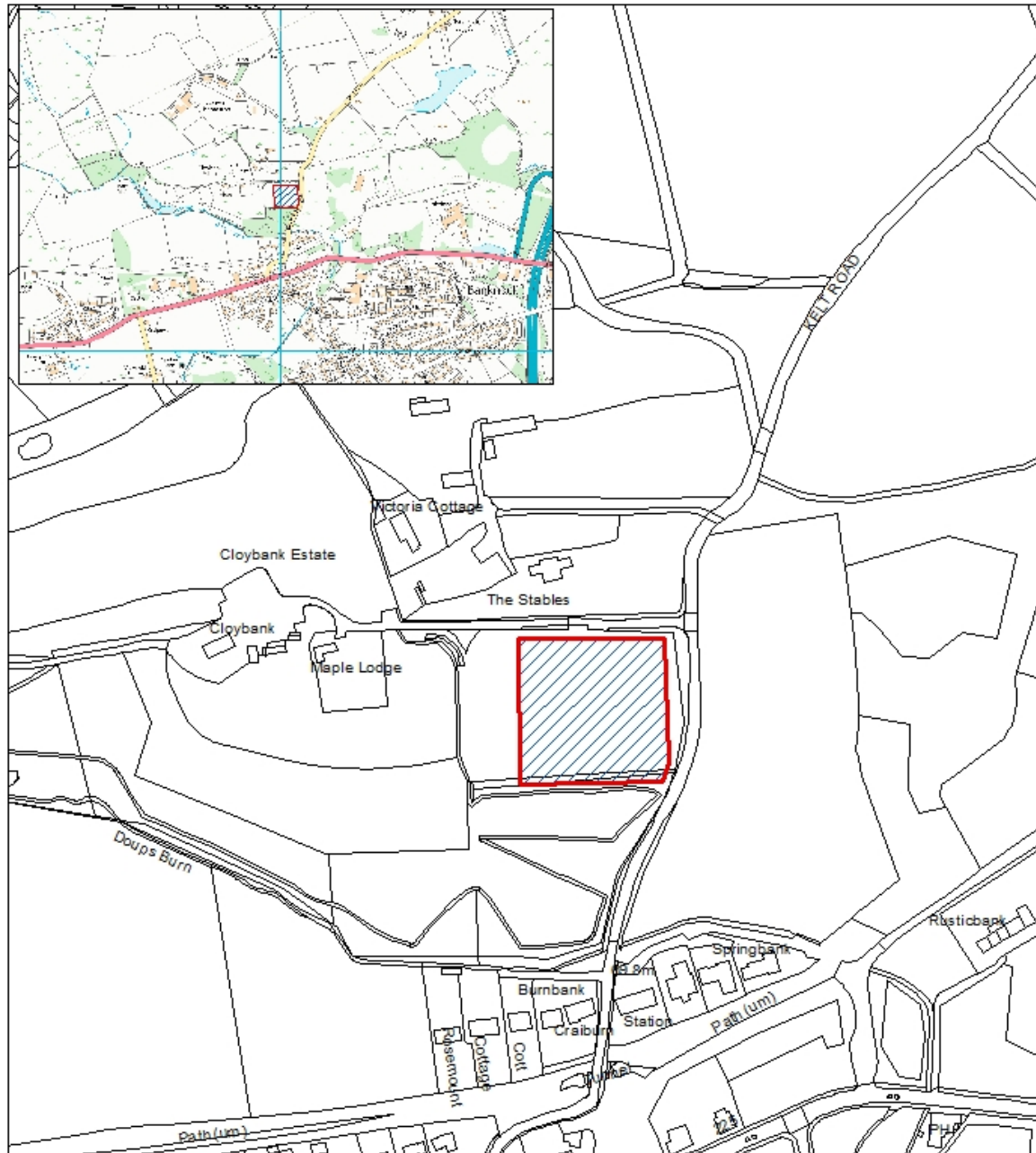
Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504935 and ask for Brent Vivian, Senior Planning Officer.

Planning Committee

Planning Application Location Plan

P/16/0778/75M

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



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