



# **AGENDA ITEM**

**4**

**Planning Application  
P/16/0074/FUL -  
Erection of 3 No.  
Dwellinghouses at  
Land to the South West  
of Wester Bonhard,  
Bo'ness.**

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**Falkirk Council**

**Title:** Land to the South West of Wester Bonhard, Bo'ness –  
Erection of Three Dwelling houses – Application Number  
P/16/0074/FUL  
**Meeting:** Planning Review Committee  
**Date:** 10 October 2017  
**Submitted By:** Director of Corporate & Housing Services

**1 Purpose of Report**

- 1.1 The purpose of this report is to inform Members of the Planning Review Committee of the background to this application: Land to the South West of Wester Bonhard, Bo'ness – Erection of Three Dwelling houses – application number P/16/0074/FUL (the Application).

**2 Background to the Application**

- 2.1 On 17 May 2016 the Application was refused under delegated powers by the Council's Appointed Planning Officer. On 25 July 2016 the applicant submitted a request to have the Appointed Planning Officer's decision to refuse the Application reviewed by the Planning Review Committee.
- 2.2 On 19 September 2016 the Planning Review Committee resolved that it was minded to grant planning permission subject to conditions. On 11 November 2016, a minded to grant decision notice was issued which was subject to consultation with the Coal Authority in terms satisfactory to the Director of Development Services (item 3 in the agenda papers). On 20 January 2017, and following satisfactory consultation with the Coal Authority, the Council issued a decision to grant the Application subject to conditions (item 2 in the agenda papers).
- 2.3 On 4 January 2017 two objectors raised a statutory appeal in the Court of Session challenging the Planning Review Committee's minded to grant decision notice dated 11 November 2016.
- 2.4 On 22 March 2017 following legal advice from the Council's external legal advisers the Council decided to concede the statutory appeal. The reason for the concession was that the Planning Review Committee had misinterpreted the terms of its Supplementary Guidance 01 on Development in the Countryside (SG01). This means that the Planning Review Committee's decision had not been made within the powers of the Town & Country Planning (Scotland) Act 1997.

- 2.5 By interlocutor dated 13 April 2017 the Court of Session quashed the minded to grant decision notice dated 11 November 2016 and, by extension, the decision notice dated 20 January 2017. The Application has now been referred back to the Planning Review Committee for a fresh decision.
- 2.6 Given the passage of time since the original supporting statement was submitted with the applicant's Notice of Review, the applicant was invited to resubmit its supporting statement, updated to take account of any new material considerations it wished to bring to the attention of the Planning Review Committee. The revised supporting statement was then notified to all parties who had previously provided representations on the application and they were invited to provide further representations. The applicant was then given the opportunity to provide comments on those representations. The revised supporting statement and subsequent representations are included in the agenda papers as items 4 to 8.

### **3 Conclusion**

- 3.1 The Application is now back before the Planning Review Committee to decide the matter again. The Planning Review Committee must take a de novo approach to determining the Application. This means that the Planning Review Committee must consider the Application afresh and that it must take its own view on whether planning permission should be granted or whether planning permission should be refused. It is also for the Planning Review Committee to decide if the Application should be granted subject to conditions and, if so, the nature and purpose of any conditions that it considers appropriate.
- 3.2 As with all applications that it is required to review, the Planning Review Committee must decide the Application in accordance with the development plan unless the Committee determines that material considerations indicate otherwise.

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#### **Director of Corporate & Housing Services**

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Date: 02 October 2017

#### **Appendices**

None

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#### **List of Background Papers:**

None

**Planning Review Committee  
Review Decision Notice**

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

Site Address	Land To The South West Of Wester Bonhard, Bo'ness
Application No.	P/16/0074/FUL
Development	Erection of 3 No. Dwellinghouses
Decision Date	20 January 2017

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**Decision**

The FCPRC overturned the decision which was the subject of this Review and was minded to grant planning permission subject to consultation with the Coal Authority and conditions. The consultation with the Coal Authority has been satisfactorily concluded.

**Preliminary**

This notice constitutes the formal decision notice of the FCPRC as required by the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013. The FCPRC confirmed it considered the matter on a "de novo" basis.

The above application for planning permission was considered by the FCPRC at its meeting on 19 September 2016 and was attended by Baillie Buchanan (Convener) and Councillors McLuckie, C Martin and Nicol. At this meeting it was decided that there was insufficient information to make a determination and it was agreed that an unaccompanied site inspection be undertaken. This also took place on 19 September 2016 when the application site, including the location of the proposed accesses, and the surrounding area including the road network and settlement pattern were viewed. Members took the opportunity as part of the site inspection to observe and travel the full length of Borrowstoun Road from the A904 to Kinglass. Following this inspection, the FCPRC met again on the same day and it was agreed that the Review should be conducted without further procedure as the site inspection and documentation were sufficient to allow a decision to be made.

**Proposal**

The application seeks full planning permission for the erection of 3 detached dwellinghouses within an area of countryside, green belt and also the South Bo'ness Special Landscape Area. The dwellinghouses proposed are all of the same design, single storey to eaves level, with straight gables, chimney, dormers and rooflights at first floor level and an integral garage at ground floor level. The proposed external materials include natural slate for the roof, natural stone and wet dash render and timber windows. Vehicle access for the easternmost plot is proposed via an existing access serving Bonhard House to the immediate south of the site, from Borrowstoun Road (C27). The other dwellinghouses would be accessed via an existing point of access at a bend on Borrowstoun Road further to the west. Borrowstoun Road at this location is derestricted, unlit with no footpath provision and with restricted horizontal and vertical alignment, typical of many rural roads.



## Reasoning

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

The FCPRC, in taking a "de novo" approach in the determination of the application, considered that the relevant policies were CG03 - Housing Development in the Countryside, CG02 - Green Belt, GN02 - Landscape, RW10 - Vacant, Derelict, Unstable and Contaminated Land, D04 - Low and Zero Carbon Development and RW04 - Agricultural Land, Carbon Rich Soils and Rare Soils. In addition, Supplementary Guidance SG01 - Development in the Countryside and SG15 - Low and Zero Carbon Development were considered to be relevant, and these documents form part of the Development Plan and have statutory status.

The FCPRC noted that additional information had been provided by the applicant with the review papers beyond that before the appointed officer at the time of the officer's determination. The FCPRC had regard to this matter and the content of the applicant's supporting statement. It also had regard to issues of procedural fairness noting that interested parties had received notification of the review, been advised as to how to inspect the review papers and been given an opportunity to comment on the information provided with the Notice of Review. The FCPRC allowed the additional information to be considered in its de novo determination.

The FCPRC considered that a determining issue was whether the proposed development represented a suitable form of development within an area of countryside and Green Belt. In consideration of these matters, the FCPRC was of the view that whilst the site is within the Polmont/Grangemouth/Bo'ness/Linlithgow Corridor designated as Green Belt, the proposed development, given its location and relationship with the settlement pattern of the surrounding area, would not undermine the strategic purposes of the Green Belt, which are to maintain the separate identity and visual separation of settlements, protect their landscape setting and to protect and give access to greenspace for recreation.

In relation to compliance with the relevant policies regarding development in the countryside, the FCPRC considered that, although not having all the characteristics of an infill development, as it did not represent a clear gap between two existing residential properties, and that existing residential properties were more than 80 metres apart, the scale, density and design of the proposed infill housing did respect the well established character and settlement pattern of the area, as the site could be viewed as being a gap within a hamlet, and the development proposed was responsive to local distinctiveness. The FCPRC considered that the proposed development was in accordance with policies CG02 - Green Belt, CG03 - Housing in the Countryside and the provisions of SG01 - Development in the Countryside. In relation to policy GN02 - Landscape, the FCPRC acknowledged that the site fell within the South Bo'ness Special Landscape Area (LSA), however, given the modest scale of development proposed and the site's characteristics in relation to the surrounding area, there would be no adverse impact on the distinctive landscape quality of the LSA, and that the proposal was in accordance with this policy.

In considering matters relating to road safety, the FCPRC, having viewed the proposed access and noted the characteristics of the local road network when visiting the site, acknowledged that the Borrowstoun Road was typical of many rural roads and that vehicles travelling took into account these circumstances. The FCPRC also noted the content of the Transportation Statement submitted with the request for a Review and the representations received. The FCPRC considered that the proposed development would not introduce an unacceptable level of additional traffic and that the development would not be unacceptable in road safety terms. The proposed access points were considered to be acceptable. In terms of access and servicing, the proposal was in accordance with SG01 - Housing in the Countryside.

In terms of policy RW04 - Agricultural Land, Carbon Rich Soils and Rare Soils, the FCPRC noted that the site was classed as 3.1 prime quality agricultural land, and that there was a degree of ambiguity as to whether the site was or had been used for agricultural purposes. However, the FCPRC was of the view that the development of the site would not result in a significant loss and would not be detrimental to the farming industry. The proposal, therefore, was in accordance with this policy.

In relation to policies RW10 - Vacant, Derelict, Unstable and Contaminated Land, and D04 - Low and Zero Carbon Development, the FCPRC noted that a Contaminated Land Site Investigation, Coal Mining Risk Assessment and Energy Statement had been submitted as part of the request for a Review, and that whilst these appeared to address the policy requirements and the terms of SG15 - Low and Zero Carbon Development and reasons for refusal, consultation with the Coal Authority and further assessment by the Director of Development Services would be required.

Representations relating to Planning Policy and road safety were addressed by the FCPRC in its consideration of these matters. Other issues raised, including those relating to the maintenance of a private drive and water pressure, were not considered to be material planning considerations. The FCPRC was of the view that there would be no unacceptable impact on nearby properties in relation to noise, privacy, overshadowing or drainage, and the site was outwith consultation zones associated with a pipeline to the east of the site.

The FCPRC also noted that there was no record of any applications or enquiries in relation to previous development proposals for the application site.

It was noted by the FCPRC that Members and officers had, prior to the meeting, received correspondence from a Planning Consultant acting on behalf of objectors to the application. The FCPRC had regard to the terms of the correspondence and considered that it did not raise any issues which would prevent a determination of the application being made. It considered that references to the application site boundary not including the entire extent of the proposed access arrangements, the right of the applicant to use an existing access, and removal of trees outwith the applicant's ownership were not material planning considerations and were civil matters. The FCPRC noted that an applicant's lack of ownership of part of an application site is not a material consideration with the Planning Authority's function being to decide whether or not a proposed development is desirable in the public interest. The answer to that question should not be affected by issues around the intentions of a landowner. Whilst noting that the site was classed as 3.1 prime quality agricultural land, the issue relating to whether the site was or had been used for agricultural purposes was ambiguous and not considered to be a determining factor. The FCPRC was of the view that there was no prejudice from the process as set out in the letter received from the objectors' Planning Consultant. The relevant parties had been alerted to the submission of the application, had had an opportunity to receive information on the application and to make representations.



## Conclusion

The Planning Review Committee decided, having assessed the application against the Development Plan and balanced the material considerations as required by section 25 of the Town and Country Planning (Scotland) Act 1997 that the original decision should be overturned and planning permission granted subject to conditions, the conditions being delegated to the Director of Development Services.

## Conditions

1. The development hereby approved shall be implemented in accordance with the plan(s) itemised in the informative below and forming part of this permission unless a variation is required by a condition of the permission or a non-material variation has been agreed in writing by Falkirk Council as Planning Authority.
2. Before any work is commenced on site, details of all external finishing materials to be used in the development shall be submitted for the consideration of the Planning Authority and no work shall begin until written approval of the Planning Authority has been given.
3. Before any work is commenced on site, details of the height, location and construction of all fences, and other means of enclosure shall be submitted to and approved by the Planning Authority.
4. Development shall not begin until details of the scheme of soft landscaping works has been submitted to and approved in writing by the Planning Authority. Details of the scheme shall include (as appropriate):-
  - (i) indication of existing trees, shrubs and hedges to be removed, those to be retained and, in the case of damage, proposals for their restoration
  - (ii) location of new trees, shrubs, hedges and grassed areas
  - (iii) schedule of plants to comprise species, plant sizes and proposed numbers/density
  - (iv) programme for completion and subsequent maintenance.
5. All walls, hedgerows and shrubbery within the visibility splay at both of the site accesses be cut back and maintained at a level of 1.00m above the road channel level and that any trees be pleached back to the trunk and be maintained as such between the heights of 1.00m and 2.5m within the visibility splay envelopes of 2.4m x 70m in each direction as set out within paragraphs 5.5 and 5.6 of the Transportation Statement by Andrew Carrie Traffic and Transportation Ltd dated July 2016.
6. Before any work is commenced on site, further intrusive site investigation works shall be undertaken to establish the exact situation in regard to coal mining legacy issues on the site. A scheme detailing these investigation works shall be submitted to and approved in writing by the Planning Authority and thereafter the work shall be completed in accordance with the approved scheme. On completion of the investigation works, a report of findings, including results of any gas monitoring and a scheme of proposed remedial works if necessary, shall be submitted to and approved in writing by the Planning Authority. These

remedial works shall be completed in accordance with this approved scheme prior to commencement of work on the site.

7. Before any work is commenced on site, a Phase 2 intrusive site investigation shall be undertaken, including ground gas monitoring to establish the exact situation in regard to potential contaminated land issues on the site. A scheme detailing these investigation works shall be submitted to and approved in writing by the Planning Authority and thereafter the work shall be completed in accordance with the approved scheme. On completion of the investigation works, a report of findings, including results of any gas monitoring and a scheme of proposed remedial works if necessary, shall be submitted to and approved in writing by the planning authority. These remedial works shall be completed in accordance with this approved scheme prior to commencement of work on the site.

Reason(s):-

1. As these drawings and details constitute the approved development.
2. To safeguard the visual amenity of the area.
3. To safeguard the visual amenity of the area.
4. To safeguard the visual amenity of the area.
5. To safeguard the interests of the users of the highway.
6. To ensure the ground is suitable for the proposed development.
7. To ensure the ground is suitable for the proposed development.

Informative(s):-

1. For the avoidance of doubt, the plan(s) to which this decision refer(s) bear our online reference number(s) 01A, 02, 03, 04 and 05.
2. In accordance with section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended), this permission lapses on the expiration of 3 years beginning with the date on which this permission is granted unless the development to which this permission relates is begun before that expiration.

3. The applicant shall ensure that noisy work which is audible at the site boundary shall ONLY be conducted between the following hours:-

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

  
Chief Governance Officer

20 January 2017

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

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

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

- 1 If the applicant is aggrieved by the decision of the planning authority:-
  - a. to refuse permission for the proposed development;
  - b. to refuse approval, consent or agreement required by a condition imposed on a grant of planning permission; or
  - c. to grant permission or approval, consent or agreement subject to conditions,

The applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.

- 2 If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.

## **THE DECISION ON YOUR APPLICATION**

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

### **Notification of Initiation of Development (NID)**

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

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

### **Notification of Completion of Development (NCD)**

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

### **Display of Notice while development is carried out**

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

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

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

## **OTHER INFORMATION**

### **Renewal of Consent or Change to Conditions**

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

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



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

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

### **Variation of Planning Permission**

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

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

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

### **Conditions Monitoring**

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

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

### **Contact Details**

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

**Planning Review Committee  
Review Decision Notice – Minded to Grant**

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

Site Address	Land To The South West Of Wester Bonhard, Bo'ness
Application No.	P/16/0074/FUL
Development	Erection of 3 No. Dwellinghouses
Decision Date	11 November 2016

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**Decision**

The FCPRC overturned the decision which was the subject of this Review and was minded to grant planning permission subject to consultation with the Coal Authority and conditions.

**Preliminary**

This notice constitutes the formal decision notice of the FCPRC as required by the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013. The FCPRC confirmed it considered the matter on a "de novo" basis.

The above application for planning permission was considered by the FCPRC at its meeting on 19 September 2016 and was attended by Baillie Buchanan (Convener) and Councillors McLuckie, C Martin and Nicol. At this meeting it was decided that there was insufficient information to make a determination and it was agreed that an unaccompanied site inspection be undertaken. This also took place on 19 September 2016 when the application site, including the location of the proposed accesses, and the surrounding area including the road network and settlement pattern were viewed. Members took the opportunity as part of the site inspection to observe and travel the full length of Borrowstoun Road from the A904 to Kinglass. Following this inspection, the FCPRC met again on the same day and it was agreed that the Review should be conducted without further procedure as the site inspection and documentation were sufficient to allow a decision to be made.

**Proposal**

The application seeks full planning permission for the erection of 3 detached dwellinghouses within an area of countryside, green belt and also the South Bo'ness Special Landscape Area. The dwellinghouses proposed are all of the same design, single storey to eaves level, with straight gables, chimney, dormers and rooflights at first floor level and an integral garage at ground floor level. The proposed external materials include natural slate for the roof, natural stone and wet dash render and timber windows. Vehicle access for the easternmost plot is proposed via an existing access serving Bonhard House to the immediate south of the site, from Borrowstoun Road (C27). The other dwellinghouses would be accessed via an existing point of access at a bend on Borrowstoun Road further to the west. Borrowstoun Road at this location is derestricted, unlit with no footpath provision and with restricted horizontal and vertical alignment, typical of many rural roads.

## Reasoning

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The FCPRC noted that additional information had been provided by the applicant with the review papers beyond that before the appointed officer at the time of the officer's determination. The FCPRC had regard to this matter and the content of the applicant's supporting statement. It also had regard to issues of procedural fairness noting that interested parties had received notification of the review, been advised as to how to inspect the review papers and been given an opportunity to comment on the information provided with the Notice of Review. The FCPRC allowed the additional information to be considered in its de novo determination.

The FCPRC considered that a determining issue was whether the proposed development represented a suitable form of development within an area of countryside and Green Belt. In consideration of these matters, the FCPRC was of the view that whilst the site is within the Polmont/Grangemouth/Bo'ness/Linlithgow Corridor designated as Green Belt, the proposed development, given its location and relationship with the settlement pattern of the surrounding area, would not undermine the strategic purposes of the Green Belt, which are to maintain the separate identity and visual separation of settlements, protect their landscape setting and to protect and give access to greenspace for recreation.

In relation to compliance with the relevant policies regarding development in the countryside, the FCPRC considered that, although not having all the characteristics of an infill development, as it did not represent a clear gap between two existing residential properties, and that existing residential properties were more than 80 metres apart, the scale, density and design of the proposed infill housing did respect the well established character and settlement pattern of the area, as the site could be viewed as being a gap within a hamlet, and the development proposed was responsive to local distinctiveness. The FCPRC considered that the proposed development was in accordance with policies CG02 - Green Belt, CG03 - Housing in the Countryside and the provisions of SG01 - Development in the Countryside. In relation to policy GN02 - Landscape, the FCPRC acknowledged that the site fell within the South Bo'ness Special Landscape Area (LSA), however, given the modest scale of development proposed and the site's characteristics in relation to the surrounding area, there would be no adverse impact on the distinctive landscape quality of the LSA, and that the proposal was in accordance with this policy.

In considering matters relating to road safety, the FCPRC, having viewed the proposed access and noted the characteristics of the local road network when visiting the site, acknowledged that the Borrowstoun Road was typical of many rural roads and that vehicles travelling took into account these circumstances. The FCPRC also noted the content of the Transportation Statement submitted with the request for a Review and the representations received. The FCPRC considered that the proposed development would not introduce an unacceptable level of additional traffic and that the development would not be unacceptable in road safety terms. The proposed access points were considered to be acceptable. In terms of access and servicing, the proposal was in accordance with SG01 - Housing in the Countryside.

In terms of policy RW04 - Agricultural Land, Carbon Rich Soils and Rare Soils, the FCPRC noted that the site was classed as 3.1 prime quality agricultural land, and that there was a degree of ambiguity as to whether the site was or had been used for agricultural purposes. However, the FCPRC was of the view that the development of the site would not result in a significant loss and would not be detrimental to the farming industry. The proposal, therefore, was in accordance with this policy.

In relation to policies RW10 - Vacant, Derelict, Unstable and Contaminated Land, and D04 - Low and Zero Carbon Development, the FCPRC noted that a Contaminated Land Site Investigation, Coal Mining Risk Assessment and Energy Statement had been submitted as part of the request for a Review, and that whilst these appeared to address the policy requirements and the terms of SG15 - Low and Zero Carbon Development and reasons for refusal, consultation with the Coal Authority and further assessment by the Director of Development Services would be required.

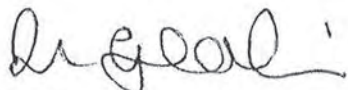
Representations relating to Planning Policy and road safety were addressed by the FCPRC in its consideration of these matters. Other issues raised, including those relating to the maintenance of a private drive and water pressure, were not considered to be material planning considerations. The FCPRC was of the view that there would be no unacceptable impact on nearby properties in relation to noise, privacy, overshadowing or drainage, and the site was outwith consultation zones associated with a pipeline to the east of the site.

The FCPRC also noted that there was no record of any applications or enquiries in relation to previous development proposals for the application site.

It was noted by the FCPRC that Members and officers had, prior to the meeting, received correspondence from a Planning Consultant acting on behalf of objectors to the application. The FCPRC had regard to the terms of the correspondence and considered that it did not raise any issues which would prevent a determination of the application being made. It considered that references to the application site boundary not including the entire extent of the proposed access arrangements, the right of the applicant to use an existing access, and removal of trees outwith the applicant's ownership were not material planning considerations and were civil matters. The FCPRC noted that an applicant's lack of ownership of part of an application site is not a material consideration with the Planning Authority's function being to decide whether or not a proposed development is desirable in the public interest. The answer to that question should not be affected by issues around the intentions of a landowner. Whilst noting that the site was classed as 3.1 prime quality agricultural land, the issue relating to whether the site was or had been used for agricultural purposes was ambiguous and not considered to be a determining factor. The FCPRC was of the view that there was no prejudice from the process as set out in the letter received from the objectors' Planning Consultant. The relevant parties had been alerted to the submission of the application, had had an opportunity to receive information on the application and to make representations.

## Conclusion

The Planning Review Committee decided, having assessed the proposal against the Development Plan and balanced the material planning considerations as required by section 25 of the Town and Country Planning (Scotland) Act 1997, -that it was **MINDED** to **GRANT** planning permission, subject to consultation with the Coal Authority in terms satisfactory to the Director of Development Services, and thereafter, on the conclusion of the foregoing matter, to grant planning permission subject to conditions relating to (a) treatment of trees; (b) boundary enclosures; (c) construction materials; (d) contaminated land; and (e) road related matters, and such other conditions as the said Director shall deem appropriate.



Chief Governance Officer

11 November 2016



TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

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

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

- 1 If the applicant is aggrieved by the decision of the planning authority:-
  - a. to refuse permission for the proposed development;
  - b. to refuse approval, consent or agreement required by a condition imposed on a grant of planning permission; or
  - c. to grant permission or approval, consent or agreement subject to conditions,

The applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.

- 2 If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.

## **THE DECISION ON YOUR APPLICATION**

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

### **Notification of Initiation of Development (NID)**

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

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

### **Notification of Completion of Development (NCD)**

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

### **Display of Notice while development is carried out**

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

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

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

## **OTHER INFORMATION**

### **Renewal of Consent or Change to Conditions**

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

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

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

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

### **Variation of Planning Permission**

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

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

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

### **Conditions Monitoring**

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

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

### **Contact Details**

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

Dear Iain,

**LOCAL PLANNING REVIEW COMMITTEE – PLANNING APPLICATION P/16/0074/FUL – ERECTION OF 3 NO. DWELLINGHOUSES AT LAND TO THE SOUTH WEST OF WESTER BONHARD, BO'NESS.**

Thanks for your letter re the above dated 26/4/2017 and referenced IH/DV/PT/486.

Whilst we are very disappointed that Falkirk Council did not seek to justify the Decision taken by the Planning Review Committee (PRC) at the Court of Session we must now look forward and we note the helpful information provided in your letter concerning further consideration by the PRC.

We have discussed the matter with our client and he has instructed us to proceed on the basis of your letter. Please find attached our updated Supporting Statement which includes a plan showing the existing residential properties named Wester Bonhard and Bonhard House with the P/16/0074/FUL site located in the gap site/land in between. The Grounds of Appeal to the Court of Session was that ALL of the criteria in Supplementary Guidance SG01 was not met, with the PRC Decision Notice stating that the proposed development – “did not represent a clear gap between two existing residential properties and that existing residential properties were more than 80m apart”. The distance between the existing residential properties is less than 60m and we contend that the development proposal meets all of the SG01, CG03 and CG02 criteria.

We look forward to progressing matters.

Yours sincerely

Dan Henderson

Development & Environmental Services Limited

01324 841183

07925 374 164

## NOTICE OF REVIEW

### P/16/0074/FUL – PROPOSED ERECTION OF 3 DWELLINGHOUSES AT LAND TO THE SOUTH WEST OF WESTER BONHARD BO'NESS EH51 9RR

## UPDATED SUPPORTING STATEMENT

### **INTRODUCTION**

Application for Planning Permission P/16/0074/FUL was validated on 1<sup>st</sup> April 2016 and refused on 17<sup>th</sup> May 2016 on a delegated basis. On 19<sup>th</sup> September 2016, the Planning Review Committee (PRC) overturned the delegated decision and was Minded to Grant Planning Permission subject to consultation and conditions. Following consideration of the PRC Decision at the Court of Session the Planning Permission was quashed- solely on the basis of the development not meeting all of the Gap site criteria and the matter has been referred back to the PRC for a fresh Decision. This Updated Supporting Statement addresses the Gap Site issue and is submitted for consideration by the PRC.

### **REASON FOR REVIEW**

The application was refused on a delegated basis and it is considered that had more time been permitted to allow lodgement of information in support of the proposed development the application would have been granted. A second review is required because of the Appeal to the Court of Session. The Grounds of Appeal to the Court of Session was that all of the criteria in Supplementary Guidance SGO1 were not met because **the site did not represent a clear gap between two existing residential properties and the properties were more than 80m apart**. This Updated Supporting Statement provides additional information on this specific point.

### **MATTERS FOR REVIEW**

It is considered that the following matters require further consideration; -

- (a) Reason 5 for refusal was that the proposal was contrary to Supplementary Guidance SGO1 – Development in the Countryside, in that accesses to the site do not meet visibility splay requirements and as a result would not be in the best interests of road safety. Paragraph 3.4 of SGO1 states that “proposals will be required to meet the Council’s standards for access and servicing”; and “in some instances the Council will request a transport assessment”, and advises reference to the Council’s “Design Guidelines & Construction Standards for Roads in the Falkirk Council Area”. A detailed Transportation Statement is submitted as a supporting document which concludes; -
  - there is no justification for refusal of the application on road safety grounds;
  - the development will not significantly affect the operation of the surrounding road networks;
  - there have been no injury accidents along the route in the last 5 years and this is indicative of no particular road safety difficulties at the location;



- although the road is subject to the National Speed Limit ACTUAL traffic speeds are considerably lower, the road is lightly trafficked and, on the basis of the appropriate design speed the available visibility splay of 70m meets the standard prescribed in the Design Manual for Roads and Bridges – which is the appropriate standard to be applied to trunk roads throughout Scotland, England and Wales.

It is concluded that there is no justification for refusal of the application on road safety grounds.

- (b) Reason 4 for refusal was that the proposal was contrary to Policy DO4 – Low and Zero Carbon Development. The Local Development Plan (LDP) states all development proposals must be accompanied by an Energy Statement which demonstrates compliance with Policy DO4. The new houses will incorporate low and zero carbon generating technologies (LZCGT), namely photovoltaic cells, and more than 10% of the overall reduction in CO2 emissions as required by Building Standards shall be achieved by LZCGT. The design, orientation and layout of the development also seeks to minimise energy requirements through solar gain and by retention and maximisation of shelter.

An Energy Statement which demonstrates compliance with DO4 accompanies this submission and accordingly there is no justification for refusal of the application on the basis of the Low and Zero Carbon Development Policy.

- (c) Reason 3 for refusal was that “the proposal would result in the unacceptable permanent loss of prime quality agricultural land to the detriment of the farming industry and is contrary to the terms of Policy RWO4 – Agricultural Land, Carbon Rich Soils and Rare Soils of the Falkirk LDP and Scottish Planning Policy. The development site soil is not a Carbon Rich Soil and it is not a Rare Soil (such as podzols or saltings). Policy RWO4 relates to SIGNIFICANT permanent loss of prime agricultural land and it is contended that the development proposal is not contrary to RWO4 for the following reasons; -

- The area of land is so small, less than 0.73ha, that it is not significant
- The land was last actively farmed more than 26 years ago and has subsequently been used only for grazing
- The site is not part of a farm or agricultural holding and use of the land for a small housing development will not be to the detriment of the farming industry

It is considered that the development proposal is not contrary to RWO4 and that there is no justification for refusal of the application on that basis.

- (d) Reason 2 for refusal was that an adequate assessment of coal mining legacy risk had not been undertaken. A Coal Mining Risk Assessment (CMRA) and a Phase 1 Contaminated Land Report accompany this submission. These reports address the matters of coal mining legacy and possible land contamination. The CMRA identifies the issue of ground instability and indicates that remediation by grouting is likely to

be required. In light of the submitted information the development proposal is not contrary to RW10 - indeed RW10 states that proposals that reduce the incidence of unstable and contaminated land will be supported – and Policy RW10 therefore provides justification for approval of the application.

It is considered that there is no justification for refusal of the application on the basis of Policy RW04.

- (e) Reason 1 for refusal is that the development would represent unacceptable development in the countryside and green belt – which is contrary to Policies CG03 – Housing in the Countryside; CG02 – Green Belt; and Supplementary Guidance SG01 – Development in the Countryside.

**Policy CG03 states that housing development in the countryside will be supported in instances of appropriate infill development; paragraph 3.10 of SG01 provides guidance on infill development and Policy HSG05 – Infill Development & Subdivision of Plots – states proposals for erecting houses on small gap sites will be permitted in certain circumstances.**

The development proposal is justified in terms of Policy HSG05 and in particular; -

- The design of the proposed houses and the scale, density and disposition respect the character of the area;
- Adequate garden ground is provided;
- Adequate privacy will be afforded to the proposed and neighbouring properties;
- The proposal will not result in the loss of features such as trees, vegetation or walls;
- Proposed vehicular access, parking and infrastructure is of adequate standard for proposed and existing houses; and
- The proposed development complies with LDP policies.

The site is a gap site. The infill development is not backland, ribbon or sporadic development; it is appropriate and will sit well within the existing development cluster.

Whilst others are of the view that the site is not a “gap” site and that the development is not infill development we have always taken the view that **the P/16/0074/FUL development is appropriate infill development and we would refer you to the attached O.S extract upon which we have marked the distances between the two residential properties (Bonhard House and Wester Bonhard) at the location at which the infill is located. The distances are from 57.4m to 58.5m.** Our view is that a “residential property” includes both the land and buildings.

The criteria within SG01 for “appropriate infill development” – with our pertinent comments – are as follows; -

- The proposed infill development must occupy a clear gap between two existing residential properties – Yes it does.
- The scale, density and design of the proposed infill housing should respect the character of existing development. Proposals should respond to local distinctiveness – Yes it does and this is generally the subject of a condition re materials etc.

- The existing residential properties must front a road or access lane and be less than 80 metres apart – Wester Bonhard fronts a road to the west, Bonhard House fronts a lane to the east and the existing residential properties are less than 60m apart. There is no reference to the principal elevation (or any elevation) fronting a road/lane, only for the property to do so. There is no reference to the buildings (or building footprints) being less than 80m apart, only the residential properties.
- The gap is not on the edge of an existing village or urban limit where the edge of the settlement has already been defined – the development proposal is in accordance with this.
- The development should not constitute ribbon or backland development – the development proposal is neither ribbon nor backland development.
- If there is a predominant building line this should be adhered to – there is no predominant building line.
- The terms of the LDP Policy HSG05 (Infill development and Subdivision of Plots) should be met – the HSG05 terms are met as follows.
- The scale, density, disposition and design of the proposed houses respect the character of the area – met.
- Adequate garden ground can be provided to serve the proposed houses without an unacceptable impact upon the size or functioning of existing gardens – met.
- Adequate privacy will be afforded to both the proposed houses and neighbouring properties – met.
- The proposal would not result in the loss of features such as trees, vegetation or walls; such that the character or amenity of the area would be adversely affected – met.
- The proposed vehicular access, parking and other infrastructure is of an adequate standard for both proposed and existing houses – met; and in particular, the character or amenity of the area will not be adversely affected.
- The proposal complies with other LDP policies – met.

The development proposal meets all of the requirements. It is also in accordance with CG03 and CG02.

**The development proposal constitutes infill development of a gap site in accordance with HSG05. It is in accordance with CG03 and para 3.10 of SG01 and there is therefore no justification for refusal.**

- (f) The importance of meeting the new house building targets set within the Falkirk Council LDP and consequently securing the economic regeneration benefits delivered through the provision of employment in the construction industry must be fully recognised. The Council target is the delivery of 675 new houses on average per year.

From about 1916 until at least 1954 and possibly into the 1980's there were at least 10 houses between Northbank Cottages and Bonhard House.

The LDP advises that regeneration at Bo'ness Foreshore will not deliver housing until after 2024; it also states windfall sites have made a significant contribution to housing supply in the Council area and "will continue to provide additional flexibility

over and above the housing allocations”; crucially **the LDP states that small gap sites will be supported where Policy HSG05 is satisfied.**

Approval of the 3 houses at Bonhard will result in about a million pounds being invested into the local Bo’ness economy through payments to small building contractors, roof truss manufacturers, timber yards and businesses involved in the supply of building materials and services. It will also result in Building Warrant fees of about £4000-£6000, and in almost £9000/annum being paid in respect of council tax/water charges in 2017 and every subsequent year thereafter.

At a time when many larger construction projects are being “put on hold” it is important that the Economic Development benefits delivered from lots of smaller construction projects are facilitated and encouraged.

In conclusion – our sincere belief is that the application would not have been refused if all the information relating to the development proposal had been provided prior to determination. The only matter of contention is the key issue of what constitutes a gap site and **this Updated Supporting Statement and the attached plan demonstrate the site is a Gap Site, meets all of the criteria of Supplementary Guidance SG01, and therefore constitutes appropriate infill development.**

We respectfully request that the application is now approved.

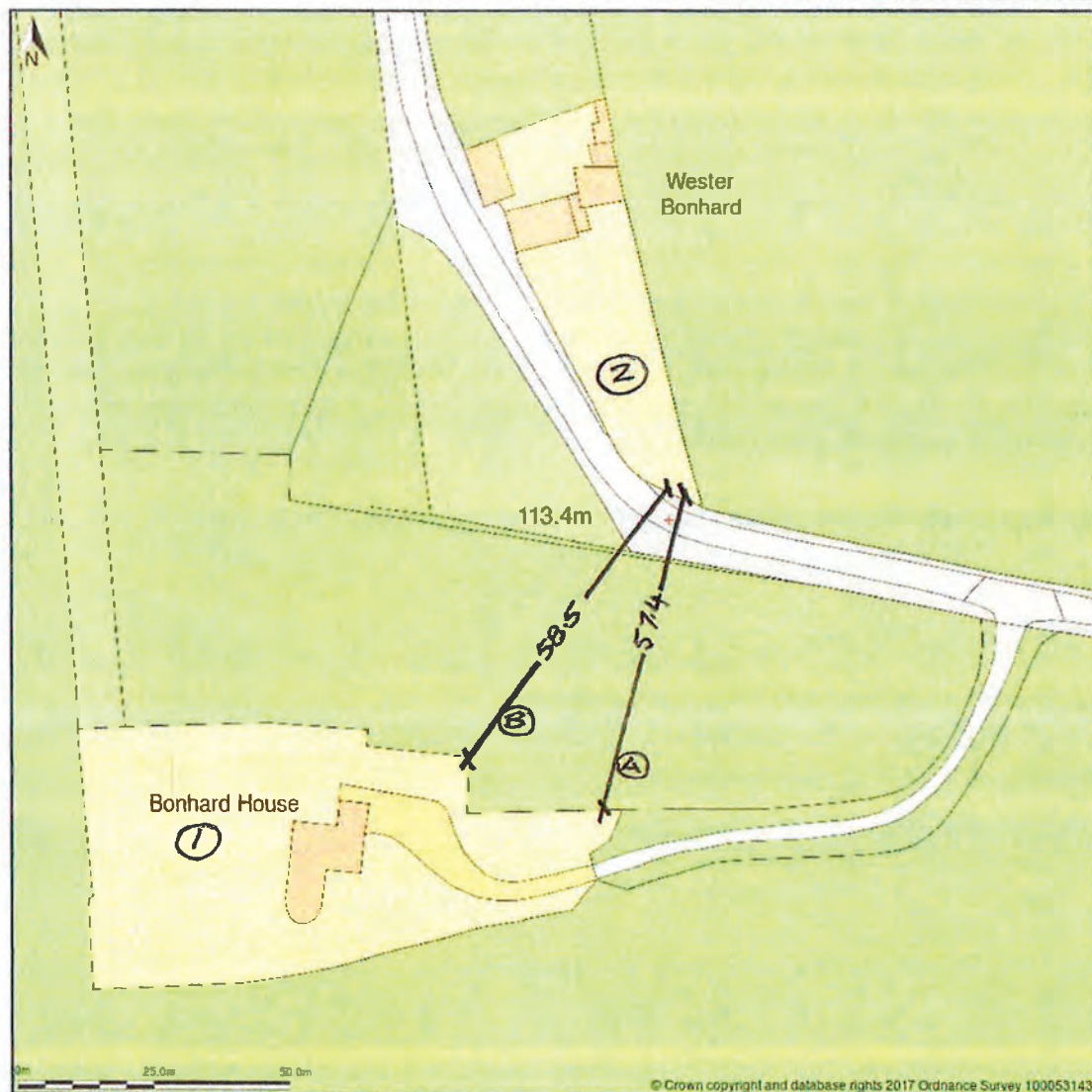
Development and Environmental Services Limited

DH/MH 08/05/2017 Version 1.4.



Wester Bonhard and Bonhard House, C27 From Borrowstoun Road, Bo'ness To A904, Bo'ness,  
EH51 9RR

DISTANCE BETWEEN THE TWO RESIDENTIAL PROPERTIES



Site Plan shows area bounded by: 301357.33, 679756.87 301557.33, 679956.87 (at a scale of 1:1250) The representation of a road, track or path is no evidence of a right of way. The representation of features as lines is no evidence of a property boundary.

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DISTANCES FROM CURTILAGE OF RESIDENTIAL  
 PROPERTY ①-BONHARD HOUSE TO RESIDENTIAL  
 PROPERTY ②-WESTER BONHARD AT POSITIONS  
 SHOWN ABOVE ARE: -

A - 57.4m OR THEREBY (FIFTYSEVEN POINT FOUR)  
 B - 58.5m OR THEREBY (FIFTYEIGHT POINT FIVE)

NOTES -(1) MEASUREMENTS TAKEN ON 3/5/2017; (2) PREVIOUS  
 DIMENSIONS QUOTED WERE SCALED FROM THE O.S. MAP



### Further Objections to planning Application P/16/0074/FUL

Dr Andrew John Ashworth  
Bonhard House  
Bo'ness  
EH51 9RR

1. These objections are additional and supplementary to the objections that I have previously raised.

### Strategic Considerations

2. The Local Development plan directs in SGO1 *"The general strategy of the LDP is to direct new housing development in rural areas to the existing villages, in order to sustain their vitality and take advantage of village services and infrastructure."*
3. In this case the applicant concedes "the gap is not on the edge of an existing village"
4. There is no village at the site and so the proposal does not comply with the general strategy of the LDP.
5. The applicant has made (financial) strategic arguments that would not necessarily meet the targets he has set (though he has stated that procurement would be restricted to local firms, prior to Brexit this would be subject to European procurement rules given the large amount of money involved. The Committee should specifically dismiss this argument.
6. Policy HSG01 Housing Growth requires that *"The Council will monitor and update the effective housing land supply figures annually to make sure that a minimum five year supply is maintained at all times. If this Housing Land Audit process identifies a shortfall in the effective land supply, the Council will consider supporting sustainable development proposals that are effective, in the following order of preference:*
  - Urban Capacity sites
  - Additional brownfield sites
  - Sustainable greenfield sites*In doing so, account will be taken of other local development plan policies and of any adverse impacts that would significantly and demonstrably outweigh the benefits of the proposal."*
7. This site is a greenfield site and so has the lowest preference for new building. There is currently new building of a large number of houses a mile to the West that has not been considered in this proposal: no non-financial benefit of this proposal has been identified.
8. **The proposal is not consistent with the democratically determined housing strategy: the appeal should be dismissed.**

### Central Scotland Green Network

9. The Central Scotland Green Network (CSGN) is identified as a National Development in NPF3, and stretches across 19 local authorities, with the Falkirk area is at its heart. It provides a fresh context in which to consider the further development of Falkirk's green network over the period of the LDP. The vision of the CSGN is that "by 2050, Central Scotland has been transformed into a place where the environment adds value to the economy and where peoples lives are enriched by its quality".
10. Policy GN01 Falkirk Green Network requires
  1. *The Council will support the Central Scotland Green Network in the Falkirk area through the development and enhancement of a multi-functional network of green components and corridors as defined in Map 3.5.*
  2. *Within the green network, biodiversity, habitat connectivity, active travel, recreational opportunities, landscape quality, placemaking, sustainable economic development and climate change adaptation will be promoted, with particular reference to the opportunities set out in the Settlement Statements, and detailed in the Site Schedule in Appendix 1.*
  3. *New development, and in particular the strategic growth areas and strategic business locations, should contribute to the green network, where appropriate, through the integration of green infrastructure into masterplans or through enabling opportunities for green network improvement on nearby land.*

11. The proposal is to build directly on a green network route close to its junction with the West Lothian Green Network route. The Committee has a civic duty to liaise with its partners in the Central Scotland Green Network prior to granting this appeal.
12. **The proposal is not consistent with the democratically determined Green Network policy: the appeal should be dismissed.**

#### **Building in the Countryside Policy**

13. Policy CG03 Housing in the Countryside lays a duty on the Committee to ensure that *"Proposals will be subject to a rigorous assessment of their impact on the rural environment, having particular regard to policies protecting natural heritage and the historic environment."*
14. While the definition of rigorous is subjective, the committee has a duty to demonstrate its consideration of the impact of this development. An Environmental Impact assessment with particular reference to the Central Scotland Green Network does not appear to have been carried out in accordance with Planning advice note 1/2013 Environmental Impact Assessment
15. Policy CG03 Housing in the Countryside sets out the circumstances where housing in the countryside will be supported:
  1. *Housing required for the pursuance of agriculture, horticulture, or forestry, or the management of a business for which a countryside location is essential;*
  2. *Restoration or replacement of houses which are still substantially intact, provided the restored/replacement house is of a comparable size to the original;*
  3. *Conversion or restoration of non-domestic farm buildings to residential use, including the sensitive redevelopment of redundant farm steadings;*
  4. *Appropriate infill development;*
  5. *Limited enabling development to secure the restoration of historic buildings or structures; or*
  6. *Small, privately owned gypsy/traveller sites which comply with Policy HSG08.*
16. The proposal does not fulfil circumstances 1, 2, 3, 5 or 6.
17. Circumstance 4 is regulated by SGO 3.10 (4) infill developments which directs that **all** of the following (italicised) criteria should be met:
  - a) *The proposed infill development must occupy a clear gap between two existing residential properties.*
18. Wester Bonhard lies on the opposite side of the road to Bonhard House. Accordingly this development most closely resembles the diagram for "Inappropriate sporadic development" in the document.
  - b) *The scale, density and design of the proposed infill housing should respect the character of existing development. Proposals should respond to local distinctiveness.*
19. The surrounding houses each occupy around 1 acre of land.
20. The development should reflect the ratio of house/garden to comply with this requirement
21. Paragraph 5 of SGO 1 includes building drawings and site plans described as *"inappropriate"* that closely resemble the drawings and plans in the application.
22. Paragraph 5.45 of SGO 1 states that *Site analysis should include assessment of vantage points in the surrounding area from which new development will be visible. New landscaping features should be designed accordingly to create a natural fit between new buildings and rural setting.*
23. No assessment of vantage points has been included. This is particularly pertinent to West Lothian Golf Club, which is a significant business in the area with spectacular views.
24. Paragraph 5.48 of SGO 1 states *Infill development will only be acceptable where existing clusters of buildings are deemed to have capacity to accommodate new*



- development without detriment to established patterns of development, character of the group and spatial relationships*
25. The spatial relationships of the existing buildings would be destroyed by the proposed development
  26. Paragraph 5.49 of SGO 1 states *The introduction of modest development to small clusters of houses, and existing groups of buildings such as country estates and farm steadings must reflect the key characteristics of the existing group including building lines, scale, massing, orientation and existing access arrangements.*
  27. An extension to Bonhard house was made on a single story with an additional story (added downwards after the need for underpinning became apparent) being substantially below ground level. The applicant's proposal envisages two stories up from ground level that is in any event above the ground level on Bonhard house in the case of the westernmost proposed dwelling. The upper story of each house would overlook my property.

*c) The existing residential properties must front a road or access lane and be less than 80 metres apart (emphasis added)*

28. The applicant makes the assumption that the drafter of the policy considered the term "residential property" to include buildings and land. This is a point of law. The applicant has not cited statute or other law to support his case. Accordingly it would be inappropriate for the Committee to grant the application until the point of law has been settled by the appropriate Court. The Court of Session has already quashed the application on the grounds that the two existing residential properties in this case are more than 80m apart: it would appear that the Court of Session has already settled this matter. It is beyond the competence of the committee to rule against the Court of Session.
29. In this case the residential buildings are 100m apart and neither proprietor is inclined to sleep in the garden. I have spoken to the proprietor of Wester Bonhard who has agreed, with me, to give evidence to that effect in the Court of Appeal should that be required in this matter.
30. The guidance uses the terms "road" and "access lane" in the singular and as alternatives. Bonhard House does not front the road and Wester Bonhard does not front the access lane to Bonhard House. Should the Committee determine that this criterion be met it would be open to objectors to seek the determination of the Court of Session on this point.

*d) The gap is not on the edge of an existing village or urban limit where the edge of the settlement has already been defined.*

31. Since the proposed development does not meet the strategy of building within villages, the drafter of this regulation would have assumed that countryside development would have been restricted to existing villages. This is a point of law and can only be determined by the Court.

*e) The development should not constitute ribbon or backland development. (Ribbon development is defined as the outward linear growth of development along a road).*

32. *If the development is seen as development of a "hamlet" (the basis on which the officers' recommendations were previously overturned by the PAC), it constitutes a ribbon development*
33. Given that the proposal is behind land associated with Wester Bonhard and requires access through that land, it is a "Backland development" in respect of Wester Bonard. The map provided by the proposers updated supporting statement incorrectly misidentifies the parcel of land to the north of the proposed site by shading only a narrow corridor around the road.
34. The proposal does not comply with all of the criteria laid out in SGO 3.10 (4) infill developments.
35. **The proposal is not consistent with the democratically determined housing policy: the appeal should be dismissed.**

## Proposer's Updated Supporting Statement

36. Turning to the proposer's updated supporting statement.
37. Updated supporting statement (a) "There have been no injury accidents in the last 5 years"
38. This statement is not consistent with historical events. For example an injury accident requiring police and ambulance service and my medical assistance occurred on the road on 11 October 2015. My recollection is that speed, visibility and road surface had been contributory factors; at least one casualty was attended to in the A&E Department of St John's Hospital, Livingston. From time to time over the last 15 years that I have lived here, the road has been closed by the police as a result of accidents including on 11 October 2015. The provenance of the data on which the statement has been made is not clear.
39. Updated supporting statement (e) "Whilst others are of the view that the site is not a gap site"  
Those "others" include their Lordships in the High Court.
40. Updated supporting statement (f) "Approval of the 3 houses at Bonhard will result in about a million pounds being invested in the local Bo'ness economy"  
Prior to Brexit, this proposal appears to breach European procurement regulations.
41. Updated supporting statement (c) "The area of land is so small, less than 0.73ha, that it is not significant"  
The land is currently owned by the applicant and/or his family. Were he able to build on half of the field he proposes to build in, he would then have grounds to build as "infill" in the other half of the field. This proposal risks making a mockery of the local development plan by providing a gateway to a larger development. The "significance" of this land depends on protection of its type: various animals have become extinct as hunting single beast was considered "insignificant". Green Land is a precious and irreplaceable resource: the Committee is urged not to permit piecemeal development outside the strategic plan carefully drawn up by Falkirk Council to balance competing needs and demands.
42. *The land was last actively farmed more than 26 years ago and since then has subsequently been used for grazing.*  
The applicant implies that sheep farming is not part of the farming industry. While vegetarians may restrict themselves to the plough, the majority consider sheep an essential component of their diet. Indeed sheep (which have previously grazed) are essential in the creation of the haggis (though there are no records of haggis having been hunted locally!).
43. Robert Burns correctly identified the importance of grazing sheep to Scottish Culture  
*Fair fa' your honest, sonsie face,  
Great chieftain o the puddin'-race!  
Aboon them a' ye tak your place,  
Painch, tripe, or thairm:  
Weel are ye worthy o' a grace  
As lang's my arm.*
44. Officers were right to conclude that the proposal would result in unacceptable permanent loss of prime quality land to the detriment of the farming industry" particularly since the application may simply herald a second application on an infill created by this development as evidenced by their disagreement with the determination of the High Court on the matter of infill development.
45. **The proposal relies on evidence and assumptions that are subject to challenge: the appeal should be dismissed.**

46. The committee is urged to heed the words of the Bard about discharging its authority to ensuring that land is not removed from Scottish sheep (who have no voice) thus protecting a national dish to the benefit of the people of Falkirk District.

47. *Ye Pow'rs, wha mak mankind your care,  
And dish them out their bill o fare,  
Auld Scotland wants nae skinking ware  
That jaups in luggies:  
But, if ye wish her gratefu prayer,  
Gie her a Haggis*

A J Ashworth  
14 May 2017

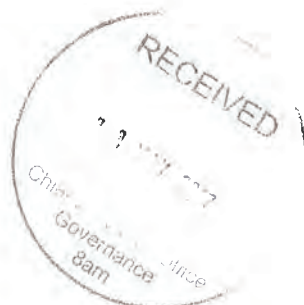




**Falkirk Council**  
Development Services

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Falkirk Council  
Legal Services,  
Municipal Buildings,  
Falkirk.  
FK1 5RS



Our Ref: 170519-GC  
Your Ref: IH/DV/PT/486

19 May 2017

For the attention of Mr Iain Henderson

**Local Planning Review Committee – Planning Application – P/16/0074/FUL –  
Erection of 3 No. Dwellinghouses at Land to the South West of Wester  
Bonhard, Boness.**

I refer to your letter dated 12 May 2017 concerning the above planning application.

In my initial response to the planning application, I used my local knowledge and roads development experience to assess the proposals and concluded that I could only revert to the stance of adopting the 60mph speed limit as the requirement for the visibility splays at both proposed accesses.

Even with the traffic count/speed figures obtained from Falkirk Council Transport Planning, which I supplied to Andrew Carrie, I still have concerns about the access proposals and stand by my original response. The inability, to attain the required visibility splays, combined with limited forward visibility at the blind bend at Wester Bonhard, create an unnecessary increase in risk to road users at that location.

I would therefore still conclude that it would not be in the best interests of road safety to change the use of the two accesses at the above location.

Yours sincerely,

Grahame Crawford  
Roads Development Officer

*Director: Rhona Geisler*

Abbotsford House,  
Davids Loan, Falkirk FK2 7YZ  
LP 3 Falkirk-2.  
Telephone: 01324 504950

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# TURCAN CONNELL

Iain Henderson Esq  
Legal Services Manager  
Falkirk Council  
LP1 Falkirk 2



Our Ref PFS/DCO/G.2002.004  
Date 23rd May 2017  
Email paul.forrestersmith@turcanconnell.com

Dear Sir

**Local Planning Review Committee**  
**Application: P/16/0074/FUL**  
**Three dwelling houses at Wester Bonhard near Bo'ness**

We refer to our earlier correspondence. We attach a Note of Objections for our clients Mr and Mrs Green in relation to this matter. Please could you arrange for this to be placed before the Planning Review Committee. We would also ask that you request that the Planning Review Committee to consider the following:-

1. We would ask that the Planning Review Committee agree to hold an accompanied site visit prior to determining the Review Request so that the matters highlighted in our clients' statement can be pointed out and explained in full. This request relates, in particular, to issues regarding access arrangements, planning application boundaries and trees.
2. The Planning Review Committee should agree to hold a hearing prior to the determination of the application.
3. We look forward to hearing from you regarding these points in due course.

Yours faithfully

Turcan Connell

Enc

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PARTNERS: Simon Mackintosh Alasdair Loudon Ian Clark Jonathan Robertson Adam Gillingham Niall Stringer David Ogilvy Alexander Garden  
Gavin McEwan Grierson Dunlop Gillian Crandles Michael Kane Peter Littlefield Donald Simpson Tom Duguid Alix Storrie Noel Ferry Louise Johnston  
Paul Macaulay Chris Sheldon Don Macleod Jack Gardiner CONSULTANT: Robin Fulton

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# **OBJECTION TO PLANNING APPLICATION**

**P/16/0074/FUL - ERECTION OF 3 NO. DWELLING HOUSES ON LAND TO THE SOUTH  
WEST OF WESTER BONHARD, BO'NESS, FALKIRK**

Prepared by

**Derek Scott Planning  
Planning and Development Consultants**



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On behalf of

**Mr. Alexander Green & Mrs. Anna Grant  
Wester Bonhard  
Bo'ness  
EH51 9RR**

# Executive Summary

## Objection to Planning Application

**P/16/0074/FUL - ERECTION OF 3 NO. DWELLING HOUSES ON LAND TO THE SOUTH WEST OF WESTER BONHARD, BO'NESS, FALKIRK**

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- This objection statement has been prepared by Derek Scott Planning, Chartered Town Planning and Development Consultants on behalf of our clients, Mr. Alexander Green and Mrs. Anna Grant who reside at Wester Bonhard, Bo'ness EH51 9RR. It relates to a planning application submitted to Falkirk Council by Now Holdings Limited under Planning Application Reference Number P/16/0074/FUL for the erection of 3 no. dwelling houses on land located to the south west of Wester Bonhard, Bo'ness. The application was initially refused under delegated powers by the Council's Appointed Planning Officer on 17<sup>th</sup> May 2016.
- Now Holdings Limited submitted a request to have the Appointed Planning Officer's decision to refuse the application reviewed by the Council's Planning Review Body on 25<sup>th</sup> July 2016. The Review Body considered the request at a meeting on 19<sup>th</sup> November 2016 and resolved to grant planning permission subject to consultation with the Coal Authority and conditions. The decision to grant subject to conditions was issued on 20<sup>th</sup> January 2017.
- An appeal against the Planning Review Body's decision to grant permission for the proposed development was subsequently lodged with the Court of Session by Mr. and Mrs Green. The Court of Session quashed the Planning Review Body's decision to grant planning permission for the proposed development following its acknowledgement that it had misinterpreted the terms of its Supplementary Guidance 01 on Development in the Countryside (SG01) and that as such, the decision had not been made within the powers of the Town and Country Planning (Scotland) Act 1997.
- The effect of the Court's decision to quash the planning permission granted is that it has now been referred back to the Planning Review Committee for a fresh decision to be taken. The applicant, Now Holdings Limited, has submitted a revised statement in support of their request to review the original decision made by the Appointed Planning Officer. This statement responds to that revised statement.
- The application site, according to the location plan and application forms submitted with it, measures 6960 sq. metres (1.72 acres) and consists of an agricultural field forming part of a larger holding. It is presently used for agricultural purposes (grazing sheep). The site is positioned, in part, to the south of Borrowstoun Road and in part to the south west; the latter relationship arising as a result of a significant bend on Borrowstoun Road. Beyond, but on the opposite side of Borrowstoun Road, exists our client's property known as Wester Bonhard. A further residential property known as Bonhard House and its associated access arrangements exist to the south.