

- The application AS originally submitted to the Council sought detailed planning permission for the erection of three substantial but identically designed 1½ storey five bedroom dwelling houses on large development plots. Access to the eastern most plot was proposed to be taken off the existing access road leading to Bonhard House. Access to the other two plots further to the west was to be taken off a proposed new access road formed at the curve of the bend on Borrowstoun Road.
- Section 25 of the Town and Country Planning (Scotland) Act 1997 (as amended) requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise. Having undertaken such an assessment we are of the view that the application should be refused for the following reasons:
 - (1) The application site, as shown on the location plan submitted with the planning application, does not include within its boundaries, the entire extent of the proposed access arrangements required to service the two westernmost development plots.
 - (2) Setting the above aside, the applicants have failed to demonstrate that they have the legal rights required to form the access arrangements to the two westernmost dwelling houses. Such works would require the construction of a new access road, the felling of trees and the partial demolition of a stone wall, all of which are on our client's land and not in the applicant's ownership.
 - (3) The proposals are contrary to the terms of Policies CG02 on the '*Green Belt*'; CG03 on '*Housing in the Countryside*'; HSG05 on '*Infill Development and Subdivision of Plots*'; ANDD02 on '*Sustainable Design Principles*' of the Falkirk Local Development Plan 2015 and also contrary to the Council's Supplementary Guidance on Housing in the Countryside (SG01) as a result of the following considerations:
 - There is a strong presumption against the erection of new dwelling houses in areas designated as the Green Belt and Countryside, albeit with some limited exceptions. The applicants have advanced the argument that the proposal is an '*infill development*' and should be granted planning permission. In order to qualify as such, the site to which it relates must form a clear gap between two existing residential properties and must front onto the same road or access lane. The two existing properties do not front onto the same road or access lane and are located on opposite sides of Borrowstoun Road. The site does not therefore constitute a clear gap between the two existing properties and as such the proposal is clearly not an '*infill development*.'
 - The erection of three identically designed dwelling houses disproportionate in scale and character to the traditional architectural vernacular and sited in an uncomfortable linear/ribbon manner at inappropriate angles to the surrounding road network fail to respond to the local distinctiveness and character of the area.
 - The proposed access arrangements off Borrowstoun Road, albeit not included within the application site, will have an adverse impact on a significant number of trees and walls on land within our client's ownership.

- The applicants are incapable of providing the required visibility splays of 2.4 x 215 metres at the access points to the proposed development off Borrowstoun Road as required by the Council's Roads Development Unit. This results in a significant road safety hazard. They have attempted to justify the lesser visibility requirement of 2.4 metres x 70metres, citing in their support, the Design Manual for Roads and Bridges and the lack of significant accident history on Borrowstoun Road. The Design Manual for Roads and Bridges relates to Trunk Roads rather than to a derestricted unlit single track road like Borrowstoun Road. The lack of significant accident history on a road does not provide adequate justification for the introduction of an unsafe junction onto that road.
- The proposals are contrary to Policy GNO2 on '*Landscape*' of the Falkirk Local Development Plan 2015 as they will have a significant adverse effect on the character and appearance of the area.
- The proposals are contrary to Policy RW04 on '*Agricultural Land, Carbon Rich Soils and Rare Soils*' of the Falkirk Local Development Plan 2015 as they will result in the permanent loss of a significant area of Prime Quality Agricultural Land.
- The proposals are contrary to the terms of Policy Policy GNO4 on '*Trees, Woodlands and Hedgerows*' of the Falkirk Local Development Plan 2015 and Supplementary Guidance SG06 on '*Trees and Development*' as the applicants have failed to demonstrate, through the submission of a tree survey, constraints plan and tree protection plan that the proposals will not result in a loss of trees detrimental to the character and appearance of the area.
- In light of all considerations outlined above the application/review request should be dismissed and planning permission refused for the proposed development.

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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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

1. INTRODUCTION & BACKGROUND

- 1.1 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.
- 1.2 The application was initially refused under delegated powers by the Appointed Planning Officer on 17th May 2016 for the following reasons:
1. *The proposal would represent unacceptable development in the countryside and green belt which is contrary to Policy CG03 – Housing in the Countryside and CG02 – Local Development Plan , Supplementary Guidance SG01 – Development in the Countryside and Scottish Planning Policy (SPP).*
 2. *The proposal fails to demonstrate that an adequate assessment has been carried out in relation to coal mining legacy risks and appropriate mitigation and/or remediation measures cannot therefore be identified to the potential detriment to the safety of future occupants of the proposed dwellings. The proposal is contrary to Policy RW10 – Vacant, Derelict, Unstable and Contaminated Land of the Falkirk Local Development Plan.*
 3. *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 RW04 – Agricultural Land, Carbon Rich Soils and Rare Soils of the Falkirk Local Development Plan and Scottish Planning Policy (SPP).*
 4. *The proposal has failed to demonstrate that a sufficient proportion of carbon reductions within the development will be secured by means of low and zero carbon generating technologies to the potential detriment of the environment. The proposal is contrary to the terms of Policy DO4 – Low and Zero Carbon Development of the Falkirk Local Development Plan and Supplementary Guidance SG15 – Low and Zero Carbon Development.*
 5. *The proposed accesses to the site do not meet visibility splay requirements and as a result would not be in the best interests of road safety. The proposal is contrary to the terms of Supplementary Guidance SG01 – Development in the Countryside.*
- 1.3 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 25th July 2016. The Planning Review Body considered the request at a meeting on 19th 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 by the Council on 20th January 2017.

- 1.4 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 our clients, Mr. Alexander and Mrs. Anna Green. The Court of Session quashed the Planning Review Body's decision to grant planning permission for the proposed development following the Council's 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 (as amended).
- 1.5 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 its request to review the original decision made by the Appointed Planning Officer. This statement responds to that revised statement.

2. LOCATION AND DESCRIPTION OF SITE

- 2.1 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 which 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 in 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.

3. DESCRIPTION OF PROPOSED DEVELOPMENT

3.1 The application, as originally submitted to the Council sought detailed planning permission for the erection of three substantial but identically designed 1½ storey five bedroom dwelling houses on three large development plots. Access to the eastern most plot was proposed to be taken off the existing access road leading to Bonhard House. Access to the other two plots further to the west was to be taken off a proposed new access road formed at the curve of the bend on Borrowstoun Road. Key considerations to note in respect of the new access arrangements off Borrowstoun Road include the following:

- (i) The red line application site, as shown on the location plan submitted with the planning application, does not include within its boundaries, the entire extent of the proposed access arrangements from the public road to the two western most plots.
- (ii) The right of the applicants to use, what is described in the Proposed Site Plan as an '*existing access*,' on land owned by our clients, Mr. & Mrs. Green, is disputed.
- (iii) The delivery of the access arrangements identified in the application, necessitate the removal of trees and other boundary features on land in the ownership of Mr. & Mrs. Green which the applicants have no legal right to so remove. Whilst the Site Plan submitted with the application identifies trees within and outside the application site the location of those trees shown do not correlate with the location of the existing trees as identified on the topographical survey submitted with the application (Refer to drawing numbers JWAC 01/72/2015 and JWAC 02/72/2015).

4. PLANNING POLICY

4.1 Section 25 of the Town and Country Planning (Scotland) Act 1997 (as amended) states that:

'where in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the development plan unless material considerations indicate otherwise.'

4.2 In the context of the above it is worth making reference to the House of Lord's Judgement on the case of the City of Edinburgh Council v the Secretary of State for Scotland 1998 SLT120. It sets out the following approach to deciding an application under the Planning Acts:

- identify any provisions of the development plan which are relevant to the decision;
- interpret them carefully, looking at the aims and objectives of the plan as well as the detailed wording of policies;
- consider whether or not the proposal accords with the development plan;
- identify and consider relevant material considerations, for and against the proposal; and
- assess whether these considerations warrant a departure from the development plan.

4.3 The relevant development plan for the area is the Falkirk Local Development Plan which was adopted by Falkirk Council in July 2015. The application site lies out with the urban limits of Bo'ness and within an area designated as Green Belt where policy CGO2 applies. The site is also designated as being part of the South Bo'ness Special Landscape Area which is characterised as being sensitive to change due to its elevated position. Policy GN02 applies in such areas.

4.4 Policy CG02 on the 'Green Belt' states the following:

1. *The following areas, as indicated generally on Map 3.1 and detailed on the Proposals Map, are designated as Green Belt:*

- *Falkirk/Stenhousemuir/Grangemouth/Laurieston Corridor*
- *Polmont/Grangemouth/Bo'ness/Linlithgow Corridor*
- *Falkirk/Larbert/Denny/Bonnybridge Corridor*
- *Callendar Park/Woods*

2. *The purpose of the Green Belt is:*

- *To maintain the separate identity and visual separation of settlements;*
- *To protect the landscape setting of settlements; and*
- *To protect and give access to greenspace for recreation.*

3. *Within the Green Belt, development will not be permitted unless it can be demonstrated that the proposal satisfies the relevant countryside policies, and it can be demonstrated that it will not undermine any of the strategic purposes of the Green Belt as set out in sub section (2) above.'*

4.5 The relevant countryside policies referred to in Policy CG02 are set out in Policy CG03 on 'Housing in the Countryside' and in Supplementary Guidance SG01 on 'Development in the Countryside.'

4.6 Policy CG02 on 'Housing in the Countryside' contains a general presumption against the development of new housing in countryside locations with some limited exceptions. It states the following:

'Proposals for housing development in the countryside of a scale, layout and design suitable for its intended location will be supported in the following circumstances:

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.*

Detailed guidance on the application of these criteria will be contained in Supplementary Guidance SG01 'Development in the Countryside'.

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.'

4.7 For any of the above exceptions to the general presumption against the erection of new housing in the countryside to apply the housing proposed must be of a scale, layout and design suitable for its intended location. We are of the view that the dwellings as proposed are not in keeping with the character and scale of the established architectural vernacular in the area. The fact that the three houses are exactly the same in their design and layout results in a mundane and repetitive scene more appropriate in an urban context rather than the striking rural context within which they are proposed. The dwellings are also sited in a linear/ribbon like manner rather than forming an organic development cluster which is entirely out of keeping with the spatial relationship one would expect in this area.

4.8 Setting our concerns about the scale, layout and design of the properties aside the three dwelling houses as proposed are not, in our opinion supported by any of the above exceptions for the reasons outlined below:

1. No information has been submitted by the applicants to demonstrate that the housing is required for the pursuance of agriculture, horticulture, or forestry, or for the management of a business for which a countryside location is essential.
2. The proposals do not involve the restoration or replacement of an existing house.
3. The proposals do not involve the restoration of a non-domestic farm building.
4. The proposals do not represent an appropriate form of infill development. Please refer to Paragraphs 4.9-4.12 for a further explanation in this regard.

5. The proposals are not related to the restoration of historic buildings or structures.
6. The proposals do not relate to gypsy or traveller sites.

4.9 The Council's Supplementary Guidance on 'Development in the Countryside' (SG01) which was also adopted by the Council in July 2015 recognises that 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. However, it also recognises that there are circumstances where new houses in the countryside are necessary or appropriate. One such circumstance as noted from Policy CG02 above relates to appropriate infill development. Paragraph 3.10 of SG01 states the following in respect of such development:

'Appropriate infill development will be allowed between two residential properties where all of the following criteria are met:

- *The proposed infill development must occupy a clear gap between two existing residential properties.*
- *The scale, density and design of the proposed infill housing should respect the character of existing development. Proposals should respond to local distinctiveness.*
- *The existing residential properties must front a road or access lane and be less than 80 metres apart.*
- *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 should not constitute ribbon or backland development. (Ribbon development is defined as the outward linear growth of development along a road).*
- *If there is a predominant building line this should be adhered to.*
- *The terms of LDP **HSG05** (Infill Development and Subdivision of Plots) should be met.'*

4.10 The application proposals are not supported by the terms of all of the above criteria for the following reasons:

- (i) The application site does not occupy a clear gap between the two properties known as Wester Bonhard and Bonhard House. To do so, both Wester Bonhard and Bonhard House would require to be sited on the same side of Borrowstoun Road. They are located on the opposite sides of this road. The site is, in effect, a partial gap site between Bonhard House and Borrowstoun Road rather than between Bonhard House and Wester Bonhard. It cannot therefore be recognised or regarded as a 'clear gap' between two existing residential properties.
- (ii) The erection of three identically designed dwelling houses disproportionate in scale and character to the traditional architectural vernacular and sited in an uncomfortable linear/ribbon manner at inappropriate angles to the surround road network fail to respond to the local distinctiveness and character of the area.
- (iii) Whilst the existing residential properties at Wester Bonhard and Bonhard House front a road and an access lane respectfully, they do not, as a consequence of being located on opposite sides of Borrowstoun Road, front onto the same road or access lane. It is clearly evident with reference to the examples of acceptable and unacceptable infill development

in Paragraph 3.11 (Figure 1) of SGO1 that appropriate infill development is expected to be located on the same side of a road or access lane and not on opposite sides.

- (iv) The requirement for properties to be 80 metres apart is somewhat irrelevant with this particular application as the site does not occupy a clear gap between two residential properties due to the existence of Borrowstoun Road between them. Notwithstanding this and as noted in the Planning Officer's Report on the application, the properties are in excess of 100 metres apart. Whilst it would have been advantageous for the policy to have specified if the 80 metre requirement referred to the distance between the dwelling houses or their curtilages, from a rural design perspective, we have no doubt whatsoever, that the distance referred to refers to the distance between the buildings. The proposal fails to comply with those distances.
- (v) Two of the houses are proposed off a new access road from Borrowstoun Road. Ribbon development is defined as the outward linear growth of development along a road. If that is the case this proposal, without question, involves ribbon development.

4.11 Paragraph 3.10 of SGO1 also requires compliance with Policy HSG05 on '*Infill Development and Subdivision of Plots*' which states the following:

'Proposals for the erection of additional houses within the curtilage of existing properties or on small gap sites will be permitted where:

1. *The scale, density, disposition and design of the proposed houses respect the townscape character of the area;*
2. *Adequate garden ground can be provided to serve the proposed houses without an unacceptable impact upon the size or functioning of existing gardens;*
3. *Adequate privacy will be afforded to both the proposed houses and neighbouring properties;*
4. *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;*
5. *The proposed vehicular access, parking and other infrastructure is of an adequate standard for both proposed and existing houses; and*
6. *The proposal complies with other LDP Policies.'*

4.12 The terms of the above criteria are responded to in the following terms:

1. The application site is located in the open countryside rather than being within an urban boundary. It is not appropriate to respect the townscape character of an area when that area is rural. The erection of three dwellings on this site would not result in an appropriate cluster of development in a rural context and would have a significant adverse effect on the character of the area.
2. Given the substantial size of the plots it is accepted that adequate garden ground can be provided to service the requirement of the inhabitants.
3. Similarly given the substantial sizes of the plots privacy considerations have been satisfactorily addressed.
4. The proposed access arrangements off Borrowstoun Road will have an adverse impact on a significant number of trees and walls on land within our client's ownership. The extent

of that impact and in particular the loss of trees arising as a result of it have not been quantified by either the applicants or the Council in its consideration of this application.

5. The Council's Roads Development Unit stated the following in its response to the planning application submitted:

'The proposed development sits on the south side of Borrowstoun Road, which at this location is a derestricted unlit single track road with a number of blind bends and passing places created by default.

Neither the proposed new access on the bend nor the existing access can meet the required visibility splays which are 2.4 x 215 metres.

On the grounds of road safety, it would be inappropriate to create a new access or to increase vehicle use on the existing access.'

The applicants have advanced an argument, through their traffic consultants, that the visibility splays should be reduced from 2.4 x 215 metres as required by the Council's Roads Development Unit to 2.4 x 70 metres. In support of this request they have referred to the fact that there have been no injury accidents along the route in the last five years (although this is disputed by Dr. Andrew Ashworth who resides in Bonhard House) and that the standard accords with the Design Manual for Roads and Bridges which is the appropriate standard to be applied to **trunk roads** throughout Scotland, England and Wales. (highlighting added)

Whether there have been any accidents or not along Borrowstoun Road during the course of the last five years does not provide a justification for the formation of a new access at a dangerous bend where insufficient visibility splays exist. It is the introduction of such an access which increases the risk to road users of accidents and injury.

The Design Manual for Roads and Bridges is the appropriate standard to be applied to trunk roads. Trunk Roads connect Scotland's major cities, towns, airports and ports enabling the movement of people, goods and services. They are provided and maintained by the Scottish Government (Transport Scotland). Borrowstoun Road is not a trunk road. It is, as noted by the Council's Roads Development Unit, a derestricted unlit single track road with a number of blind bends. It is entirely inappropriate to apply the standards relating to trunks roads to a road of this nature.

6. It has been demonstrated throughout this statement the application proposals do not comply with all policies in the LDP.

4.13 Policy GNO2 in relation to 'Landscape' states the following:

1. The Council will seek to protect and enhance landscape character and quality throughout the Council area in accordance with Supplementary Guidance SG09 'Landscape Character Assessment and Landscape Designations'.
2. Priority will be given to safeguarding the distinctive landscape quality of the Special Landscape Areas identified on the Proposals Map.

3. *Development proposals which are likely to have a significant landscape impact must be accompanied by a landscape and visual assessment demonstrating that, with appropriate mitigation, a satisfactory landscape fit will be achieved.*

4.14 The application site, as noted previously lies, within a Special Landscape Area, characterised as being sensitive to change due to its elevated position. The erection of the three dwelling houses as proposed, will, without question, result in a significant landscape change but yet the application submitted has not been accompanied by a landscape and/or visual assessment demonstrating that a satisfactory landscape fit can be achieved. Setting aside that omission it is patently obvious that the scheme as proposed is not appropriate in its rural context and will have a significant adverse effect on the character and appearance of the area.

4.15 Other policies and supplementary guidance of relevance to the planning application include:

Policy RW04 – Agricultural Land, Carbon Rich Soils and Rare Soils

Policy RW10 – Vacant, Derelict, Unstable and Contaminated Land

Policy DO2 – Sustainable Design Principles

Policy DO4 – Low and Zero Carbon Development

Supplementary Guidance SG15 – Low and Zero Carbon Development

Policy GNO4 – Trees, Woodlands and Hedgerows

4.16 Policy RW04 on '*Agricultural Land, Carbon Rich Soils and Rare Soils*' states the following:

1. *Development involving the significant permanent loss of prime quality agricultural land (Classes 1, 2 and 3.1), carbon rich soils (basin peat, blanket bog, peat alluvium complex, peaty podzols and peaty gleys) and rare soils (podzols, humus iron podzols and saltings) will not be permitted unless:*

- *The site is specifically allocated for development in the LDP; or*
- *Development of the site is necessary to meet an overriding local or national need where no other suitable site is available.*

2. *Planning applications for development which is likely to disturb areas of carbon rich or rare soil will be required to submit a soil or peat management plan which demonstrates that:*

- *The areas of highest quality soil or deepest peat have been avoided;*
- *Any disturbance, degradation or erosion has been minimised through mitigation; and*
- *Any likely release of greenhouse gas emissions caused by disturbance is offset.'*

4.17 As noted in Paragraph 2.1, the application site measures 6960 sq. metres (1.72 acres) which represents, in our opinion, a significant quantum of prime quality agricultural land. The site is not specifically allocated for development in the LDP and its development is most certainly not necessary to meet an overriding need where no other suitable site is available. The applicants have advanced the argument in their review request that the land in question is not agricultural as it is only used for grazing sheep. They also claimed in the land ownership certificate submitted with the application that '*none of the land to which the application relates constitutes or forms part of agricultural land.*' This is clearly incorrect. The definition of '*agriculture*' as provided in Section 277 of the Town and Country Planning (Scotland) Act 1997 includes '*the grazing of land.*' The

proposal is, as a consequence of these considerations, clearly contrary to the terms of Policy RWO4.

- 4.18 Policy RW10 on '*Vacant, Derelict, Unstable and Contaminated Land*' states the following:

'Proposals that reduce the incidence of vacant, derelict, unstable and contaminated land will be supported, subject to compliance with other LDP policies, particularly those relating to development in the countryside.'

'Where proposals involve the development of unstable or contaminated land, they will only be permitted where appropriate remediation or mitigation measures have been undertaken.'

- 4.19 Whilst the applicants failed to demonstrate that an adequate assessment had been carried out in relation to the site's coal mining legacy we are satisfied that information subsequently submitted as part of the review request complies with the requirements of Policy RW10.

- 4.20 Policy DO2 on '*Sustainable Design Principles*' states the following:

'New development will be required to achieve a high standard of design quality and compliance with principles of sustainable development.'

Proposals should accord with the following principles:

1. **Natural and Built Heritage.**
Existing natural, built or cultural heritage features should be identified, conserved, enhanced and integrated sensitively into development;
2. **Urban and Landscape Design.**
The scale, siting and design of new development should respond positively and sympathetically to the site's surroundings, and create buildings and spaces that are attractive, distinctive, welcoming, adaptable, safe and easy to use;
3. **Accessibility.**
Development should be designed to encourage the use of sustainable, integrated transport and to provide safe access for all users;
4. **Climate Change & Resource Use.**
Development should promote the efficient use of natural resources and the minimisation of greenhouse gas emissions through energy efficient design, choice and sourcing of materials, reduction of waste, recycling of materials and exploitation of renewable energy;
5. **Infrastructure.**
Infrastructure needs and their impacts should be identified and addressed by sustainable mitigation techniques, with particular regard to drainage, surface water management, flooding, traffic, road safety and noise; and
6. **Maintenance.**

Proposals should demonstrate that provision will be made for the satisfactory future management and maintenance of all public areas, landscaping and infrastructure.

Masterplans will be required for significant development proposals requiring a co-ordinated approach to design and infrastructure, and should demonstrate how the above principles have been incorporated into the proposals. Masterplans should be informed by a development framework or brief where relevant.'

4.21 The proposal is considered to be contrary to the terms of the above-mentioned policy for the following reasons:

1. The proposed development and particular the proposed access arrangements will result in the loss of a significant number of trees.
2. The proposed development by reason of its siting, design and layout are entirely inappropriate in this attractive rural area and will, as a consequence, have an adverse effect on the character and appearance of the area.
3. The proposed development does not provide safe access arrangements.
4. The application submitted fails to provide adequate information to demonstrate that the site can be satisfactorily drained with adequate infrastructure particularly in respect of foul and surface water drainage arrangements. According to the application forms foul drainage is to be treated via a septic tank with some form of secondary treatment. No further details are provided. No details whatsoever have been provided for the drainage and appropriate treatment of surface water.

4.22 Policy DO4 on 'Low and Zero Carbon Development' states the following:

- *1. All new buildings should incorporate on-site low and zero carbon generating technologies (LZCGT) to meet a proportion of the overall energy requirements. Applicants must demonstrate that 10% of the overall reduction in CO2 emissions as required by Building Standards has been achieved via on-site LZCGT. This proportion will be increased as part of subsequent reviews of the LDP. All proposals must be accompanied by an Energy Statement which demonstrates compliance with this policy. Should proposals not include LZCGT, the Energy Statement must set out the technical or practical constraints which limit the application of LZCGT. Further guidance will be contained in Supplementary Guidance SG15 'Low and Zero Carbon Development'.*

Exclusions from the requirements of this policy are:

- *Proposals for change of use or conversion of buildings;*
- *Alterations and extensions to buildings;*
- *Stand-alone buildings that are ancillary and have an area less than 50 square metres;*
- *Buildings which will not be heated or cooled other than by heating provided solely for the purpose of frost protection;*
- *Temporary buildings with consent for 2 years or less; and*
- *Where implementation of the requirement would have an adverse impact on the historic environment as detailed in the Energy Statement or accompanying Design Statement.*

2. *The design and layout of development should, as far as possible, seek to minimise energy requirements through harnessing solar gain and shelter;*
 3. *Decentralised energy generation with heat recycling schemes (combined heat and power and district heating) will be encouraged in major new developments, subject to the satisfactory location and design of associated plant. Energy Statements for major developments should include an assessment of the potential for such schemes.'*
- 4.23 Whilst the applicants failed to demonstrate that a sufficient proportion of carbon reductions within the development would be secured by means of low and zero carbon generating technologies we are again satisfied that information subsequently submitted as part of the request to review the application complies with the requirements of Policy D04 and Supplementary Guidance SG15 on *'Low and Zero Carbon Development.'*
- 4.24 Policy GO4 on *'Trees, Woodlands and Hedgerows'* states the following:
- 'The Council recognises the ecological, landscape, economic and recreational importance of trees, woodland and hedgerows. Accordingly:*
1. *Felling detrimental to landscape, amenity, nature conservation or recreational interests will be discouraged. In particular ancient, long established and semi-natural woodlands will be protected as a habitat resource of irreplaceable value;*
 2. *In an area covered by a Tree Preservation Order (TPO) or a Conservation Area, development will not be permitted unless it can be proven that the proposal will not adversely affect the longevity, stability or appearance of the trees. Where necessary, endangered trees and woodlands will be protected through the designation of further TPOs;*
 3. *Development which is likely to affect trees should comply with Supplementary Guidance SG06 'Trees and Development', including the preparation where appropriate of a Tree Survey, Constraints Plan, and Tree Protection Plan. Where development is permitted which will involve the loss of trees or hedgerows of amenity value, the Council will normally require replacement planting appropriate in terms of number, size, species and position;*
 4. *The enhancement and management of existing woodland and hedgerows will be encouraged. Where the retention of a woodland area is integral to a development proposal, developers will normally be required to prepare and implement an appropriate Management Plan; and*
 5. *There will be a preference for the use of appropriate local native species in new and replacement planting schemes, or non-native species which are integral to the historic landscape character.'*
- 4.25 The access arrangements as proposed will result in the loss of a significant number of trees which contribute significantly to the character and appearance of the area. The failure of the applicants to submit a tree survey, constraints plan and tree protection plan renders the entire proposal contrary to the terms of Policy GO4 and Supplementary Guidance SG06 on *'Trees and Development.'*

Other material considerations

- 4.26 As noted previously, in addition to the development plan, due cognisance must also be given in the determination of planning applications to other material considerations. These are addressed below and include, in this particular instance, Scottish Planning Policy, Consultation Responses, Third Party Representations, the Applicant's Review Request, and Land Ownership Considerations.

Scottish Planning Policy

- 4.27 Scottish Planning Policy (SPP) was published by the Scottish Government in June 2014 with the purpose of setting out national planning policies which reflect Scottish Minister's priorities for the operation of the planning system and for the development and use of land. The SPP introduces a presumption in favour of development that contributes to sustainable development and advises that policies and decisions should be guided by the following principles:

- *giving due weight to net economic benefit;*
- *responding to economic issues, challenges and opportunities, as outlined in local economic strategies;*
- *supporting good design and the six qualities of successful places;*
- *making efficient use of existing capacities of land, buildings and infrastructure including supporting town centre and regeneration priorities;*
- *supporting delivery of accessible housing, business, retailing and leisure development;*
- *supporting delivery of infrastructure, for example transport, education, energy, digital and water;*
- *supporting climate change mitigation and adaptation including taking account of flood risk;*
- *improving health and well-being by offering opportunities for social interaction and physical activity, including sport and recreation;*
- *having regard to the principles for sustainable land use set out in the Land Use Strategy;*
- *protecting, enhancing and promoting access to cultural heritage, including the historic environment;*
- *protecting, enhancing and promoting access to natural heritage, including green infrastructure, landscape and the wider environment;*
- *reducing waste, facilitating its management and promoting resource recovery; and*
- *avoiding over-development, protecting the amenity of new and existing development and considering the implications of development for water, air and soil quality.'*

- 4.28 Paragraph 75 of SPP advises that the Planning System should:

- *in all rural and island areas promote a pattern of development that is appropriate to the character of the particular rural area and the challenges it faces;*
- *encourage rural development that supports prosperous and sustainable communities and businesses whilst protecting and enhancing environmental quality; and*
- *support an integrated approach to coastal planning.'*

- 4.29 Paragraph 81 of the SPP states the following:

'In accessible or pressured rural areas, where there is a danger of unsustainable growth in long-distance car-based commuting or suburbanisation of the countryside, a more restrictive approach to new housing development is appropriate, and plans and decision-making should generally:

- *guide most new development to locations within or adjacent to settlements; and*
- *set out the circumstances in which new housing outwith settlements may be appropriate, avoiding use of occupancy restrictions.*

4.30 Paragraph 83 of the SPP states the following:

'In remote rural areas, where new development can often help to sustain fragile communities, plans and decision-making should generally:

- *encourage sustainable development that will provide employment;*
- *support and sustain fragile and dispersed communities through provision for appropriate development, especially housing and community-owned energy;*
- *include provision for small-scale housing (including clusters and groups; extensions to existing clusters and groups; replacement housing; plots for self-build; holiday homes; new build or conversion linked to rural business) and other development which supports sustainable economic growth in a range of locations, taking account of environmental protection policies and addressing issues of location, access, siting, design and environmental impact;*
- *where appropriate, allow the construction of single houses outwith settlements provided they are well sited and designed to fit with local landscape character, taking account of landscape protection and other plan policies;*
- *not impose occupancy restrictions on housing.'*

4.31 The Falkirk Local Development Plan, in responding to the requirements of Scottish Planning Policy, sets out a number of limited exceptions under which housing in countryside locations is considered acceptable under the terms of Policy CGO3 on *'Housing in the Countryside'* and the associated Supplementary Guidance on *'Development in the Countryside'* (SG01). It has been comprehensively demonstrated within this statement that the planning application under consideration for the erection of three dwelling houses on this site does not comply with those limited exceptions and as a consequence of this the proposals run contrary to the terms of Scottish Planning Policy.

Third Party Representations

4.32 It is understood that three letters of representation were submitted to the Council in opposition to the proposed dwelling houses. The main points of objection raised the following points:

- Loss of agricultural land.
- Impact upon the greenbelt.
- Road safety impacts.
- Sanitation concerns.
- Water pressure concerns.
- Impact on area of great landscape value.

- Increased costs for the maintenance of what would become a shared driveway.
- Noise Concerns
- Privacy Issues
- Overshadowing Issues
- Proximity of development to the oil pipeline to the east of the site.

4.33 All material points of objection made have been commented upon elsewhere in this statement.

Consultation Responses

4.34 The Planning Application has been the subject of consultation with Scottish Natural Heritage, Scottish Water, the Council's Environmental Protection Unit and the Council's Roads Development Unit. Scottish Natural Heritage, Scottish Water and the Council's Roads Development Unit appear to have raised no concerns. However and as noted previously, the Council's Roads Development Unit has recommended refusal of the application, stating that '*on the grounds of road safety, it would be inappropriate to create a new access or to increase vehicle use on the existing access.*'

Applicant's Review Request Statement

4.35 Whilst the majority of the points raised in the Review Request submitted by the applicant have been responded to elsewhere within this statement there are a number of further points that we would wish to comment on.

- (i) Firstly, the applicants have claimed that the three dwellings are required to meet the new house building targets set within the Falkirk Council Local Development Plan. Paragraph 2 of Policy HSG01 on '*Housing Growth*' states the following:

'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.'

Whilst it is acknowledged that the last Housing Land Audit published in September 2016 showed an effective land supply of 4.3 years, the application site does not lie within a preferred area for addressing any shortfalls. It is not an Urban Capacity Site; it is not a brownfield site; and it is not a sustainable green field site.

- (ii) Secondly, the applicants cite the economic impacts of developing the three dwelling houses for local builders and suppliers and to the Council in terms of Planning/Building Control Fees and Council Tax. The development of any site creates economic advantages including those within settlement boundaries, of which there are many in

the Falkirk and Bo'ness areas still to be developed. Positive economic impacts do not provide adequate justification for the erection of housing developments located on entirely inappropriate sites.

Land Ownership Considerations

- 4.36 As noted previously all of the land required to deliver the proposed development is not under the control of the applicant. Indeed the access arrangements to the two western most dwelling houses are located outside the application site and owned by our clients, Mr. & Mrs. Green. That land will not, under any circumstances be made available to the applicants for the formation of the required road to service these two plots. Whilst planning permission goes with the land rather than ownership, the Planning Review Committee must take into account the fact that the access road required to service the two westernmost plots lies outside the application site and therefore planning permission has not been applied for it. In the circumstances described should the Committee over turn the Appointed Planning Officer's decision and grant permission for the three houses, those houses on the two easternmost plots would be incapable of being accessed. That in effect makes the application one that seeks consent for one house rather than three.

5. CONCLUSIONS

- 5.1 Having considered the proposed development against the terms of the development plan and all other material considerations as required under the terms of the Planning Act we are firmly and unequivocally of the view that this review request should be dismissed and the decision of the Appointed Planning Officer to refuse the application upheld.

Signed

A dark, rectangular redacted area covering the signature of Derek Scott.

Derek Scott

Date 22nd May 2017

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

COMMENTS ON REPRESENTATIONS

INTRODUCTION

- 1 This is the Applicant's responses to the submission made by three interested parties, namely the Owners of the two residential properties between which the application site is located and the Falkirk Council Roads Development Officer. On 8 May 2017, an updated Supporting Statement was submitted on behalf of the Applicant "Supporting Statement" with Interested Parties being given an opportunity to respond.

STRUCTURE OF RESPONSE

- 2 We rely upon and refer to our Supporting Statement in this response.
- 3 The Appellant has not been sent a copy of the original objections but note from the officers report that they related to:
 - 1) The loss of agricultural land and the impact on the green belt – this is further addressed in our Supporting Statement and at points 6-23 below;
 - 2) Road safety concerns – this is further addressed in our Supporting Statement and at point 20 below;
 - 3) Impact on Landscape Value – this is further addressed in our Supporting Statement and at points 6-21 below;
 - 4) Private Drainage – as noted previously the Applicant intends to make private drainage arrangements and it is considered that the plots are of sufficient size to accommodate such an arrangement without adversely impacting on neighbours. This was the view as previously endorsed by the officer, which the Applicant fully supports. The drainage proposals have been raised and the proposal involves wastewater treatment by septic tank and thereafter to a soakaway; with storm water discharging to a separate soakaway – all subject to consultation and approvals from SEPA, Building Standards and Scottish Water which can be dealt with by a condition.
 - 5) Water pressure concerns –this is not a material planning consideration (as previously endorsed by the officer) and must be ignored in any determination;
 - 6) Access – details out with red line, ownership, access rights and costs of shared maintenance - these are not material planning considerations (as previously endorsed by the officer) and must be ignored in any determination. Information on general access arrangements have been provided including the re-opening of an existing access to serve the two houses and the use of a current access for the third. If there are further development works which necessitate an express planning application because they are out with the red line then further applications can and will be made. The matter before the FCPRC are the development proposals within the red line. Further, if the FCPRC consider mitigation measures are

necessary but are out with the red or blue line of a planning application they can deal with these issues by means of a suspensive grampian condition.

7) Noise, privacy and overshadowing – the plot sizes are sufficiently large so as not to raise any issues in this regard. This was the view as previously endorsed by the officer, which the Applicant fully supports.

8) Pipeline – the Application Site is well out with the recognised hazard consultation zones associated with the pipeline to the east. This was the view as previously endorsed by the officer, which the Applicant fully supports.

- 4 Under s43B of the Town and Country Planning (Scotland) Act 1997, no new matters are to be raised at a review beyond those that were before the officer. The further representations now include new objection grounds to those originally submitted to the Application and also do not relate to matters raised by the officer in the determination. The Applicant considers it would be unlawful for these to be considered as valid grounds for objection but has provided comment in case the FCPRC consider that they are allowed as a matter of procedural fairness. These are namely:

9) HSG01 Housing Growth – in any case this is further addressed at point 26 below;

10) GN01 Green Network – in any case this is further addressed at point 27 below;

11) G04 Trees, Woodlands and Hedgerows- in any case this is further addressed at point 25 below;

12) DO2 Sustainable Design Principles – in any case this is further addressed at point 28 below;

13) EIA is required – an Environmental Impact Assessment is clearly not required. This is not Schedule 1 or Schedule 2 or EIA Development in terms of the Town and Country Planning (EIA) Scotland Regulations;

14) A Breach of European Procurement Rules – there is no breach and in any case this is not a material planning consideration and must be ignored in any determination.

- 5 The reference to the Court of Session in the Further Representations are wholly irrelevant as the Application is now simply reverted back for a fresh decision, as if the previous Review did not take place. It is misleading of the objectors to suggest that the Court heard this case nor did they or would they provide any determination on matters of planning judgement for the decision maker. The reason why it was referred to the Court of Session related to the lawful manner in which the Application was determined in relation to the interpretation of SG01. FCPRC had stated that it both complied with and didn't comply with SG01 - which is clearly a misinterpretation of policy and the parties jointly agreed that the Court quashed the decision. The Court's supervisory role is to consider matters of law and not the planning merits of the decision, including ascertaining the meaning of infill development which is a matter of planning judgement for the Council to make.

DEVELOPMENT IN THE COUNTRYSIDE, GREEN BELT & LANDSCAPE

- 6 It is noted that the objectors make reference to the dwelling house buildings comprising Wester Bonhard on the opposite side of the road and thus it cannot be recognised as a "clear gap" between two residential properties. Further the officer considered that the gap measured in excess of 100m between residential properties, one of which is not considered to be fronting onto a road or access lane. The question turns on what is regarded as "residential property" for the purpose of measuring the gap in between.
- 7 However, the objectors and officers fail to identify an area of curtilage/garden ground, ancillary to West Bonhard House, which fronts the road and is adjacent to the boundary of the Application Site. This is shown on the attached photos.
- 8 The courts have held that ground which is used for the comfortable enjoyment of a house i.e. a garden and thereby as an integral part of the same is part of its curtilage - it does not need to be marked off or enclosed in any way or part of the same area. It is enough that it serves the purpose of the house in some necessary or reasonably useful way (Sinclair-Lockhart's Trustees v Central Land Board (1950) 1 P & CR 195).
- 9 The residential property consisting of the dwelling house and ground that comprises West Bonhard House clearly fronts the road. This is a matter of fact. Any ground that is part of the garden/curtilage of the dwelling house at West Bonhard not only will attract permitted development rights associated with that dwelling house but as a matter of law and planning judgement consists of a single planning unit in residential use at "the property". This is regardless of any road severing that ground. Even if it is considered that the ground adjacent to the Application Site is not part of the curtilage, then the residential property consisting of both the dwelling house and curtilage/garden ground is still less than 60m.
- 10 The property known as Bonhard House comprising a dwelling house and its curtilage/garden grounds is also adjacent to the Application Site. It fronts an access lane and is adjacent to the boundary of the Application Site. Any ground that is clearly part of the curtilage of the dwelling house building at Bonhard House will also attract permitted development rights associated with that dwelling house – all of which are as a matter of law and planning judgement consist of one planning unit in residential use at "the property".
- 11 If gap sites only arose between properties which were built developments only (such as a dwelling house) and ignored its garden or curtilage, this would suggest that the curtilage or garden ground would and could always be regarded as a gap site. If this was also the case, there would not be a requirement to make a distinction between "development within the curtilage" and "development between two properties" within the definition of Infill Development in the Falkirk Council LDP. As a matter of planning judgement, this is not the case as it is clearly being used for an ancillary purpose associated with a dwelling house. The policy does not refer to buildings or dwelling houses but "property" clearly includes land as well as built development. The entire planning unit is also in residential use.

- 12 As a matter of planning judgement, the Applicant submits that "residential property" includes the curtilage/garden ground and therefore the Application Site is a gap site between two residential properties and at less than 80m apart.
- 13 **This is considered fundamental and material to the determination of the Application due to the grounds the objectors have raised in relation to compliance with policy in respect of development in the Countryside and Green belt.**
- 14 In this regard, we note that two interested parties/objectors have now made representations on this matter aligning themselves with grounds of previous refusal that the development would be unacceptable development in the countryside and green belt and; contrary to CG03 – Housing in the Countryside; CG02-Green Belt; and contrary to Supplementary Guidance SG01 Development in the Countryside; GN02 – Landscape.
- 15 **CG03 – Housing in the Countryside** – this states that housing development in the countryside will be supported in instances of appropriate infill development. The reason why the officer previously considered that the site was not a gap site was due to the distance between existing properties measuring in excess of 100m. As demonstrated in our Supporting Statement together with the reasons set out within this response, that is clearly not the case. The Application Site either abuts the boundaries between existing properties or at worst is 58 metres between them. It clearly, as a matter of fact and degree is a gap site. The Applicant maintains that the Application is supported by CG03.
- 16 **CG02-Green Belt** - the officer considered that the proposal did not comply with CG02 because it did not comply with countryside policies. As the proposal complies with CG03, and thus the relevant countryside policy, it does comply with this policy in this regard. Further 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 separate identity and visual separation of settlements; protect of the landscape setting of settlements; and protect and give access to greenspace for recreation. The Applicant maintains that the Application is supported by CG02.
- 17 **Supplementary Guidance SG01 Development in the Countryside** - as noted in Our Supporting Statement the Development meets the requirements of SG01 for the reasons set out therein and for brevity we do not repeat these. As noted above the Application complies with the LDP definition of "Infill Development". The criteria includes a requirement that the existing residential properties between which the infill site is located should be less than 80m apart. The two residential properties are either adjacent to the site or **less than 60 metres apart**. It is accepted that the dwelling house footprints are more than 80m apart – but NOT the residential properties.
- 18 Two interested parties/objectors have made further representations on this matter specifically:

- 18.1 One takes the view that; the residential property includes only the buildings and does not include the land; and claims that the Falkirk Council Guidance states that both properties must front THE SAME road or access lane.
- 18.2 The second interested parties/objectors states – “The requirement for properties to be 80m apart is somewhat irrelevant with this particular application as the site does not occupy a clear gap”; and “it would have been advantageous for the policy to have specified if the 80m requirement referred to the distance between the dwellinghouses – or – their curtilages. They further state that the site is not infill development/a gap site because the residential properties between which the site is located are not sited on the same side of Borrowstoun Road. It further states a number of reasons for not being compatible with SG01 including disproportionate in scale; that it is ribbon development; adverse effects on the character of the area; inadequate garden etc.
- 19 Further reasons that the proposal was contrary to SG01 was because the proposed accesses to the site do not meet visibility splay requirements decided by a Roads Development Officer and, as a result, would not be in the interests of road safety. The interested parties have now also raised this issue.
- 20 The Appellant's response to these points is; -
- a) as noted above it is the Applicant's view that a “residential property” includes the building and the curtilage/land; it is one planning unit; that the site either bounds the residential properties or in the worst case the distance between the two residential properties is less than 60m. The Application therefore accords with the 80m guidance criteria.
- b) the guidance on infill development has no requirement for the properties between which the infill development is to be located to front onto, or be on the same side of a single road or lane. Some examples are given in the guidance but it is not possible to cover every eventuality. Showing examples does not rule out other situations such as the circumstances that prevail at the Application Site. It is common for a rural road to run perpendicular between two sites and if there were a house abutting a road on one side; the road; then a gap; and then another house, the objector's judgement is suggesting that there would be no gap site due to the road. As a matter of planning judgement, this would be a gap site and the Application Site accords with this.
- c) the site is not a large site and has existing well defined boundary features; it is of modest scale; benefits from a reasonable level of tree cover; it includes natural materials; and the height of the dwellings are limited; the sites characteristics are wholly compatible and respects the surrounding area and overall settlement pattern of the area. It therefore responds to local distinctiveness. There is adequate garden ground and the proposal will not result in the loss of features such as trees, vegetation or walls. Adequate privacy is provided. In this regard not only does it comply with SG01 (and thus HSG05, CG03 and CG02) as explained above and in the Supporting Statement it doesn't adversely impact upon the

Bo'ness South Special Landscape Area (which the officer agreed with) and it will therefore have no adverse impact on landscape and GN02.

VISIBILITY SPLAYS/ROAD SAFETY

d) a Transportation Statement was prepared and the Applicant has instructed a further report from the Traffic and Transportation Engineer and it is attached herewith. The Engineer has calculated visibility splay requirements based upon the actual speed of vehicles at the location (as measured by Falkirk Council) and these visibility splay requirements can clearly be delivered. The characteristics of the local road network is typical of rural roads and vehicles take these into account in travelling. The Development would not introduce an unacceptable level of additional traffic and it would not be unacceptable in road safety terms. The Applicant considers that the Transportation Statement and the recent additional Report demonstrate clearly that appropriate visibility splay requirements can be provided and that there is no justification for refusal of the application on a road safety basis. Further on the one hand the objectors state that there are no access details within the red line. Information on general access arrangements have been provided including the re-opening of an existing access to serve the two houses and the use of a current access for the third. If there are further development works which necessitate an express planning application as they are out with the red line then further applications can and will be made. The matter before the FCPRC are the development proposals within the red line. Further, if the FCPRC consider mitigation measures are necessary or access arrangements are not finalised as they are out with the red or blue line of a planning application they can deal with these issues by means of an appropriately worded suspensive grampian condition.

- 21 **The Applicant strongly contends that the development meets all the policy criteria within CG03, HSG05 and SG01 (including infill development) and with CG02 and GN02. There is therefore no justification for refusal of the application on the basis of the foregoing policies relating to countryside development, landscape or green belt.**

COAL MINING AND CONTAMINATED LAND

- 22 **Policy RW10 – Vacant, Derelict, Unstable and Contaminated land.** The reason the officer gave for refusal was that an adequate assessment of coal mining legacy risk had not been undertaken and thus the proposal was contrary to this Policy. A Coal Mining Risk Assessment Report and a Phase 1 Contaminated Land Report were submitted to the Authority and our previous Supporting Statement refers. In any case, this could have easily been attached as a suspensive condition to the planning permission and if there is still information required can still be dealt with by means of a suspensive condition or a grant subject to Coal Authority consultation. Policy RW10 also 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. **We have considered the further comments from the interested parties and welcome the acceptance that the proposal complies with RW10.**

AGRICULTURAL LAND

- 23 **Policy RW04 – Agricultural Land, Carbon Rich Soils and Rare Soils** - we note that two interested parties/objectors have raised this issue and our previous Supporting Statement refers. The Appellants have pointed out that the wording of the policy refers to **"SIGNIFICANT" permanent loss** and our contention is that the area of land is so small – less than 0.75ha – that it is not significant. The Applicant also contends that the development of the site will not result in any significant detriment to the farming industry because a) it is not part of a farm or part of an agricultural holding – and has not been for 26 years; and b) is not a carbon rich soil or a rare soil. If sheep were removed then inadvertently it would not in any case be agricultural land. The reference to agricultural land in the application relates to there being no agricultural tenancy of that land. **We consider that there is no justification for refusal of the application on the basis of Policy RW04.**

LOW & ZERO CARBON TECHNOLOGIES

- 24 **Policy DO4 – Low & Zero Carbon Generating Technologies and SG15 – Low and Zero Carbon Development** – a previous reason for refusal was that sufficient information had not been submitted regarding the proportion of low and zero carbon generating technologies (LZCGT) that would be used within the new development. An Energy Statement has now been submitted to demonstrate compliance with this policy, advising that the new houses will incorporate low and zero carbon generating technologies and generally demonstrating compliance with Policy DO4 and our previous Supporting statement refers. In any case, in this regard, the dwelling houses must comply with Building Standards legislation. The planning system must not be used to duplicate other legislative controls. **We have considered the further comments from the interested parties and welcome the acceptance that the proposal complies with DO4 and SG15.**

NEW GROUNDS OF OBJECTION

- 25 **Policy G04 – Trees, Woodlands and Hedgerows-** a new ground of objection has been raised that the access arrangements will result in the significant loss of trees which contribute to the character and appearance of the area; and that failure of the applicant to submit a tree survey; constraints plans and tree protection plan renders the entire proposal contrary to Policy G04 and SG06. The Applicant does not consider that there will be a significant loss of trees which contribute to the character of the area. In any case, if the LRB consider this to be an issue and require a tree survey, the matter can be dealt with by means of a suspensive condition.
- 26 **Policy HSG01 – Housing Strategy and Housing Growth** a new ground of objection has been raised on the matter of the site being greenfield; no account for houses to the West; and non-financial benefits of the proposal as grounds in relation to whether the Development is in accordance with this policy. This is clearly a misinterpretation of policy as it relates to ensuring there is a five year effective land supply maintained and if the Housing Land Audit identifies a shortfall it will consider supporting sustainable development proposals that are effective. Paragraph 2.2 of the 2015/16 Falkirk Council Housing Land Audit states that – Private windfall and small sites of 3 or less units may also make a contribution to the housing

land supply in years 1-5. The development site is; - private; a wind fall site; and a small site of 3 units – and Falkirk Council policy clearly states a proportion of the housing land requirements will be met from private, windfall and small sites. In this regard, the Application is fully justified and is not contrary to this policy. Further the LDP has a clear strategic objective to facilitate continued population and household growth, and the delivery of housing to meet the full range of housing needs. The Falkirk area is projected to experience continued population and household growth over the period of the LDP. Based on the 2010 household projections, some 13,630 new homes would be needed over the 20 year period 2014 - 2034. It makes it clear that growth has stalled, with annual housing completions reducing by two thirds and seeks a good supply of housing land and completion rates to provide a choice of quality new housing which meets the needs of local people and continues to attract newcomers to the area as an attractive alternative to the cities. The proposed houses will clearly contribute to meeting the targets set in the LDP.

- 27 **Policy GN01 – Green Network** - a new ground of objection raised by an interested party/objector is that they incorrectly state the proposal is to build directly on a Green Network Route. Map 3.5 (page 21) of the 2015 LDP is an indicative corridor. In any case with the green network "placemaking" will be promoted.
- 28 **Policy DO2 - Sustainable Design Principles** – for the reasons set out above the Development complies with these overarching design principles.

Material Considerations

SCOTTISH PLANNING POLICY

- 29 An interested party/objector correctly refers to Scottish Planning Policy which advocates a presumption in favour of development that contributes towards sustainable development. SPP goes on to state that "the planning system should support economically, environmentally and socially sustainable places by enabling development that balances the costs and benefits of a proposal over the longer term. The aim is to achieve the right development in the right place; it is not to allow development at any cost."
- 30 The principles, which the objector refers to, are then to be delivered through development planning. It is incorrect to state that they are to guide decisions. As noted in the SPP at para 32, the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making. Proposals that accord with up-to-date plans should be considered acceptable in principle and consideration should focus on the detailed matters arising. Where relevant policies in a development plan are out-of-date or the plan does not contain policies relevant to the proposal, then the presumption in favour of development that contributes to sustainable development will be a significant material consideration.
- 31 Reference is also made to para 75, 81 and 83 of the SPP. Delivery of these principles is by reference to development plan policy which the Falkirk LDP takes cognisance of, including

CG03. As noted in para 79 plans are to set out a spatial strategy which makes provision for housing in rural areas. As noted above, it is considered that the Application does comply with the policies of the development plan and therefore does not run contrary to the aims of the SPP.

CONCLUSIONS

Having regard to the provisions of the development plan, the main issue in this Review is whether the proposal is infill development.

For the reasons set out in the Supporting Statement and above, even if the FCPRC consider there are non-compliance with certain policy, the Applicant considers that the Development accords overall with the relevant provisions of the development plan and that there are no material considerations which would justify refusing to grant planning permission.

The Applicant notes that there are conditions that were suggested previously and clearly a number of conditions (including suspensive/grampian ones) which can be attached to the permission if the FCPRC considers are necessary in order to mitigate concerns the objectors have regarding the impact of the Development.

DH/MH 14 June 2017

G120-let01

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1 June 2017

Dear Jim

**Local Planning Review Committee - Planning Application P/0074/FUL
Erection of 3 Dwelling Houses in Land to the South of Wester Bonhard, Bo'ness**

I refer to the letter of 19 May from Falkirk Council's Roads Development Officer, which appears to be a response to a letter dated as recently as 12 May asking for views on the proposal. Both of those dates, of course, are well after the date of the original Planning Review Committee meeting. We submitted all of the necessary information, including the Transport Statement, last July, in time for that original Committee. It now appears that Planning did not consult their own Roads Department at the time, so these are views of which neither we, nor the Committee, were aware at the time.

He states that their first response was based on traffic travelling at or near the 60 miles per hour speed limit. Subsequently, they provided us with traffic count/speed figures for use in the Transportation Statement, which showed that traffic is travelling well below that speed limit, at the point where speeds were measured.

It is important to note, however, that those speeds were measured on a straight section of the route, some distance from the proposed development, where forward visibility is good, and traffic in each direction has good intervisibility.

The Transportation Statement addresses this point, and points out that in the vicinity of the site, vehicle speeds are far more constrained by the existing geometry of the road. If that geometry is considered to be a risk, then the Council have powers to address that. In reality, there is no evidence of an accident record, which indicates that drivers are treating the historic road layout with the appropriate degree of care.

If there is a road safety risk, the Council had powers, at the time of the previous application for development further along this road, at the edge of Bo'ness, to restrict that development because of increased risk on this route which conveniently connects to the M9 motorway. They chose not to mention such a restriction.

They could have imposed a planning condition restricting the use of this route by construction traffic to and from that development, if they considered that would lead to a road safety risk, but again, chose not to do so.

Paragraph 3.39 of the Transportation Statement states that "It cannot be denied that, as the number of users of any length of road increases, there is a greater likelihood that one or more of them will make an error, which may lead to an accident. It would be unreasonable to assume otherwise. That in itself, however, does not constitute grounds to refuse any application which might lead to increased traffic flows, however marginal – if it did, it would effectively create a presumption against any increase in traffic or pedestrian flows, at any junction, anywhere. The test that must be applied, sensibly, is to ask whether any change in risk to road safety is real and / or significant."

This appears to have been the approach adopted by the Council in considering those previous proposals, and is perhaps more indicative of their real perception of "risk" on the route as a whole. Any risk, then, appears to come down to the operation of the proposed accesses.

The Transportation Statement discusses speeds at the proposed accesses, and shows that those are far lower than the speeds measured in the Council's survey further along the road. In assessing safe visibility, the speed limit is of secondary relevance: the important criterion is the speed that traffic is travelling at, as it approaches or passes the proposed junction. It is evident, from the briefest examination on site, that traffic cannot pass the proposed access(es) at any speed greater than 25 to 30 miles per hour, if they are to negotiate the existing bend in the road. It would be preposterous to suggest that these proposed accesses should be designed for an approach speed of 60 miles per hour.

The Transportation Statement clearly demonstrates that visibility splays can be provided, commensurate with the approach speed of traffic, so there is no disproportionate increased road safety risk.

It is evident that the latest Council response does not address, or even acknowledge, any of the technical arguments presented in the Transportation Statement, but simply seeks to justify an earlier position based on "local knowledge and experience".

I hope that these comments are helpful to you.

Yours faithfully

Andrew Carrie

LAND AT WESTER BONHARD

12 JUNE 2017

PICTURE 1.

