



Agenda Item 4

**ERECTION OF 4 DWELLINGHOUSES
AND ACCESS ROAD AT HOME FARM,
DROVE LOAN, HEAD OF MUIR,
DENNY, FK6 5LH FOR MR STEPHEN
RUSSELL - P/18/0461/PPP**

FALKIRK COUNCIL

Subject: **ERECTION OF 4 DWELLINGHOUSES AND ACCESS ROAD
AT HOME FARM, DROVE LOAN, HEAD OF MUIR, DENNY,
FK6 5LH FOR MR STEPHEN RUSSELL - P/18/0461/PPP
PLANNING COMMITTEE**

Date: **24 January 2019**

Author: **DIRECTOR OF DEVELOPMENT SERVICES**

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

**Councillor Jim Blackwood
Councillor Fiona Collie
Councillor Paul Garner
Councillor Nigel Harris**

Community Council: **Denny and District**

Case Officer: **Kevin Brown (Planning Officer), Ext. 4701**

UPDATE REPORT FOLLOWING COMMITTEE SITE VISIT

1. Members will recall that this application was originally considered by the Planning Committee on 21 November 2018 (copy of previous report appended), when it was agreed to continue the application for a site visit. The site visit took place on Monday 3 December 2018.
2. Following a summary of the proposal by the case officer, the applicant made a short statement in support of their application. The applicant made reference to the history of business rates payments made covering the application site and surrounding land. The applicant expressed the view that payment of those rates was sufficient to classify the application site as brownfield land and, in their view, to justify development of the site. The applicant made a commitment to Committee to provide footpath and lighting provision along the access road to the site and expressed the view that the development of four houses in this location would result in significantly less traffic generation than the previous riding school which operated from this location.
3. Members then had the opportunity to ask questions of officers and the applicant. Many of these questions focussed around the history of the site, definition of 'brownfield land' and access/road issues. In relation to each of these points clarification can be offered as follows:

History of Site and Definition of Brownfield Land

4. 'Brownfield' sites are defined within the Falkirk Council Local Development Plan as "land that has been previously developed or used for some purpose which has ceased. Excludes open space, garden ground, etc."
5. Scottish Planning policy (SPP) defines brownfield land as "Land which has previously been developed. The term may cover vacant or derelict land, land occupied by redundant or unused building and developed land within the settlement boundary where further intensification of use is considered acceptable".
6. The land which is the subject of this application is within the countryside and has historically been used as grazing land. There is no planning application history granting planning permission for the grazing use at the site and historical application site boundaries for the adjacent riding school and stables did not extend to the current application site area. The application site cannot therefore be defined as brownfield in this instance.
7. In addition, a recent appeal decision (APP/VO728/W/18/3207383) in Redcar and Cleveland Borough Council provides useful clarification on this issue. The appeal focused on whether the site in question represented 'previously developed land'. A number of parallels between the current application before the Planning Committee and this appeal can be drawn. In particular, the site subject to the appeal covered two distinct areas, one containing a variety of buildings, parking / circulation areas and enclosures relating to the operation of a livery yard and riding school, and another comprising of two grassed paddocks. The Reporter places weight on the presence of a clear and direct boundary located between the grouping of buildings and the paddocks. The Reporter concluded that whilst ownership may cover the whole site and whilst the paddocks were undoubtedly used in connection with the riding school operation, this does not outweigh the distinctly separate nature of the paddocks resulting from the physical layout of the site. The paddocks were not deemed to be so integral or intimately associated with the grouping of buildings as to be considered to be part of the same curtilage. Rather than be within the curtilage of the buildings of the riding school, the Reporter took the view that they were instead adjacent to it. As a matter of fact and degree, the Reporter concluded that the paddocks were not within the curtilage of the buildings and do not therefore constitute previously developed land.
8. It is considered that the circumstances of the current application are similar to that of this recent appeal decision. The grazing land which forms the application site is distinctly separate to the grouping of buildings at Home Farm and the previous riding school site. The grazing land is also separated from the grouping of buildings by a well established boundary fence. It is considered that the recent appeal decision outlined above supports the conclusion that the current application site is not brownfield land for the purposes of policy assessment.

Access Road

9. The applicants have made a commitment to provide a footpath and street lighting along the access road from the site to Drove Loan. Members should be aware that this could only be secured by way of a condition attached to a planning permission in instances where the applicant or Falkirk Council own the land in question. In this case, the applicant has not demonstrated that they own the access road and therefore there is no guarantee that this work could be completed. Also, the footpath and lighting would not be adopted by Falkirk Council and the responsibility for maintenance would remain with the applicant / land owners. The Roads Development Unit has also confirmed that whilst these upgrades could potentially be achieved and may improve the access road, this would not remove their more general concerns relating to the increased usage of this unadopted access road which is restricted in width and alignment. The proposal would remain contrary to the terms of the National Roads Development Guide (SCOTS). It should also be noted that no details have yet been provided to demonstrate that improvement works could be accommodated within the space currently available and within the applicants control along the length of the access road.
10. Further to the site visit a further representation of objection has been received. The objector comments that there is a lack of street lighting and the access road is poor. The objector also comments that conditions attached to previous planning permissions for development served by this access road required improvement of the road and installation of lighting and that these conditions have not been complied with. Upon investigation of these matters it can be confirmed that the applicant has not complied with previous planning conditions. Consideration is currently being given as to how to most appropriately address this breach in relation to the applicants previous housing developments to the west of the application site, bearing in mind the issue of current land ownership raised in paragraph 9.
11. Since the site visit, representation to this application has now been received. This representation focuses concerns on the sub-standard condition of the access road and the fact that planning conditions attached to previous permissions in this area and requiring upgrades to the access road, have not been complied with. Upon investigation of these matters, it can be confirmed that the current applicant is indeed in breach of planning conditions requiring improvements to the access road to be carried out. Consideration is currently being given as to how best to address this breach.

12. In addition to the above considerations and the content of the previous report, the applicants have also submitted additional information outlining that the proposed units would be needed to house two directors of their company who would take-over from the applicants when they retire. The remaining two plots would be used to fund the expense of surfacing and pavements for the access road improvements. No information has been provided to demonstrate that the company in question requires a staff presence at the site or requires a countryside location. This information would not therefore justify setting aside the policy considerations of the Falkirk Local Development Plan in this instance. Similarly, the applicant has made reference to another application where planning permission has been granted for 3 houses within the countryside and greenbelt at Roughmote Transport Depot, Larbert (P/15/0320/FUL). The applicant is of the view that this previous decision, taken by the Planning Review Committee, sets a precedent for housing within the countryside and greenbelt. Officers do not share this view. These two sites have distinctly different sets of characteristics and circumstances and the granting of permission P/15/0320/FUL does not justify a grant of planning permission on the current application before Committee.
13. No issues were raised on site or in the applicant's further submissions which alter the recommendation to refuse planning permission.

14. RECOMMENDATION

14.1 It is recommended that the Planning Committee refuse planning permission for the following reason(s):-

- 1. The development proposed represents undesirable and unjustified development within the countryside to the detriment of environmental quality and the established rural character of the area. The proposal is contrary to the terms of policies CG01 'Countryside' and CG03 'Housing in the Countryside' of the Falkirk Local Development Plan as well as Supplementary Guidance SG01 'Development in the Countryside'.**
- 2. The proposal represents undesirable and unjustified development within the Greenbelt which would undermine the primary function of the Greenbelt by reducing visual separation between settlements and eroding settlement identity. The proposal is contrary to policy CG02 'Greenbelt' of the Falkirk Local Development Plan.**
- 3. The proposal represents a pedestrian and road safety hazard due to the increased traffic which would be generated on an existing private access road of restricted width and alignment and which does not benefit from street lighting or footpath provision. The proposal is contrary to the terms of the National Roads Development Guide.**

Informative(s):-

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

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pp Director of Development Services

Date: 15 January 2019

LIST OF BACKGROUND PAPERS

1. Falkirk Local Development Plan.
2. Proposed Falkirk Local Development Plan 2.
3. Scottish Planning Policy (SPP).
4. The Planning Inspectorate Appeal Decision, APP/V0728/W/18/3207383 dated 22 November 2018.
5. Objection received from Mr John McDonald, 40, Parkview Avenue, Falkirk, FK1 5JX on 14 January 2019

Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504701 and ask for Kevin Brown, Planning Officer.

FALKIRK COUNCIL

Subject: ERECTION OF 4 DWELLINGHOUSES AND ACCESS ROAD
AT HOME FARM, DROVE LOAN, HEAD OF MUIR, DENNY,
FK6 5LH FOR MR STEPHEN RUSSELL - P/18/0461/PPP
Meeting: PLANNING COMMITTEE
Date: 21 November 2018
Author: DIRECTOR OF DEVELOPMENT SERVICES

Local Members: Ward - Denny and Banknock

Councillor Jim Blackwood
Councillor Fiona Collie
Councillor Paul Garner
Councillor Nigel Harris

Community Council: Denny and District

Case Officer: Kevin Brown (Planning Officer), Ext. 4701

1. DESCRIPTION OF PROPOSAL / SITE LOCATION

- 1.1 This application for planning permission in principle proposes the erection of 4 dwellinghouses and associated access road on land within the greenbelt between Denny and Bonnybridge. The site is located to the immediate north of the M876 and is accessed via a private road onto Drove Loan which sits to the west of the site.

2. REASON FOR COMMITTEE CONSIDERATION

- 2.1 The application was called in by Councillor Nigel Harris to allow further consideration of the history of the site.

3. SITE HISTORY

- 3.1 P/07/0584/OUT - Outline - Granted 15 February 2008 - Development of Land for 2 Semi-Detached Holiday Cottages.
- 3.2 P/08/0002/OUT - Outline - Granted 22 August 2008 - Erection of Coffee Shop.
- 3.3 P/08/0466/REM - Reserved Matters - Granted 7 August 2008 - Erection of 2 Semi-Detached Holiday Cottages.
- 3.4 P/08/0826/REM - Reserved Matters - Granted 4 December 2008 - Erection of Coffee Shop.

- 3.5 P/09/0745/FUL - Detail - Granted 8 February 2010 - Change of Use of Existing Stables (Half) to Form Gift Shop.
- 3.6 P/11/0344/FUL - Detail - Granted 5 September 2011 - Extension and Alterations to 2 Semi Detached Dwellinghouses to Form 1 Detached Dwellinghouse.
- 3.7 P/14/0140/PPP - Planning Permission in Principle - Granted 1 December 2014 - Demolition of Existing Stables and Development of Land for Residential Use.
- 3.8 P/15/0360/75D - Agreement - Discharged 2 November 2015 - Discharge of Planning Obligation attached to Planning Permission P/07/0584/OUT which provides that the two semi-detached holiday cottages to be erected on the site (being 360 square metres or thereby at Home Farm, Drove Loan, Head of Muir, Denny) in terms of the permission shall be used and occupied in all time coming for no other purpose than as holiday cottages under short-term holiday lettings.
- 3.9 P/16/0036/FUL - Detail - Granted 26 February 2016 - Change of Use from Holiday Cottage to Form Dwellinghouse.
- 3.10 P/16/0148/FUL - Detail - Granted 15 April 2016 - Change of Use of Holiday Cottage to Dwellinghouse.
- 3.11 P/16/0347/FUL - Application Withdrawn 11 August 2016 - Erection of Dwellinghouse (Part Retrospective).
- 3.12 P/16/0533/MS - Matters Specified in Conditions - Granted 30 September 2016 - Erection of Dwellinghouse (Part Retrospective) (Matters Specified in Condition of Planning Permission P/14/0140/PPP).
- 3.13 P/17/0222/MS - Matters Specified in Conditions - Granted 19 May 2017 - Erection of 2 Dwellinghouses (Matters Specified in Condition of Planning Permission P/14/0140/PPP).
- 3.14 F/96/0670 - Withdrawn 1 October 1996 - Change of Use of Holiday Accommodation Units for the Disabled to form 2 Dwellinghouses (Detailed).
- 3.15 F/2002/0813 - Detail - Granted 13 December 2002 - Deletion of Conditions 4 and 5 Contained in Planning Permission F/2002/0431.
- 3.16 F/2002/0431 - Outline - Granted 30 December 2002 - Erection of Dwellinghouse for Tourist Accommodation [Renewal of Permission F/96/0211].
- 3.17 F/95/0267 - Application Refused 17 October 1995 - Erection of Dwellinghouse (Outline).
- 3.18 F/96/0211 - Outline - Granted 14 June 1999 - Erection of Dwellinghouse for Tourist Accommodation (Outline).
- 3.19 F/2003/1046 - Reserved Matters - Granted 30 January 2004 - Erection of Dwellinghouse.

4. CONSULTATIONS

- 4.1 The Roads Development Unit has raised concerns over road safety implications of more residential units being accessed via the existing private access track which is of restricted width and alignment and also does not benefit from footpath or lighting provision.
- 4.2 Scottish Water has no objections.
- 4.3 The Environmental Protection Unit has no objections but requested contaminated land conditions if planning permission was to be granted.

5. COMMUNITY COUNCIL

- 5.1 The Denny and District Community Council has not commented on this application.

6. PUBLIC REPRESENTATION

- 6.1 There were no representations received in relation to the application.

7. DETAILED APPRAISAL

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

Accordingly,

7a The Development Plan

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

7a.1 Policy CG01 - Countryside states:-

The Urban and Village Limits defined on the Proposals Map represent the limit to the expansion of settlements. Land outwith these boundaries is designated as countryside, within which development will be assessed in the terms of the relevant supporting countryside policies (Policies CG03 and CG04), and Supplementary Guidance SG01 'Development in the Countryside'.

7a.2 The application site is located outwith the urban limits as defined by the Falkirk Local Development Plan and is within an area of countryside. The proposal therefore requires to be assessed against the countryside policies within the Falkirk Local Development Plan and Supplementary Guidance SG01 'Development in the Countryside'. The proposal does not accord with the countryside policies or guidance and is therefore contrary to policy CG01.

7a.3 Policy CG02 - Green Belt states:-

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.*

7a.4 The application site is located within the greenbelt as defined by the Falkirk Local Development Plan. It has not been demonstrated that the development satisfies the relevant countryside policies. The proposal would undermine the purpose of the greenbelt by reducing the visual separation between settlements and eroding settlement identity. The proposal is contrary to the terms of policy CG02.

7a.5 Policy CG03 - Housing in the Countryside states:-

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.

- 7a.6 The application has not been supported by any evidence to suggest that this housing is required to support any form of agricultural, horticultural or forestry business. The proposals do not represent a restoration or replacement of existing houses or the conversion of non-domestic buildings. The proposal does not represent a suitable form of infill development and does not take the form of enabling development. The proposal is not a gypsy/traveller site. The proposal represents undesirable and unjustified development within a countryside location and the proposal is therefore contrary to policy CG03.

Supplementary Guidance forming part of Local Development Plan

- 7a.7 Supplementary Guidance SG01 - Development in the Countryside. This guidance sets out the circumstances within which the council may support new development within a countryside setting. The proposed development does not fall within any of the criteria set out in this guidance and the development therefore represents undesirable and unjustified growth within the countryside. The proposal is therefore contrary to the terms of this guidance.

7b Material Considerations

- 7b.1 The material considerations to be assessed are the points raised through consultation, site history and submitted supporting information and the proposed Falkirk Local Development Plan 2 (FLDP2).

Consultation responses

- 7b.2 The Roads Development Unit has expressed concerns in relation to the number of dwellinghouses which would be served by the private access serving this site. The proposal does not propose to upgrade the existing private access to a road. The existing private access is currently restricted in terms of width and alignment and there is no footpath or street lighting provided. The proposal would intensify the use of this private access which is not considered to be in the best interests of road safety and which would be contrary to the terms of the National Roads Development Guide.

Site History and Supporting Information

- 7b.3 The application site and surrounding area has been the subject of a number of previous planning applications relating to riding school and stables infrastructure, holiday home accommodation, dwellinghouses, café and a shop.

- 7b.4 The applicant contests, given the previous riding school use at this site, the application site should be considered brownfield land and therefore development of the site for housing is appropriate. In support of the application, the applicant has submitted information confirming that business rates have been paid for use of the land as grazing. Information in the form of a newspaper extract has also been submitted highlighting previous case law in relation to grazing uses being classified as brownfield land.
- 7b.5 It is accepted that the application site may previously have been used as grazing land associated with the riding school which previously operated from the adjacent site. There does not however appear to be any planning application history for this site which would change the use of land from agriculture to recreational or commercial grazing land. Planning permission for the previous riding school was granted on land adjacent to this site, however the site boundaries of the riding school and stables applications do not extend to the area of land which is now the subject of this application. The grazing use would therefore appear to be unauthorised. In addition, the information provided relating to the payment of business rates appears historic and is not supported by confirmation of what land the business rates apply to. The riding school has now closed and the indoor riding arena and stables buildings have been demolished and redeveloped. The grazing land has been left free from any form of physical development and does not contain any buildings or structures. Whilst the land may previously have been used for grazing associated with the riding school, the lack of any planning permission covering this land leads to the conclusion that the grazing use, if associated with the riding school, was in fact unauthorised. The land would not therefore be classed as brownfield land for the purposes of future planning application assessment.
- 7b.6 Further, the classification of this site as brownfield land or otherwise has no direct bearing on the assessment of this application against current local plan policy. The site is located within the countryside and within the greenbelt. The relevant local plan policies and guidance applicable in this instance do not offer any support for residential development on this land irrespective of whether it is classified as brownfield or not.

Emerging Local Development Plan

- 7b.7 The current Falkirk Local Development Plan is in the process of being replaced by a new plan, LDP2. The Proposed Falkirk Local Development Plan 2 (LDP2) has been approved by the Council for consultation. The consultation period runs from 27 September 2018 to 23 November 2018. Following consideration by Scottish Ministers of representations received it is expected that LDP2 will be adopted in 2020, at which point it will replace the current Falkirk Local Development Plan. LDP2 provides the most up to date indication of Falkirk Council's views in relation to Development Plan policy and constitutes a material consideration in the determination of planning applications. In the case of this particular application, the proposed plan in its current form does not introduce any new policy considerations or land use allocations which justify a grant of planning permission in this instance.

Consideration of the Site in Relation to Coal Mining Legacy

- 7b.8 The application site falls within or is partially within the Development Low Risk Area as defined by the Coal Authority. However, as coal mining activity was undertaken at depth, no recorded surface hazards currently exist which could pose a risk to new development. Unrecorded coal mining related hazards could still exist. It is not necessary to consult the Coal Authority on any planning applications which fall within the Development Low Risk Area.
- 7b.9 Where planning permission is to be granted, an appropriate informative note appears on the Decision Notice.

7c Conclusion

- 7c.1 The proposal is an unacceptable form of development within the countryside and greenbelt where no justification has been made in support of current policies and is therefore contrary to the Development Plan. The proposal would also exacerbate road safety concerns as it would access an existing private access and that is of a restricted width and alignment and does not benefit from street lighting or footway provision. There are no material planning considerations that warrant a grant of planning permission in this instance.

8. RECOMMENDATION

8.1 It is recommended to refuse planning permission for the following reason(s):-

1. The development proposed represents undesirable and unjustified development within the countryside to the detriment of environmental quality and the established rural character of the area. The proposal is contrary to the terms of policies CG01 'Countryside' and CG03 'Housing in the Countryside' of the Falkirk Local Development Plan as well as Supplementary Guidance SG01 'Development in the Countryside'.
2. The proposal represents undesirable and unjustified development within the Greenbelt which would undermine the primary function of the Greenbelt by reducing visual separation between settlements and eroding settlement identity. The proposal is contrary to policy CG02 'Greenbelt' of the Falkirk Local Development Plan.
3. The proposal represents a pedestrian and road safety hazard due to the increased traffic which would be generated on an existing private access road of restricted width and alignment and which does not benefit from street lighting or footpath provision. The proposal is contrary to the terms of the National Roads Development Guide.

Informative(s):-

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

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pp Director of Development Services

Date: 12 November 2018

LIST OF BACKGROUND PAPERS

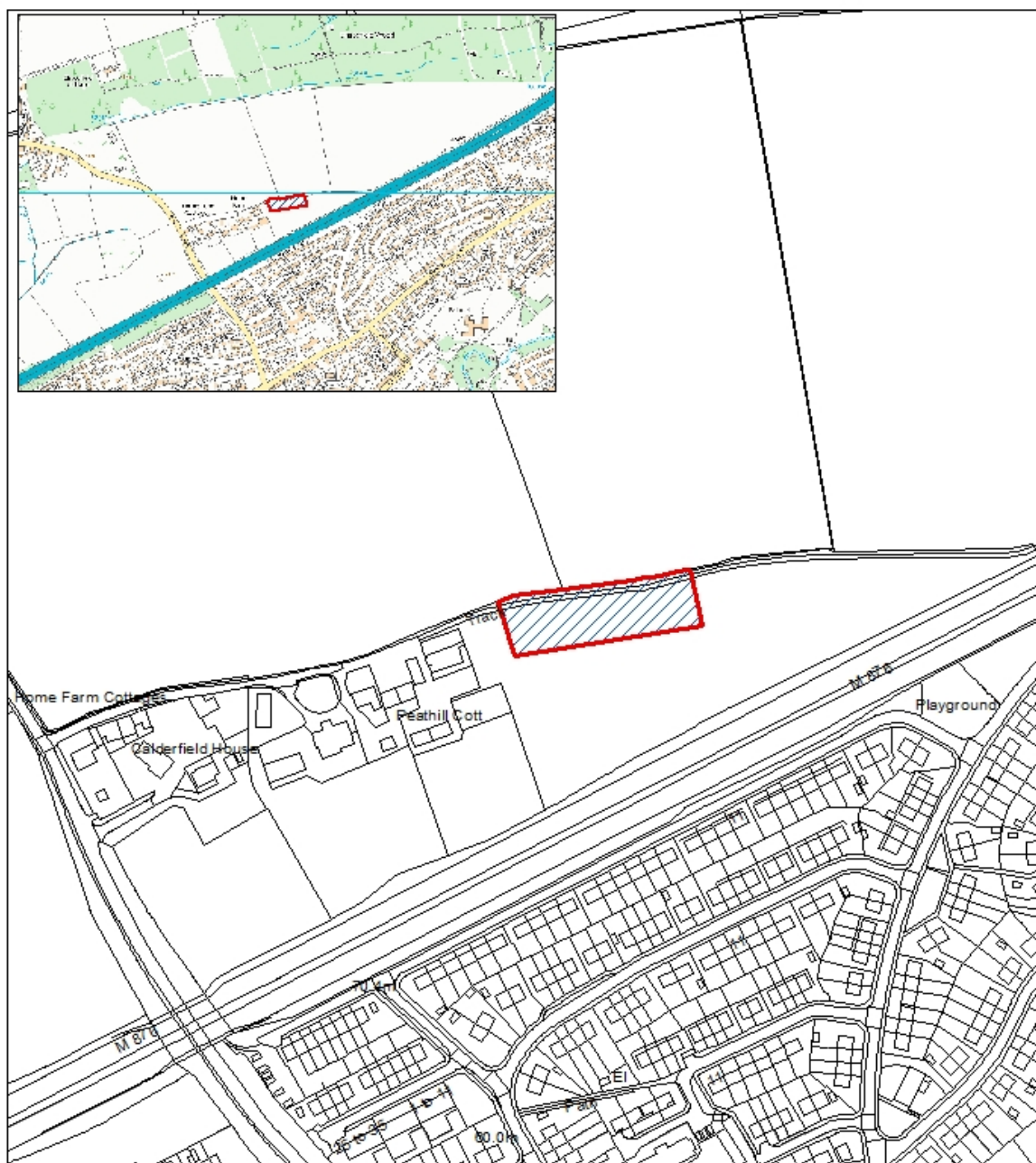
1. Falkirk Local Development Plan.
2. Proposed Falkirk Local Development Plan 2.
3. Scottish Planning Policy (SPP).

Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504701 and ask for Kevin Brown, Planning Officer.

Planning Committee

Planning Application Location Plan **P/18/0461/PPP**

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



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