



Abbotsford House Davids Loan Falkirk FK2 7YZ Tel: 01324 504748 Email: [bsdm@falkirk.gov.uk](mailto:bsdm@falkirk.gov.uk)

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100468318-001

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

## Applicant or Agent Details

Are you an applicant or an agent? \* (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

☐ Applicant ☒ Agent

## Agent Details

Please enter Agent details

Company/Organisation:

Ref. Number:  You must enter a Building Name or Number, or both: \*

First Name: \*  Building Name:

Last Name: \*  Building Number:

Telephone Number: \*  Address 1 (Street): \*

Extension Number:  Address 2:

Mobile Number:  Town/City: \*

Fax Number:  Country: \*

Postcode: \*

Email Address: \*

Is the applicant an individual or an organisation/corporate entity? \*

☐ Individual ☒ Organisation/Corporate entity

## Applicant Details

Please enter Applicant details

Title:	<input type="text" value="Mr"/>	You must enter a Building Name or Number, or both: *
Other Title:	<input type="text"/>	Building Name: <input type="text" value="Oakfield House"/>
First Name: *	<input type="text"/>	Building Number: <input type="text" value="378"/>
Last Name: *	<input type="text"/>	Address 1 (Street): * <input type="text" value="Brandon Street"/>
Company/Organisation	<input type="text" value="G &amp; N Homes (FK-L) Limited"/>	Address 2: <input type="text"/>
Telephone Number: *	<input type="text"/>	Town/City: * <input type="text" value="Motherwell"/>
Extension Number:	<input type="text"/>	Country: * <input type="text" value="UK"/>
Mobile Number:	<input type="text"/>	Postcode: * <input type="text" value="ML1 1XA"/>
Fax Number:	<input type="text"/>	
Email Address: *	<input type="text" value="philip@felshampd.co.uk"/>	

## Site Address Details

Planning Authority:	<input type="text" value="Falkirk Council"/>
Full postal address of the site (including postcode where available):	
Address 1:	<input type="text"/>
Address 2:	<input type="text"/>
Address 3:	<input type="text"/>
Address 4:	<input type="text"/>
Address 5:	<input type="text"/>
Town/City/Settlement:	<input type="text"/>
Post Code:	<input type="text"/>

Please identify/describe the location of the site or sites

Northing	<input type="text" value="680585"/>	Easting	<input type="text" value="289385"/>
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## Description of Proposal

Please provide a description of your proposal to which your review relates. The description should be the same as given in the application form, or as amended with the agreement of the planning authority: \*  
(Max 500 characters)

Proposed Affordable Housing Development, comprising 23 residential units.

## Type of Application

What type of application did you submit to the planning authority? \*

- ☒ Application for planning permission (including householder application but excluding application to work minerals).
- ☐ Application for planning permission in principle.
- ☐ Further application.
- ☐ Application for approval of matters specified in conditions.

What does your review relate to? \*

- ☒ Refusal Notice.
- ☐ Grant of permission with Conditions imposed.
- ☐ No decision reached within the prescribed period (two months after validation date or any agreed extension) – deemed refusal.

## Statement of reasons for seeking review

You must state in full, why you are seeking a review of the planning authority's decision (or failure to make a decision). Your statement must set out all matters you consider require to be taken into account in determining your review. If necessary this can be provided as a separate document in the 'Supporting Documents' section: \* (Max 500 characters)

Note: you are unlikely to have a further opportunity to add to your statement of appeal at a later date, so it is essential that you produce all of the information you want the decision-maker to take into account.

You should not however raise any new matter which was not before the planning authority at the time it decided your application (or at the time expiry of the period of determination), unless you can demonstrate that the new matter could not have been raised before that time or that it not being raised before that time is a consequence of exceptional circumstances.

Please see the attached Planning Appeal Statement

Have you raised any matters which were not before the appointed officer at the time the Determination on your application was made? \*

☐ Yes ☒ No

If yes, you should explain in the box below, why you are raising the new matter, why it was not raised with the appointed officer before your application was determined and why you consider it should be considered in your review: \* (Max 500 characters)

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review. You can attach these documents electronically later in the process: \* (Max 500 characters)

See attached Production List

## Application Details

Please provide the application reference no. given to you by your planning authority for your previous application.

P/20/0530/FUL

What date was the application submitted to the planning authority? \*

06/11/2020

What date was the decision issued by the planning authority? \*

22/07/2021

## Review Procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Can this review continue to a conclusion, in your opinion, based on a review of the relevant information provided by yourself and other parties only, without any further procedures? For example, written submission, hearing session, site inspection. \*

☒ Yes ☐ No

In the event that the Local Review Body appointed to consider your application decides to inspect the site, in your opinion:

Can the site be clearly seen from a road or public land? \*

☒ Yes ☐ No

Is it possible for the site to be accessed safely and without barriers to entry? \*

☒ Yes ☐ No

## Checklist – Application for Notice of Review

Please complete the following checklist to make sure you have provided all the necessary information in support of your appeal. Failure to submit all this information may result in your appeal being deemed invalid.

Have you provided the name and address of the applicant?. \*

☒ Yes ☐ No

Have you provided the date and reference number of the application which is the subject of this review? \*

☒ Yes ☐ No

If you are the agent, acting on behalf of the applicant, have you provided details of your name and address and indicated whether any notice or correspondence required in connection with the review should be sent to you or the applicant? \*

☒ Yes ☐ No ☐ N/A

Have you provided a statement setting out your reasons for requiring a review and by what procedure (or combination of procedures) you wish the review to be conducted? \*

☒ Yes ☐ No

Note: You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. You may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

Please attach a copy of all documents, material and evidence which you intend to rely on (e.g. plans and Drawings) which are now the subject of this review \*

☒ Yes ☐ No

Note: Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice (if any) from the earlier consent.

## **Declare – Notice of Review**

I/We the applicant/agent certify that this is an application for review on the grounds stated.

Declaration Name: Mr Philip Neaves

Declaration Date: 08/09/2021

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT**

**THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT  
PROCEDURE) (SCOTLAND) REGULATIONS 2013**

**APPEAL AGAINST REFUSAL**

**ERECTION OF 22 FLATTED DWELLINGS AND 1 DWELLINGHOUSE  
(P/20/0530/FUL)**

**LAND TO THE WEST OF 14 KING STREET, THORNHILL ROAD, FALKIRK**

**APPEAL STATEMENT ON BEHALF OF G & N HOMES (FK-L) LTD**

**SEPTEMBER 2021**

## 1.0 Introduction

Felsham Planning & Development Ltd (FPD) are planning advisor to G & N Homes Ltd (the Appellant). We are instructed to submit an appeal against the refusal of planning permission on 22 July 2021 in respect of planning application ref (P/20/0530/FUL ) for:

*Erection of 22 Flatted Dwellings and 1 Dwellinghouse*

at land to the west of 14 King Street, Thornhill Road, Falkirk

The application was submitted on 6 November 2020 and registered on 13 November 2020. The application was determined under delegated powers on 22 July 2021 and refused the application.

Despite a request for the application to be heard by the Committee the officers decided to determine on the basis of delegated powers.

The Council refused the application on the following grounds (Production GNH21):

- 1. The proposed development would not provide sufficient on- site parking to accord with Falkirk Council parking standards and would, accordingly, be likely to encourage on-street parking which would not be in the best interests of road safety. Accordingly, the proposed development does not accord with Falkirk Local Development Plan 2 policies IR09 "Parking", PE01 "Placemaking", HC02 "Windfall Housing" and HC04 "Housing Density and Site Capacity" and does not accord with supplementary guidance SG02 "Neighbourhood Design" or the "National Roads Development Guide".*
- 2. The proposed development does not meet design requirements for flatted affordable housing developments in accordance with supplementary guidance SG06 "Affordable Housing". Furthermore it has not been demonstrated that the design of the units as proposed can be delivered by a registered social landlord as affordable housing under the terms of the Development Plan and associated guidance. Accordingly, the proposed development does not accord with Policy HC03 of the Falkirk Local Development Plan 2 "Affordable Housing" and does not accord with supplementary guidance SG06 "Affordable Housing".*

## 2.0 The Site

The site is 3048 sq.m and located on the corner of King Street and Thornhill Road that extends down and around between the rear gardens of existing King Street dwellings and Victoria Park to the east. The site is used by local residents as a pedestrian thoroughfare from Thornhill Road to Victoria Park playing field and as a car park for the neighbouring Thornhill Community Centre.

The highest level of the site is the north west corner on King Street and then slopes down across the site approximately 3.5m towards the playing fields and to the north east. The site is currently a mix of grass and asphalt surfaces of poor quality.

A variety of housing types can be found in the residential streets to the north of the site and backing onto the site from King Street. These consist of ranging from 2 storey rendered semi-detached and terraced houses to 3 storey rendered blocks of flats. The large Victoria Park playing field dominates the eastern boundary along with a public basketball court and a number of children's playgrounds. Immediately south

of the site is Thornhill Community Centre, a public garden extends further down Thornhill Road behind the centre.

Thornhill Road bounds the west of the site with 2 storey stone faced terraced houses immediately opposite. A church is located diagonally opposite the sites key King street/Thornhill Road corner.

The site is located 150m outside the boundary of the council designated Falkirk Town Centre.

### **3.0 The Proposal**

#### ***The Proposal***

The proposal consists of a residential development of 23 Affordable Housing units with associated car parking and amenity spaces.

The units consist of two 3 storey buildings, Block A occupying the corner location facing onto King Street and Block B located further into the site maximising views over Victoria Park playing field. Block A is 3 storeys high for the majority however the roof height drops slightly over the corner and reduces to 2 storeys where directly adjacent the existing dwellings on King Street.

Block B is positioned further away from existing neighbouring dwellings and is 3 storeys high. The proposal ensures the balanced mixture of materials intentionally fragments each block, reducing the mass of the buildings, and the colour palette introduces a modern sense to the traditional form, helping to accentuate and rejuvenate the area.

The units are to be 100% social rented housing. The flats are designed for general needs provision with the exception of the two ground floor flats in Block A which are wheelchair accessible and one of the ground floor flats in Block B which is ambulant disabled/older person accessible. All flats are designed to comply with Housing for Varying Needs standards.

The proposed accommodation schedule is:

- 9no. 1 bed flats
- 13no. 2 bed flats
- 1no. 2 bed house

The buildings will benefit from photovoltaic panels integrated into the roofs for generating sustainable electricity. There is a high demand for Affordable Housing and this residential site close to the town centre, amenities and transport is the ideal location for a 100% Affordable Housing development.

39 spaces on site car parking spaces are proposed and 16 new spaces for Thornhill Community Centre:

- 1 space per 1 bedroom flat (9 spaces)
- 1.8 spaces per 2 bedroom flat (25 spaces)
- approx. 20% visitor parking (5 spaces)

2 dedicated Accessible spaces are included within the above figures, located close to the rear entrance of Block A which houses the accessible flats.



The provision provided allows for 100% of units to be designated 1 car space and 30% of units to be designated an additional second car space, plus visitor spaces.

In addition to the 39 parking spaces for the use of residents, there are 16 parking spaces provided solely for the use of the neighbouring community centre, replacing the existing community centre spaces which are currently within the application site. Fourteen of the proposed spaces are within the application site and two are immediately adjacent on Council owned land to accommodate a 2m wide pathway around the community centre.

The community centre spaces are accessed via the existing community centre car park. We have kept each car park and associated entrances separate to avoid confusion and reduce the possibility of residents using the spaces allocated for the community centre and vice-versa.

#### **4.0 Planning History**

- 06/0499/FUL - Erection of medical centre and associated parking - Granted 03.10.2006.

#### **5.0 Background to the Proposal and Registered Social Landlord Involvement**

The Appellant is a SME development company actively promoting sites for social housing. They are active across the Central Belt of Scotland with a particular focus on the Falkirk and wider surrounding area.

The Appeal site has been discussed for development for some time and over the last 12 months, has been a key site to take forward based on its location, accessibility and suitability for much needed social housing in the area.

This site was originally committed to by WESLO, a registered Social Landlord (RSL) in 2018, however they withdrew their interest in 2019 due to being instructed by Scottish Government to spend their funds improving their existing portfolio. The development was designed at that stage to meet their design guide requirements and was included in the SHIP and the process of securing funding from Scottish Government had commenced - when WESLO changed its strategy to improvement of their existing portfolio, the site was taken out of the SHIP and the funding application ceased.

Following WESLO, the Appellant took the decision to continue with the project and eventually secured engagement with another RSL who are locally based and active in the Falkirk area. The development was altered to meet their exact design guide standards (as per the planning submission) and following sign off on the design, the RSL made an application to have the site included in the SHIP, which was successfully received. We understand engagement with Scottish Government also commenced regarding funding.

The RSL withdrew their interest in the project following the planning application being lodged as they felt the developer did not meet their procurement requirements which would result in them not securing final Board Approval. To provide clarity, their withdrawal was nothing to do with the viability or suitability of the project as a social housing development. Following the withdrawal from the site by the RSL, they also withdrew the SHIP application. Up until the point the SHIP application was withdrawn, the site was supported by Falkirk Council Housing team, evident by the fact it had been accepted back in the SHIP.

Despite not having an RSL identified for the site, the Appellant took the decision to progress at significant costs with both planning and Stage A warrant applications, taking the view that they had spent a significant amount of time and resource already on the project and therefore keen to push ahead as they felt it remained an excellent opportunity to provide much needed social housing accommodation in close proximity to Falkirk town centre.

In 2021, the Appellant was approached by a Falkirk based residential developer to take the project forward. They have agreed principle terms with the developer and instructed solicitors. They are in direct discussions with an RSL who have confirmed their interest in the project. The Appellant is not party to the discussions with the RSL, it is understood that the commitment will be legally formalised between the parties. Once concluded, an application will be made to have the site included in the SHIP and funding applied for by the RSL.

The Appellant understands that, should permission be granted, the developer is expecting to commence construction before the end of 2021 / early 2022, which would mean flatted units would be available for occupation from as early as end 2022 / early 2023.

## 6.0 Basis for Determining a Planning Application

Section 25 of the Town & Country Planning (Scotland) Act 1997 states:

*'Where in making any determination under the Planning Act, regard is to be had to the Development Plan that determination shall be made in accordance with the Development Plan unless material considerations indicate otherwise.'*

Section 37 should be read alongside Section 25. Section 37 (2) states:

*'In dealing with an application, the Planning Authority shall have regard to the provisions of the Development Plan so far as material to the application and to any other material considerations.'*

The House of Lords in its judgement in the City of Edinburgh Council v Secretary of State for Scotland case 1998 (SLT120) ruled that if a proposal accords with the Development Plan and no other material considerations indicate that it should be refused, planning permission should be granted. It ruled that:

*'Although priority must be given to the Development Plan in determining a planning application, there is built in flexibility depending on the facts and circumstances of each case.'*

The judgement set out the following approach to determining a planning application:

1. Identify any provisions of the Development Plan that are relevant to the decision;
2. Consider them carefully looking at the aims and objectives of the plan as well as the detailed wording of policies;
3. Consider whether or not the proposal accords with the Development Plan;
4. Identify and consider relevant material considerations for and against the proposal; and
5. Assess whether these considerations warrant a departure from the Development Plan.

This judgement sets out a clear and methodical approach to determining a planning application and clarifies how the Development Plan should be used.

The determining authority must first consider whether the proposal accords with the Development Plan. It is important to consider not only the detailed wording of policy, but the aims and objectives of the policy maker. If a proposal is considered to accord with the Development Plan, it follows that consent should be granted unless any site-specific matters preclude consent.

Scottish Planning Policy (SPP) further clarifies this point. Paragraph 8 sets out the 'core principles' which should underpin the 'modernised system'. The third core principle states:

*'Confidence in the planning system needs to be reinforced through the efficient and predictable preparation of plans and handling of applications; transparency in decision making and reliable enforcement of the law and planning decisions.'*

The House of Lords has ruled that material considerations must satisfy two tests:

1. They must be planning considerations, in other words, they must have consequences for the use and development of land or the character of the use of the land; and
2. They must be material to the circumstances of the case and they must relate to the proposed development.

There may be circumstances where the achievement of one policy objective requires another policy to be waived or reduced in impact.

In assessing this proposal would be successful, we believe that it is also relevant to refer to two further court decisions *Tesco Stores v. Dundee* [2012] PTSR 983.

Paragraph 18 of the Dundee decision states:

*The development plan is a carefully drafted and considered statement of policy, published in order to inform the public of the approach which will be followed by the planning authority in its decision making unless there is good reason to depart from it. It is intended to guide the behaviour of developers and the planning authority... the policies which it sets out are designed to secure consistency and direction in the exercise of discretionary powers, whilst allowing a measure of flexibility to be retained.*

Paragraph 19 continues:

*The development plan should be interpreted objectively in accordance with the language used...that is not to say that such statements should be construed as if they are statutory or contractual provisions. Although a development plan has a legal status and legal effects it is not analogous in its nature or purpose to a statute or contract... development plans are full of broad statements of policy many of which may be mutually irreconcilable, so that in a particular case one must give way to another... many of the provisions of the development plan are framed in language whose application to a given set of facts requires the exercise of judgement. Such matters fall within the jurisdiction of planning authorities.*

The Court ruled that the interpretation of planning policy is a matter of law but the application of planning policy is a matter of planning judgment, therefore provided the planning authority demonstrates a proper understanding of policy in its reasoning it can proceed as it sees fit and weigh one policy against another and/or give weight to factors other than policy in its determination.

The key is that the Courts have confirmed that the development plan provides the planning authority with discretionary powers and these can be used flexibly. It is not sufficient to conclude that in the planning authority's view the proposal does not comply with elements of policy. Instead the Courts require the 5-step procedure set out in the 1998 *City of Edinburgh Council* House of Lords case to be followed. The planning authority must take a view on a case by case basis with the development plan the starting point for its assessment but not the concluding point. It may be the case that a policy intended to apply across the Local Plan area is clearly not applicable to specific circumstances of a particular site.

### ***Presumption in Favour of Sustainable Development***

A further consideration is the presumption in favour of sustainable development, introduced by SPP, which can override other policies of the Development Plan. The presumption applies to all development that is found to be sustainable when tested against the other policies of the SPP as a whole and is a relevant material consideration in the determination of all applications. It is given 'significant' weight in circumstances where the development plan is more than 5 years old.

SPP paragraph 29 identifies 13 sustainability principles. Before the sustainable development presumption can be given weight as a material consideration in the overall decision-making process the perceived benefits and dis-benefits of the proposal must be tested for sustainability against the 13 principles. This includes giving due weight to net economic benefit, supporting good design and the six qualities of 'successful places', and 'making efficient use of existing capacities of land, buildings and infrastructure'.

Such assessment is a matter of planning judgement but SPP also suggests that in carrying out that assessment the decision-maker has to be satisfied, if it is proposed to refuse the development on the grounds that it is unsustainable, that the evidence demonstrates that its identified dis-benefits significantly outweigh its benefits. If the benefits outweigh the dis-benefits the proposal should be deemed to be capable of contributing towards sustainable development. At that point the SPP presumption in favour of planning permission being granted requires to be given significant weight when the proposal is tested against the development plan and other relevant material considerations in accordance with the provisions of Section 25 of the Planning Act.

The decision-maker will only be entitled to conclude that development is unsustainable if the evidence demonstrates that the dis-benefits significantly outweigh its benefits when tested against each of the 13 sustainability principles. If having applied this test, the conclusion is that the proposal is unsustainable the presumption in favour of planning permission being granted will not require to be given weight when tested against the development plan and other relevant material considerations.

If the conclusion is that the proposal will contribute towards sustainable development, the decision-maker is then expected to test the proposal against the development plan and other relevant material considerations and, in doing so, to attach significant weight to the presumption that planning permission should be granted on the basis that the development is sustainable.

## **7.0 Planning Policy**

### **Scottish Planning Policy (SPP)**

National planning policy sits at the top of the planning policy hierarchy and sets the strategic aims and objectives which must be incorporated into the Development Plan.

#### ***Scottish Planning Policy (2014)***

Scottish Planning Policy (SPP) was published in 2014. SPP is a statement of the Scottish Government's policy on how nationally important land use planning matters should be addressed across the country. A Finalised Interim SPP was published in December 2020. This made some changes to SPP concerning the weight given to the presumption in favour of sustainable development and the calculation of housing land supply. These changes were challenged in the Court of Session and in July 2021 the changes were thrown out by the Court. Therefore, SPP remains as originally published in 2014.

The SPP states that:

*'The 1997 Act requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise. As a statement of Ministers' priorities, the content of the SPP is a material consideration that carries significant weight.'*

And that:

*'Planning should take a positive approach to enabling high quality development and making efficient use of land to deliver long term benefits for the public while protecting and enhancing natural and cultural resources.'*

The first principal policy of the SPP *'introduces a presumption in favour of development that contributes to sustainable development.'* The SPP notes that:

*'The Scottish Government's central purpose is to focus government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through creating sustainable economic growth.'*

SPP states that policies and decisions should be guided by the following principles *inter alia*:

- Giving due weight to net economic benefit;
- Responding to economic issues, challenges and opportunities;
- Supporting good design and the six qualities of successful places;
- Making efficient use of existing capacities of land, buildings and infrastructure;
- Support the delivery of infrastructure, for example transport, education, energy, digital and water;
- Improving health and wellbeing; and,
- Avoiding over-development, protecting the amenity of new and existing development and considering the implications of development for water, air and soil quality.

SPP notes that the planning system should identify a generous supply of land for each housing market area within the plan area to support the achievement of the housing land requirement across all tenures, maintaining at least a 5-year supply of effective housing land at all times. Where a shortfall in the 5-year effective housing land supply emerges, development plan policies for the supply of housing land will not be considered up to date, and therefore introduces a presumption in favour of development that contributes to sustainable development.

SPP aims to guide new residential development to existing settlements and to brownfield sites in preference to greenfield sites and to locations where existing services and capacity are available. This strategy also aims to sustain existing educational, commercial and community facilities.

SPP promotes sustainable transport and active travel and states that planning can play an important role in improving connectivity and promoting more sustainable patterns of transport and travel as part of the transition to a low carbon economy. The planning system should support patterns of development which *inter alia* optimises the use of existing infrastructure, reduce the need to travel, and, provide safe and convenient opportunities for walking and cycling for both active travel and recreation, and facilitate travel by public transport.

### **Other Scottish Government Guidance**

Guidance contained within PAN68 Design Statements and PAN67 Housing Quality, note that the success or failure of a place is ultimately determined by the quality of its buildings, streets and spaces. By creating a successful place, not only does the local community benefit in terms of their use, enjoyment, happiness, appreciation and safety, but economic values also arise.

Well-designed places share common qualities, including:

- Governance – well run and inclusive community.
- Transport and connectivity.
- Access to local services.
- Environmental benefits.
- Equity.
- Vibrant local economy.
- High quality buildings.
- Social and cultural activities.
- Atmosphere.

The importance of creating high quality new development and sustainable communities is established at the top of both the UK and Scottish Government agenda.

The Scottish Government is committed to integrating the following principles in its policy agenda:

- **Sustainability:** The measure of the likely impact of development on the social, economic and environmental conditions of people in the future and in other places.
- **Social Equality:** Considering the diverse needs of local communities and ensuring accessibility for all.
- **Environmental Quality:** Guiding the location and design of development, the management of land use, energy efficiency and the need to travel.
- **Design:** Signalling the importance of achieving improvements in the design and quality of new developments and bringing long term benefits to the urban and rural environment.

The design, siting and setting of development in its surroundings are valid planning matters. The Appellant shares this vision and is actively committed to quality, particularly in terms of design and sustainability.

The Planning Policy Statement *'Designing Places'* argues that *'good design is an integral part of a confident, competitive and compassionate Scotland.'* *'Designing Places'* also emphasises the importance of partnership working and the creation of well-designed locations. The Appellant recognises the need to embrace these objectives to ensure that the design responds in a co-ordinated manner and that the land uses promoted are complimentary.

*'Designing Places'* recognises that as well as improving design quality, a joined-up approach can provide a clear basis for communication, establishing and maintaining identity, create better connections and ultimately, bridge the gap between vision and reality.

The 6 qualities that make a successful place, identified in PAN68 and PAN67 are as follows:

1. Distinctive.
2. Welcoming.
3. Safe and Pleasant.
4. Adaptable.
5. Easy to Get to and Move Around.
6. Resource Efficient.

These qualities have been incorporated into the application proposals.

The following have also been taken into account in developing the indicative application proposals:

- PAN83: Master Planning – this requires early engagement with the planning authority and development of a partnership approach to ensure that issues are defined and that there is engagement with stakeholders to ensure that matters such as infrastructure capacity can be defined and addressed at the outset.
- PAN78: Inclusive Design – design needs to reflect the needs of all sectors of the community.
- PAN77: Designing Safer Places – design should avoid dark concealed spaces and building groups should be orientated to create a sense of enclosure and visibility to discourage crime through passive surveillance.
- PAN68: Design Statements – these should be prepared to explain how the design objectives of the Scottish Government and Development Plan policy have been incorporated into the development.
- PAN67: Housing Quality – there should be a commitment to good quality design that reflects local characteristics. Attention should be paid to the spaces between buildings as well as the buildings themselves.
- PAN65: Planning & Open Space – open space should be incorporated to reflect the standards set out in the Development Plan and to achieve the objectives of PAN67.

A planning authority must make a decision on a planning application on the basis of the proposals accordance with the Development Plan unless material considerations state otherwise.



In this instance the Development Plan is:

- Falkirk Local Development Plan (LDP) was adopted on 7 August 2020.

### **Local Plan (LP) - Site Specific Policies**

The Falkirk Local Development Plan (LDP) was adopted on 7 August 2020. It is the current Adopted Local Development Plan.

### **HC02 Windfall Housing**

Housing development on sites within the Urban and Village Limits, which are not identified as LDP proposals, will be supported where:

1. The site is brownfield or, if greenfield, will meet the terms of the Policy PE16 on protection of open space;
2. Housing is compatible with neighbouring uses and a satisfactory level of residential amenity can be achieved;
3. The site enjoys good accessibility by public transport, walking and cycling to shopping, recreational and other community facilities;
4. Existing infrastructure, such as transport, drainage, education and healthcare has the capacity to accommodate the proposed development, or can be upgraded through appropriate developer contributions, as required by Policy IR02;
5. The site is not at risk of flooding in terms of Policy PE24; and
6. The proposed development complies with other LDP policies

### **HC03 Affordable Housing**

Housing developments of 20 units and over will provide affordable housing as set out below. The approach to provision should comply with Supplementary Guidance SG06 'Affordable Housing'.

Settlement Areas	Percentage of affordable housing on site
Larbert/Stenhousemuir Rural North Braes and Rural South	25%
Bo'ness Bonnybridge and Banknock Denny Falkirk Grangemouth	15%

### **PE20 Trees, Woodland and Hedgerows**

1. There will be a presumption against the removal of safe and healthy trees, non-commercial woodlands or hedgerows, where such removal would be detrimental to landscape, local amenity, nature conservation, recreation or historic environment interests, or erosion and natural flood management. Criteria in the Scottish Government's policy on Control of Woodland Removal will be used to determine the acceptability of woodland removal;
2. Ancient, long-established and semi-natural woodland, including sites identified in the Scottish Ancient Woodland Inventory, will be protected as a resource of irreplaceable value;
3. In areas covered by a Tree Preservation Order (TPO) or Conservation Area, development will not be permitted unless it can be proven that the proposal will not adversely affect the longevity, health or stability of trees, or their landscape, biodiversity or historic value. Where appropriate, other endangered trees or woodlands which have amenity, cultural or historic importance will be protected through the designation of further TPOs;

4. Development which is likely to affect trees should comply with Supplementary Guidance SG10 'Trees and Development'. A Tree Survey and Tree Constraints Plan will be required to inform the design, together with a 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 on site comprising similar species and numbers to the trees and hedgerows removed;
5. The enhancement and management of existing woodland and hedgerows will be encouraged. Where the retention of a tree group or woodland area is integral to a development proposal, developers will be required to prepare and implement an appropriate Management Plan;
6. The provision of new trees and woodland in association with new development will be encouraged in accordance with Supplementary Guidance SG05 'Green Infrastructure and New Development'; and 7. There will be a preference for the use of locally native species in new and replacement planting schemes, or other species where these are integral to an historic landscape

**PE01 Placemaking states:-**

Development proposals should promote the six qualities of successful places as defined in Scottish Planning Policy by addressing the following principles:

1. Distinctive
  - Existing natural and historic environment features should be identified, conserved, enhanced and integrated sensitively into development. Further guidance is set out in Policies PE05-PE27, and accompanying Supplementary Guidance SG07- SG12;
  - The scale, siting and design of new development should respond positively and sympathetically to the site's surroundings, and create a coherent structure of buildings, streets and public spaces that are attractive, distinctive and create a sense of identity within the development. Further guidance is set out in SG02 'Neighbourhood Design';
  - Development should include landscaping and green infrastructure which enhances, structures and unifies the development, assists integration with its surroundings, manages surface water sustainably, and contributes, where appropriate, to the wider green network. Further guidance is set out in SG05 'Green Infrastructure and New Development';
  - Developments of a significant scale should contribute to public art either through a contribution to an existing local project, or through provision of public art within the development, guided by a strategy prepared by the developer in consultation with the Council and Falkirk Community Trust. Further guidance is set out within SG13 'Developer Contributions' and the public art procurement guide produced by Falkirk Community Trust
2. Safe and pleasant
  - Development should create a safe and secure environment for all users through the provision of high levels of natural surveillance for access routes and public spaces and provision of safe access for all. Further guidance is set out in SG02 'Neighbourhood Design';
  - Development should not exacerbate existing air quality issues or introduce new sources of pollution which impact on local air quality without appropriate mitigation.
3. Easy to move around and beyond
  - Development should be designed to encourage the use of active travel and sustainable, integrated transport. Further guidance is set out in Policies IR05-IR07;
  - Development should build on the existing network of paths, edges, nodes, districts and landmarks to create places that people can navigate easily around.
4. Welcoming
  - Streets and public spaces should have buildings fronting them or, where this is not possible, a high quality hard or soft landscape treatment. Further guidance is set out in SG02 'Neighbourhood Design'.



5. Adaptable

- Development should be designed to consider how people use places differently, for example depending on age or degree of personal mobility;
- Where appropriate, development should provide a mix of building densities, tenures and typologies where a variety of diverse but compatible uses can be integrated.

6. Resource efficient

- In support of climate change mitigation, 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 incorporating space to separate materials at source; incorporation of low and zero carbon generating technologies and integration into neighbourhood and district heating networks. Further guidance is set out in Policies IR12-IR14;
- In support of climate change adaptation, 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;
- Provision should be made for the satisfactory future management and maintenance of all public areas, landscaping and infrastructure.

**PE16 – Protection of Open Space states:-**

1. Development which will result in the loss of open space will only be permitted where:
  - There is no adverse effect on the character or appearance of the area, particularly through the loss of amenity space planned as an integral part of a development;
  - There will be no significant adverse effect on the overall recreational provision in the local area, taking account of the Council's open space standards (as defined within the Open Space Strategy), or the loss will be compensated for by qualitative improvements to other open space in the local area commensurate with its recreational value. Guidance on how loss of open space should be compensated is set out in Supplementary Guidance SG05 'Green Infrastructure and New Development';
  - The area is not of significant ecological value; and
  - Connectivity within, and functionality of, the wider green network is not threatened and public access routes in or adjacent to the open space will be safeguarded.
2. Where development would also involve the loss of outdoor sports facilities, it must additionally be demonstrated that:
  - The proposed development is ancillary to the principal use of the site as an outdoor sports facility; or
  - The proposed development involves a minor part of the outdoor sports facility which would not affect its use and potential for sport and training; or
  - The outdoor sports facility which would be lost would be replaced by a new facility of comparable or greater benefit for sport and in a location which is convenient for its users, or by the upgrading of an existing outdoor sports facility to provide a better quality facility either within the same site or at another location which is convenient for its users and which maintains or improves the overall playing capacity in the area; or
  - The Council's pitch strategy and consultation with Sportscotland has shown that there is a clear excess of provision to meet current and anticipated demand in the area, and that the site could be developed without detriment to the overall quality of provision

**PE17 Open Space and New Development states:-**

New development should contribute positively to the provision of open space in the area and support the objectives of the Open Space Strategy. Accordingly:

1. Where appropriate, proposals for new development should include public open space to create a sense of place, integrate the site with the wider green network, promote physical activity, sport and active travel, enhance biodiversity, and manage water within the site; and
2. Where the quantity, quality or accessibility of recreational and sport open space and play facilities in the locality is insufficient to meet the recreational needs of proposed new residential development, as informed by the standards in the Open Space Strategy, the proposal should address the identified deficiencies through either the provision of new on-site recreational and sport open space, or contributions to the improvement of off-site open space.

The detailed planning and design of new open space within new developments, including the methodology for determining and addressing recreational open space deficiencies, should accord with SG05 'Green Infrastructure and New Development'

#### **HC04 Housing Density and Site Capacity**

1. The density and overall capacity of housing sites should be determined by a site planning process, based on the placemaking principles set out in Policy PE01, and in particular prior consideration of:
  - The context of the site and the character of the surrounding area;
  - Existing natural and built features which require to be retained within an appropriate setting;
  - Open space, flooding and surface water management, and other green infrastructure requirements;
  - Landscape impacts and associated mitigation requirements;
  - Other site constraints; and
  - Residential amenity, with particular regard to privacy, daylighting and suitable provision of private garden ground.
2. Where housing capacity figures set out in the Proposals and Opportunities Schedule have yet to be informed by an approved detailed masterplan, they will be regarded as indicative, pending the preparation of such a masterplan. However, where a proposed site capacity exceeds that set out in the Schedule, this will need to be fully justified through a design statement, which addresses Policy PE01 and the factors listed in sub section (1) above.

#### **IR02 Developer Contributions**

Developers will be required to contribute to the provision, upgrading and, where appropriate, the maintenance of infrastructure where development will create or exacerbate deficiencies in, or impose significantly increased burdens on, existing infrastructure. The types of infrastructure where contributions may be required are set out in Table 4.1. The nature, scale and phasing of developer contributions will be determined by:

1. Guidance and contribution rates set out in SG13 'Developer Contributions';
2. Site specific requirements set out in the LDP or relevant development brief; and
3. The principles contained in Circular 3/2012 'Planning Obligations and Good Neighbour Agreements'.

In assessing applications where developer contributions are required, the economic viability of proposals will be taken into account as a material consideration where supported by a Development Viability Statement. Developer contributions for education and open space will be waived for flatted residential development, or conversions of buildings for residential use, of up to 50 units within town centre boundaries

#### **IR03 Education and New Housing Development**

Where there will be insufficient capacity within catchment schools to accommodate children from proposed new housing development, or where Council nursery provision will be adversely affected, developer contributions will be sought in line with Policy IR02 to mitigate these impacts. In the rare

circumstances where such mitigation cannot be achieved in a manner which is consistent with the Council's education policies, the proposed development will not be supported

#### **IR04 Community Facilities**

1. Proposals involving the loss of existing community facilities will only be supported where it can be demonstrated that:
  - There is no longer a need for the facility;
  - The facility is no longer financially viable; or
  - The services offered by the facility will be delivered satisfactorily in alternative ways.
2. Proposals for new community facilities will be supported where:
  - In the case of proposals generating significant footfall, the sequential town centre first approach is met;
  - In other cases, there is good access by public transport, walking and cycling;
  - The proposal is compatible with the surrounding area in terms of scale, character and design; and
  - The proposal complies with other LDP policies.
2. Proposals for major new public buildings, major community facilities or major commercial developments which are publically accessible, should incorporate a Changing Places toilet

#### **IR05 Travel Hierarchy and Transport Assessment**

1. Development proposals should support a hierarchy of travel which maximises the extent to which its travel demands are met first through walking, then cycling, then public transport and finally through use of private cars.
3. Transport assessments will be required for development proposals where the impact of the development on the transport network is likely to result in an increase in the number of trips, such that there will be significant impact on the operation of the transport network, requiring mitigation. Assessments will focus on the hierarchy of travel and should include, where appropriate:
  1. Travel plans;
  2. Safety audits of proposed mitigation measures; and
  3. Air quality impact assessments.
4. The Council will only support development proposals where the transport assessment and travel plan have been appropriately scoped, the network impacts properly defined, and suitable mitigation measures identified

#### **IR06 Active Travel**

1. The Council will safeguard, improve and extend the network of active travel routes, with particular emphasis on the core path network. Development proposals should contribute to active travel infrastructure, either through direct provision or developer contributions, and should address the following requirements, as appropriate:
  - Support objectives set out in Travel Plans;
  - Support the Falkirk Greenspace Strategy by improving the extent and connectivity of routes within the green network;
  - Safeguard and improve existing active travel routes affected by the development, including the provision of temporary alternative routes where routes are disrupted by construction;
  - Provide linkages to the existing active travel network in the vicinity of the site and to schools, community facilities, local amenities and public transport; and
  - Provide appropriate additional infrastructure such as cycle parking, seating and signage.
2. The design of routes, including line, construction, surfacing, and, where appropriate, lighting should be specified within proposals and should:

- Be appropriate to the location and intended use of the routes;
- Promote safe use of the routes; • Facilitate, where appropriate, access to a wide range of users including pedestrians, cyclists and the mobility impaired;
- Promote ease of maintenance; and
- Meet relevant standards where routes are to be adopted by the Council

#### **IR07 Bus Travel**

Development should benefit from good access to bus services, taking account of the 400 metre maximum walking distance required by Scottish Planning Policy. Measures to secure this should be assessed and agreed through Travel Plans and may include:

1. Links to existing bus stops, or the provision of new bus stops
2. In the case of larger developments, inclusion of routes suitable for provision of bus services through the development; and
3. Provision of financial contributions to support the delivery of bus services serving the development

#### **IR09 Parking**

1. The parking standards in the National Roads Development Guide will be applied to new development, subject to the local variations approved by the Council.
2. Parking in town and local centres will be managed to support the role of the centres whilst promoting sustainable travel. Proposed changes to parking provision in centres will be assessed against the effect on their vitality and viability.
3. New car parking provided as part of significant new commercial or community uses should incorporate electric vehicle charging points.

#### **IR10 Drainage Infrastructure**

1. Necessary sewerage infrastructure associated with new development should either be adopted by Scottish Water or have alternative maintenance arrangements which are acceptable to SEPA. Connection to the public sewer is the most sustainable option and will ensure that any pollution risk to the environment is minimised.
2. Surface water management for new development should comply with current best practice on Sustainable Urban Drainage Systems (SUDS), where appropriate forming an integral part of the development's landscape structure as set out within Supplementary Guidance SG05 'Green Infrastructure and New Development'. SUDS will be required to meet the specifications as detailed in the most recent version of Sewers for Scotland should the developer wish the surface water system to vest in Scottish Water.
3. For developments that involve a change of use and/or redevelopment, wherever possible, opportunities should be taken to retrofit SUDS.
4. A drainage strategy, as set out in PAN61, should be submitted with planning applications and must include flood attenuation measures, details for the long term maintenance of any necessary features and a risk assessment. The strategy should follow the latest version of the SUDS Manual

#### **IR13 Low and Zero Carbon Development**

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 12% 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 is contained in Supplementary Guidance SG14 Renewable and Low Carbon Energy. 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 the other sustainability aspects of the current Sections 6 and 7 of the current Building Standards Technical Handbook.

### Material Considerations

The following Falkirk Council Supplementary Planning Guidelines are relevant to the proposals:-

- SG06 "Affordable Housing" specifies the types and tenures of development which constitute affordable.
- SG05 "Green Infrastructure and New Development";
- SG10 "Education and New Development";
- SG15 "Low and Zero Carbon Development";
- SG02 "Developer Contributions". Proposed sites and objections will be considered as part of a plan examination.
- SG01 "Neighbourhood Design".

### Objectors Comments

There are 7 official objections (9 submitted, 1 neutral representation and 1 duplicate objection) to this application that raise issues that are not planning grounds for objection to a planning application and some which do raise valid grounds for objecting to a planning application. However we have examined the issues and points raised and believe that the application submission has addressed all the valid planning issue mentioned or that they are not a reason for refusal in relation to this application, albeit they are a generally valid planning argument in some cases.

In our assessment of the issues raised there are no reasons for refusal of this application based on the objections submitted that, should it be required, conditions attached to a planning consent or Section 75 Legal Agreement cannot address.

## 8.0 Assessment

### Planning Policy

The determining issues for redevelopment of the site will include whether:

1. the principle of the proposed development is acceptable;
2. the proposal would have an adverse impact on the surrounding environment and neighbouring uses; and
3. there are any other material considerations that justify approval or refusal.

### Suitability of site for Residential

The site has existing residential use immediately to the north, west and south. It should be viewed as a site that rounds off the residential development of the area and is a gap site.

There will be no physical impact on the neighbouring properties' amenity and on the character of the area. This will be through appropriate design, layout, protection of daylight, privacy and landscaping.

The site is in the urban area where residential development is acceptable in principle. The planning authority has not sought to impose any environmental designations on the site. This coupled with the planning history of the site could be read as an acceptance that development is likely and accepted.

The site is sustainable due to good connections to the local transport network and the existing community facilities. Services and infrastructure are available with connections and capacity for water and electricity.

It is private ground and does not form an open space to aid the amenity of the existing residential area. It may have been used by residents as a thoroughfare as it is not fenced off and has a path located on it cutting the corner off of the junction of Kings Street and Thornhill Road but it is not used as a regular recreational area.

It must be noted that the application site is not shown on the LP Proposals Map as a community facility and Falkirk Council have confirmed that *"The proposed development would not have a significant impact on the existing open space and play provision in the area. However the development would generate additional need for such provision. It is noted that no open space or play area is proposed on-site. The open space requirement generated by the proposed development can be addressed by means of a developer contribution, secured by a Section 75 Obligation, to secure improvements or maintenance of open space, greenspace and play facilities serving the proposed development."* (Production GNH20)

The site is precisely the location that Scottish Government policy directs should be used for residential development.

SPP sets out a hierarchy of development, giving preference to sites within the urban area, such as this, followed by sites on the edge of the urban area to avoid the possibility of having to develop sites. SPP also has a presumption in favour of sustainable development. An accessible site within the urban area is by definition a sustainable development location.

In light of the site description and context outlined in this Section above, it is considered that the proposed development would constitute sustainable development on a gap site between existing residential development and therefore integrating into and forming part of an existing residential community.

In considering the proposals we need to :-

**Interpret them carefully looking at the aims and objectives of the plan as well as the detailed wording of policies** – the aims and objectives of policy is to provide for a generous supply of housing land and to manage housing development in terms of its impact on its local area, the appropriateness of the scale of development to that area, and the ability to adequately service the development.

**Consider whether or not the proposal accords with the Development Plan** – Section 5 above outlines the relevant policy context.

The site should be assessed at a Local Development Plan level and the site specific considerations of the proposal examined.

Falkirk Council refused that Planning Application on 22 July 2021 for the reasons set on in Section1. The Report of Handling (Production GNH20) clearly sets out the Policies that the Council consider the proposals are contrary to and those that it accords with.

The Council considers the proposals are in accordance with the following policies:-

- PE16
- PE17
- PE20
- IR02
- IR04
- IR05
- IR06
- IR07
- IR09 (in terms of community centre parking provision)
- IR10
- IR13

We have focused the assessment on the policies that the Council does not believe that the proposals comply with and contained in the Reasons for Refusal, these policies are:-

- PE01
- IR09 (in terms of on site parking provision)
- HC02
- HC03
- HC04

The Council Report of Handling (Production GNH20) does not provide analysis of why the proposals are contrary to Policy PE01, HC02 and HC04. The reasons for refusal have been analysed and appear to be able to be distilled into 2 issues:-

1. Alleged failure to comply with SPG standards for affordable housing; and
2. A shortfall of 4 parking spaces (on site) to meet the Councils Parking Standards.

Below deals with both of these issues.

### **1. Registered Social Landlord**

The site is suitable in principle for residential use and affordable housing comes within the general residential use class and is not a separate use class on its own. Therefore, there should be no affordable housing reason for refusal.

Whilst the applicant stated in the supporting documents the intention for this to be an affordable housing scheme, that does not form part of the description of development which is:

*Erection of 22 Flatted Dwellings and 1 Dwellinghouse*

Therefore, the proper assessment is whether this is a suitable housing development *per se*. The applicant has demonstrated that it is and the second reason for refusal should not have been applied.

### **2. Shortfall of Parking Spaces**

The proposal is for 100% affordable housing provision. As such the Council requires provision of 39 car parking spaces on site.



The Appellant has provided a Parking Statement (Production GNH15) and provided evidence that the proposed 39 car parking spaces is sufficient for a sustainable development with 100% secure covered cycle provision, excellent links to public transport, proximity to community facilities and within walking distance of Falkirk Town Centre.

The Parking Statement (Production GNH15) demonstrates the experience of an RSL in the Falkirk area in terms of parking need in the local area and that ~ 38.3% of households have no car. The conclusion is that the parking provision of 39 spaces is acceptable and appropriate.

The Appellant believes that the proposal is in accord with the principles of Policy IR9 and that the decision maker should consider the planning balance that should be applied to the shortfall of 4 parking spaces and if this is so significant in such an accessible location to justify refusal of a site delivering 100% affordable housing.

### **Correct Interpretation of Policy**

As a consequence of the Council's position on the RSL and the shortfall in parking spaces, it has been stated that the proposal does not comply with policies PE01, HC02, HC03, and HC04.

There is no specific policy argument provided by the Council that this site is not a suitable windfall site. HC02 Windfall Housing deals with sites within the urban environment that are not included in the LDP that are in accordance with the policy criterion.

Criterion 1 requires that the site is in accordance with Policy PE16 and as such the Council and the Appellant consider the site is in compliance. The site is located in an area of residential use and the proposals inclusion would not impact on the amenity of other neighbouring sites and as such accords with criterion 2. The site is accessible by foot, and public transport and located in close proximity to Falkirk town centre and local community facilities in accordance with criterion 3. The proposal complies with criterion 4 as there is no impact on the local infrastructure and any impact would be capable of being addressed by developer contributions and a S75 Agreement. There is no risk of flooding on site in accordance with criterion 5. Criterion 6 requires that "*proposed development complies with other LDP policies*". It is noted that this it does not state "all" other policies of the LDP. This provides the Officers with scope to use planning judgement to attach weight to the benefits of a proposal and apply a balance to the decision process.

**HC04 Housing Density and Site Capacity** deals with the design, layout and density of proposals. The Council has stated on page 5 of the Report of Handling that:-

*"The proposed development would not have a significant impact on the existing open space and play provision in the area. However the development would generate additional need for such provision. It is noted that no open space or play area is proposed on-site. The open space requirement generated by the proposed development can be addressed by means of a developer contribution, secured by a Section 75 Obligation, to secure improvements or maintenance of open space, greenspace and play facilities serving the proposed development. The applicant has agreed to contributions of £7200 towards the maintenance or improvement of active open space, £9600 towards passive open space and £3000 towards improvements to natural greenspace serving the proposed development. £19,800 in total.*

*It is noted that the proposal would result in the loss of trees. It is not considered however that there would be a significant impact on the amenity of the area as a result of the loss of the trees which would need to be removed. A satisfactory landscape plan, with compensatory planting, and maintenance plan could be secured by condition."*



Therefore, the planning authority accepts that the site is suitable in terms of the criteria of Policy HC04 apart from the lack of 4 parking spaces.

The Design Statement submitted in support of the proposals demonstrates the considerations taken into account in designing the proposals and layout. It also outlines the discussions regarding the provision of parking spaces and the sustainable and accessible location of the site that justifies a relaxation of the parking standards in this particular location to deliver 23 affordable dwelling units.

There are no issues relating to the amenity of the neighbouring properties. The layout demonstrates a design that is inherently safe by having frontage onto the existing footpath and proposed new access road (Production GNH19). This provides a natural secure environment by informal overlooking from other properties and main access road. The site is currently vacant and unsecured. Unauthorised use of the existing grassed area will be removed and any disturbance removed.

A Drainage & Water Management Strategy can be addressed by condition as suggested by the Council in the Report of Handling. (Production GNH20).

The neighbouring area is characterised by residential properties and their garden ground. The design of the proposals integrates into this area by maintaining the massing and character of the existing units. There will be no issues of overlooking, loss of privacy or amenity, overshadowing or disturbance.

The proposals will ensure that the general amenity of the area is improved. The proposal will ensure a planned development that integrates into the character and setting of the residential area. Unauthorised use of the existing grassed area will be removed and any disturbance removed. It will be a safe and secure and passively monitored by the existing and proposed new dwellings.

In light of the comments made above the proposals are in compliance with Policy PE01.

### **Principle of Development**

National planning policy encourages Local Planning Authorities to take a positive approach to development that could contribute to sustainable economic growth. Scottish Planning Policy (SPP) seeks to direct development towards the most sustainable locations and supports regeneration proposals which will make the full and appropriate use of land.

The aims and objectives of the Development Plan are *inter alia* to secure and adequate supply of housing.

It remains the case that the presumption applies to all development that is found to be sustainable when tested against the other policies of the SPP as a whole and is a relevant material consideration in the determination of all applications.

SPP identifies 13 sustainability principles. Before the sustainable development presumption can be given weight as a material consideration in the overall decision-making process the perceived benefits and dis-benefits of the proposal must be tested for sustainability against the 13 principles. This includes giving due weight to net economic benefit, supporting good design and the six qualities of 'successful places', and 'making efficient use of existing capacities of land, buildings and infrastructure'.

Such assessment is a matter of planning judgement but SPP also suggests that in carrying out that assessment the decision-maker has to be satisfied, if it is proposed to refuse the development on the grounds that it is unsustainable, that the evidence demonstrates that its identified dis-benefits outweigh its benefits. If the benefits outweigh the dis-benefits the proposal should be deemed to be capable of contributing towards sustainable development. At that point the SPP presumption in favour of planning permission being granted requires to be given weight when the proposal is tested against the development

plan and other relevant material considerations in accordance with the provisions of Section 25 of the Planning Act.

If the conclusion is that the proposal will contribute towards sustainable development, the decision-maker may attach weight to the presumption in favour of sustainable development and conclude that planning permission should be granted on the basis that the development is sustainable.

The Appellant's case is that this proposal should be judged as a windfall site and is suitable in all respects.

Its location within the urban area with no significant policy objections means it is a sustainable residential development in a location where policy directs such development should be located.

In summary, the proposed development is in line with national planning policy and the Local Development Plan. Residential development will be supported where there are no site specific issues to preclude development from taking place on the site. The only site specific issue with the site is the shortfall of 4 car parking spaces in a highly accessible and sustainable urban location. The proposal also complies with the aims and objectives of the other policy outlined above.

### **Material Considerations**

Consideration of the Falkirk Council Supplementary Planning Guidelines relevant to the proposals is as follows:-

- SG01 "Neighbourhood Design".

Falkirk Council have not stated why they consider the proposals are not in accord with this SPG, as stated (Page 6) in the Report of Handling (Production GNH20). From the reasons for refusal it appears to be as a result of the shortfall of 4 car parking spaces. This is discussed in detail above.

- SG05 "Green Infrastructure and New Development";

Falkirk Council have stated that they consider the proposals are in accord with this SPG, as stated (Page 6) in the Report of Handling (Production GNH20)

- SG10 "Education and New Development;

Falkirk Council have stated that they consider the proposals are in accord with this SPG, as stated (Page 6) in the Report of Handling (Production GNH20)

- SG15 "Low and Zero Carbon Development";

Falkirk Council have stated that they consider the proposals are in accord with this SPG, as stated (Page 6) in the Report of Handling (Production GNH20)

- SG02 "Developer Contributions".

Falkirk Council have stated that they consider the proposals are in accord with this SPG, as stated (Page 6) in the Report of Handling (Production GNH20)

## 9.0 Determining Factors

### ***Affordable Housing***

The application should not have been refused on the grounds that it failed to meet the standards for affordable housing. There is no separate use class for affordable housing and affordable housing does not feature in the description of development.

The first consideration should be whether this is a suitable residential site. It is. Only after that would it be necessary to consider whether there are any factors that enhance the prospect of getting planning permission. Having an RSL is not a factor in that regard because this is a site suitable in principle for residential use. How it is used is not relevant.

The question then becomes does the use for affordable housing introduce another consideration. The answer is no because the site is suitable *per se* for housing and affordable housing should not have been used as a reason for refusal.

Therefore affordable housing is not a competent reason for refusal and should be removed from consideration in this appeal.

### ***Car Parking***

That leaves only one outstanding matter. As we have noted above, the Courts have ruled that the interpretation of planning policy is a matter of law but the application of planning policy is a matter of planning judgment, therefore provided the planning authority demonstrates a proper understanding of policy in its reasoning it can proceed as it sees fit and weigh one policy against another and/or give weight to factors other than policy in its determination.

The key is that the Courts have confirmed that the development plan provides the planning authority with discretionary powers and these can be used flexibly. It is not sufficient to conclude that in the planning authority's view the proposal does not comply with elements of policy. Instead the Courts require the 5-step procedure set out in the 1998 City of Edinburgh Council House of Lords case to be followed.

The planning authority must take a view on a case by case basis with the development plan the starting point for its assessment but not the concluding point. It may be the case that a policy intended to apply across the Local Plan area is clearly not applicable to specific circumstances of a particular site.

Having satisfied all other points the Council should have asked whether a deficiency of 4 spaces for general residential development in the context of 152% affordable cover and 39 actual spaces, public transport accessibility and access to the town centre and other services was sufficient reason for refusal. It should also have had regard to evidence supplied by an RSL that there was only on average 38% car ownership by its tenants.

Standards are just that, they are not rules or laws. The same applies to policy. The intention is to provide a starting point from which to make a judgement on a case by case basis. The Courts have confirmed that there is discretion and flexibility.

The correct interpretation should have been to use its discretion and allow the application. Instead the planning officers took at face value the objection from the transport officers and failed to recognise that this was professional advice not a direction and that they were free to weigh that advice and reach their own conclusion. That is a significant failure of the officers' duty to properly assess the application.

The factors the planning officers should have weighed against the perceived lack of parking include:

1. Central location, with good public transport.
2. Government expects development to encourage walking and public transport. This site ticks all the boxes.
3. Court decisions require planning authorities to weigh issue and that may involve a trade off between different planning policy aspirations.
4. There is 152% car parking and the application is only 4 short of being policy compliant – this is where the weighing the issues in the balance and exercising discretion comes in. Many authorities will accept less than 100% car parking in a location like this. Falkirk is out of step with current thinking. Evidence from an RSL is car park occupancy at less than 40%. T

Taking all these factors into account the judgement should have been that there was sufficient car parking.

## 10.0 Conclusions

The Planning Act requires development to be in accordance with the Development Plan unless material considerations indicate otherwise. We have undertaken our assessment on this basis. There is a policy balance to be made.

Having assessed the aims and objectives of the relevant policies and assessed material considerations our conclusions are as follows:

- The proposal complies with the aims, objectives and principles of national and local policy;
- The site is accessible and sustainable with excellent links to existing transportation and pedestrian networks;
- The site is not and never has been a planned open space or a community facility;
- No conflict with established land use – development is compatible with the surrounding land uses;
- Respects scale, form, design and materials – the design of the proposal has had regard to the character and appearance of the surrounding area. The scale, design and materials are appropriate to the area;
- No significant loss of daylight, sunlight or privacy to the surrounding existing residential properties.
- The development can be accommodated within the plot with no impact on its neighbours;
- The proposal would not have an adverse impact on any protected species or habitats;
- No unacceptable generation of traffic or noise; and
- Visual impact- the scale, design and materials are appropriate to the area. The design of the scheme has taken account of the characteristics of the area.

The presumption in favour of sustainable development applies to all development that is found to be sustainable when tested against the other policies of the SPP as a whole and is a relevant material consideration in the determination of all applications.

The Appellant's case is that this proposal should be judged as a windfall site and is suitable in all respects. Its location within the urban area with no significant policy objections means it is a sustainable residential development in a location where policy directs such development should be located.

For these reasons we respectfully request that the appeal should be allowed.

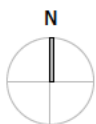
**APPEAL ON THE GROUNDS OF REFUSAL  
ERECTION OF 22 FLATTED DWELLINGS AND 1 DWELLINGHOUSE  
REF (P/20/0530/FUL)  
LAND TO THE WEST OF 14 KING STREET THORNHILL ROAD FALKIRK**

**List of Productions**

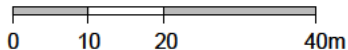
The following documents are submitted with the appeal:

GNH	01	The duly completed application forms, certificates and notices	A4
GNH	02	Design Statement - by Covell Matthews Nov 2020	A4
GNH	03	Existing Site Plan PL2_01	A1
GNH	04	Proposed Drainage SL_52_001	A1
GNH	05	Proposed Contextual Elevations PL2_07 Rev A	A1
GNH	06	Block A _ Plans PL02_03 Rev A	A1
GNH	07	Proposed Timber Boundary Fence PL2_08	A3
GNH	08	Block B Plans PL02_05	A1
GNH	09	Location Plan PL02_00 Rev A	A4
GNH	10	Block B Elevations PL02_06 Rev B	A1
GNH	11	Block A Elevations PL2_04 Rev B	A1
GNH	12	Proposed Daylighting Diagrams PL2_08	A3
GNH	13	Affordable Housing Statement	A4
GNH	14	Coal Mining Report	A4
GNH	15	Parking Statement Feb 2021	A4
GNH	16	Design Statement - by Covell Matthews Rev A Feb 2021	A4
GNH	17	Affordable Housing Statement REVISED	A4
GNH	18	Affordable Housing Clarification Email	A4
GNH	19	Proposed Site Plan PL2_02 Rev C	A1
GNH	20	Falkirk Council Report of Handling 13 Nov 2020	A4
GNH	21	Decision Notice 22 July 2021	A4
GNH	22	SG06 Affordable Housing	A4

The Appellant reserves the right to add to or otherwise to amend the above list in the light of the further discussions with, and evidence submitted by, others or resulting from further research on the part of the Appellant and / or their team.



1:1000



A Title block & scale bar amended

12.11.20 CP

Notes

Rev Description

Date

By

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Content LOCATION PLAN

Client -

Project THORNHILL ROAD, FALKIRK

**covellmatthews**  
ARCHITECTS

6 Manor Place, Edinburgh, EH3 7DD  
edinburgh@covellmatthews.co.uk  
www.covellmatthews.co.uk  
t:0131 226 3366

Date Nov 2020

Drawing Scale 1:1000 @ A4

Paper size A4

Drawn by Client

Checked HB

Project Code 896

Drawing No. PL2-00

Revision A

PLANNING



# THORNHILL ROAD, FALKIRK

## PROPOSED AFFORDABLE HOUSING DEVELOPMENT

### NOTES:

- ① SITE BOUNDARY
- ② EXISTING CAR PARK AREA
- ③ EXISTING PEDESTRIAN PATH
- ④ TREES TO BE REMOVED AND REPLACED
- ⑤ TREES TO BE RETAINED
- ⑥ EXISTING COMMUNITY CENTRE
- ⑦ PLAYING FIELDS



Notes	Rev	Description	Date	By
A	Internal floor levels & external spot levels added	12.11.2020	CP	
B	Notes added to legend to define areas as 'public' or 'private' where appropriate, blue decorative post to be retained & relocated & day-lighting diagram notes added	12.02.2021	CP	
C	4no. parking spaces added	02.07.2021	CP	

# **THORNHILL ROAD, FALKIRK** **PROPOSED AFFORDABLE HOUSING DEVELOPMENT**

## NOTES:

- 1 PROPOSED SITE ENTRANCE
- 2 LIGHTING BOLLARD
- 3 HARD LANDSCAPING (PRIVATE)
- 4 PERMEABLE PAVOIRS (PRIVATE)
- 5 TARMAC ROAD FINISH (PUBLIC)
- 6 2M WIDE WALKWAY - TARMAC (PUBLIC)
- 7 PEDESTRIAN ROUTE TO BE MAINTAINED (PUBLIC)
- 8 EXISTING TREE TO BE RETAINED
- 9 PROPOSED NEW TREE
- 10 PROPOSED SOFT LANDSCAPING (PRIVATE)
- 11 PROPOSED GRASS AREA (PRIVATE)
- 12 EXISTING GRASSED AREA
- 13 900MM HIGH HEDGING
- 14 1800MM HIGH BOUNDARY HEDGE - THORNY HEDGING
- 15 1800MM HIGH TIMBER BOUNDARY FENCE
- 16 CYCLE STORE
- 17 RECYCLING STORE
- 18 18 COMMUNITY CENTRE PARKING SPACES (PUBLIC)
- 19 EXISTING BLUE DECORATIVE POST RELOCATED

1:250	0	5	10m	20m	30m
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Content	PROPOSED SITE PLAN				
Client	-				
Project	THORNHILL ROAD, FALKIRK				
Date	New 2020	Drawing Scale	1:250 @ A1, 1:500 @ A3		
Paper size	A1	Drawn by	Client	Checked	HB
Project Code	896	Drawing No.	PL2-02	Revision	C



PLANNING

