

**FALKIRK COUNCIL**

**Subject:** ERECTION OF 55 DWELLINGHOUSES AND 36 FLATS WITH ASSOCIATED ROADS AND INFRASTRUCTURE AT LAND TO THE NORTH OF 44 NORTHFIELD ROAD, NORTHFIELD ROAD, DUNIPACE FOR PERSIMMON HOMES EAST SCOTLAND (05/0912/FUL) (RESULT OF APPEAL)  
**Meeting:** PLANNING COMMITTEE  
**Date:** 25 February 2009  
**Author:** DIRECTOR OF DEVELOPMENT SERVICES

**Local Members:** Councillor Jim Blackwood  
Councillor John McNally  
Councillor Martin David Oliver  
Councillor Alexander John Waddell

**Community Council:** Denny and Dunipace

**Case Officer:** Brent Vivian (Planning Officer), ext 4935

**1. BACKGROUND**

- 1.1 The Planning Committee decided at its meeting on 28 February 2007 to refuse the above planning application. The applicant appealed the decision. This report considers the outcome of the subsequent Public Local Inquiry.
- 1.2 The reasons for refusal (in summary) were (a) unacceptable traffic increases on existing roads, resulting in associated congestion and road safety concerns; (b) inadequate drainage proposals to guarantee that flood water from the application site would not be dispersed to other areas; (c) unacceptable loss of open space; and (d) that the flats on the southern part of the site would be out of keeping with the character of the local area. On further consideration, the Council decided at meetings on 6 August and 6 October 2008 not to contest the appeal on access/road safety, design or flooding (technical) grounds.
- 1.3 The applicant lodged an appeal to the Scottish Government Directorate of Planning and Environmental Appeals against the Council's refusal. The appeal was heard at a Public Local Inquiry which took place on 10-13 November and 3 December 2008.

## **2.0 APPEAL DECISION**

- 2.1 The Scottish Government Reporter decided, in his written decision dated 19 January 2009, to dismiss the appeal and refuse planning permission. He concluded that the proposed development would be in general accordance with the approved Development Plan but that, on balance, deficiencies of the proposal in terms of failing the requirements of nature conservation legislation (in relation to European protected species) and causing traffic and amenity problems on the access roads were, together with the adequacy of the planned housing land supply, sufficient material considerations to outweigh the general presumption that a residential development on a site allocated for housing in the Development Plan should be approved.

## **3.0 EXPENSES**

- 3.1 The Reporter has awarded expenses (costs) against the Council for acting in an unreasonable manner in not defending two of its reasons for refusing the application. However, the Reporter found that the only unnecessary expense to the appellant which may have resulted in unreasonable behaviour was the preparation of their precognition relating to architectural design matters, to the extent that it contains significant additional material prepared for the Inquiry and not already communicated to the Council prior to determination of the application by the Committee. He found that there was no unnecessary expense to the appellant arising from the Council's decision not to pursue its reason for refusal relating to road access/road safety grounds, as the Inquiry required to consider these issues in any case in response to considerable concerns expressed by local residents. The Reporter has remitted the account of expenses to the Auditor of the Court of Session to tax on an agent/client basis. A copy of the Reporter's decision on costs is attached as Appendix 1.
- 3.2 Following further reports to the Regulatory Committee on 6 August and 6 October 2008, the Committee decided not to defend three of its reasons for refusing the application, as detailed in paragraph 1.2. The reason for this was based on the advice of the planning consultant employed by the Council to defend its decision. The consultant's view was that the appellants would be likely to apply for expenses and these could be in the region of £10,000 to £30,000 and that they were likely to be wholly successful if the Council relied on the majority of its reasons for refusing the application. The further reports to the Regulatory Committee are attached as Appendix 2. The issue of expenses is considered by the consultant in the last paragraph of his position statement dated 22 July 2008 (attached as part of Appendix 2).
- 3.3 The advice of the consultant was given within the context that there is the potential for the award of expenses against the Council where the Council has taken a contrary view to officer recommendation, as was the case in this instance. The potential for this is reflected in the appellant's claim for expenses as detailed in paragraph 3 of the Reporter's decision on costs. The Council's approach in this matter, as represented by its planning consultant and Law and Administration Services, was to attempt to minimise the potential for the award of expenses. Accordingly, specialist advice was sought which recommended that three of the Council's reasons for refusing the application should not be pursued. Instead, the approach taken by the Council's planning consultant and Law and Administration Services was to consider wide ranging aspects in defending the Council decision, including lack of housing need and concerns under national flood policy, which the Reporter accepted.

- 3.4 There was no disagreement between the applicant and the Council's Planning Service in relation to the technical aspects of traffic / road safety or flooding, or in relation to design. Therefore, had the Council pursued these reasons for refusal of the application, the potential for a more substantial award of expenses may have been greater. With reference to the basis for the claim (refer to paragraph 3 of the Reporter's decision on expenses), it can be seen that the claim substantially failed as the appellant sought to recoup the whole of the costs from the Council by way of an award of expenses. The actual award of expenses is narrow in focus, relating solely to the preparation by the appellant of a precognition relating to design matters. On this matter alone, had the Council defended this aspect of the Council refusal, the potential for a more substantial award of costs may have been greater.
- 3.5 The Council's Law and Administration Services has reviewed the Reporter's decision on expenses and has advised that there is no basis in law, or economic sense, to challenge the award. The amount of the expenses which are properly chargeable can be argued by the Council at a Taxation (Audit) Hearing, the date for which has not yet been set.

#### **4.0 RECOMMENDATION**

- 4.1 That the Planning Committee note the above report.

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**Director of Development Services**

**Date: 18 February 2009**

#### **LIST OF BACKGROUND PAPERS**

1. Reports to Planning Committee dated 06 August and 06 October 2008 (Ref. 05/0912/FUL).
2. Scottish Government Directorate for Planning and Environmental Appeals Decision Notice : Claim for an Award of Expenses, Planning Appeal Ref. P/PPA/240/228.
3. Position Statement, Ryden, Planning Appeal, Northfield, Dunipace.

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

**FALKIRK COUNCIL**

**Subject:**       **ERECTION OF 55 DWELLINGHOUSES AND 36 FLATS WITH  
ASSOCIATED ROADS AND INFRASTRUCTURE AT LAND TO THE  
NORTH OF 44 NORTHFIELD ROAD, NORTHFIELD ROAD, DUNIPACE  
FOR PERSIMMON HOMES EAST SCOTLAND (05/0912/FUL)**

**Meeting:**       **REGULATORY COMMITTEE**

**Date:**           **6 AUGUST 2008**

**Author:**       **DIRECTOR OF DEVELOPMENT SERVICES**

**Local Member:**       Councillor Jim Blackwood  
                          Councillor John McNally  
                          Councillor Martin David Oliver  
                          Councillor Alexander John Waddell

**Community Council:**   Denny and Dunipace

**Case Officer:**        Brent Vivian (Planning Officer), ext 4935

**1.       BACKGROUND**

- 1.1       Members will recall that at the meeting on 28 November 2007 the Regulatory Committee refused planning permission for the above development for reasons relating to traffic impact/road safety concerns, concerns of flooding, loss of open space and design concerns. These reasons in full are attached as per the decision notice which was issued thereafter (Appendix 1). The purpose of this report is to advise Members on the proposed planning grounds on which to defend an appeal against refusal and to seek their agreement to these grounds.
- 1.2       The appellant has exercised their right of appeal against this decision. Despite the appellant's wish to have the appeal heard by Written Submissions Procedure, the Directorate for Planning and Environmental Appeals has now intimated that the appeal will be the subject of a Public Local Inquiry. The reasons for this are the technical nature of the issues and the scale of public objection. The pre-inquiry meeting is scheduled for Wednesday 20 August in the evening and it will be held in the local primary school. The Public Local Inquiry itself is scheduled to commence on 3 November 2008 for 3-4 days. It is important that the pre-inquiry meeting is fully advised on the case the Council intends to make at the inquiry, hence this report.

- 1.3 As this decision was taken contrary to the recommendation of the Director of Development Services, planning consultants (Ryden) have been appointed to prepare the Council's case for the Inquiry. The consultant will receive technical support from planning officers.
- 1.4 The consultants have recently reviewed the case as part of preparing a defense and have advised that most of the reasons for the refusal contained in the decision notice are not sustainable. The consultants are also of the view that, should the appellant (Persimmon Homes) apply for expenses in the appeal, they are likely to be successful if the Council relies on the reasons set out in the decision notice. It is the recommendation of the consultants that 3 out of the 4 reasons for refusal (the issues relating to traffic impact/concerns, flood risk concerns and design/character concerns) are conceded and not defended at the Inquiry. This is explained fully in the consultant's position statement (Appendix 2).
- 1.5 However it should be noted that the consultants advise that when considering a development which is the subject of an appeal, the opportunity exists to open the debate to all matters relating to the application. It is their view that there may be scope to defend the appeal on Local Plan policy support for the retention of open space, the deallocation of the site for housing in the Falkirk Council Local Plan Finalised Draft (Deposit Version) April 2007 and on the grounds that if the site is being developed for housing this would be inconsistent with the Structure Plan. Detailed reasons for these arguments are outlined in the consultant's position statement in Appendix 2.

## **2. RECOMMENDATION**

- 2.1. **To accept the advice offered by Messrs Rydens in their position statement (appendix 2) and to seek to defend the appeal on the grounds recommended by the planning consultants in the statement.**



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Acting Head of Planning & Transportation

**Date: 31 July 2008**

## Appendix 1

Application No.  
**05/0912/FUL**

This Decision Notice is issued under the Town and Country Planning (Scotland) Acts. It should be read, together with the accompanying plans; if any details differ, then the Decision Notice takes priority.



**Falkirk Council**

### **Town and Country Planning (Scotland) Acts as Amended**

#### **Refusal of Detailed Planning Permission**

Agent:

Roy Mitchell Design Ltd  
1 Glenbervie  
Glenbervie Business Park  
Larbert  
FK5 4RB

Applicant:

Persimmon Homes East Scotland  
Royston Road  
Deans Industrial Estate  
Livingston  
EH54 8AH

In respect of the application registered on 4 October 2005 for the proposals described below,

**Development**    **Erection of 55 Dwellinghouses and 36 Flats with Associated Roads and Infrastructure**

**Location**        **Land To The North Of 44 Northfield Road, Northfield Road, Dunipace,**

and in accordance with the plans docquetted as relative hereto, Falkirk Council, in exercise of its powers under the above legislation, hereby

#### **Refuses Detailed Planning Permission**

This decision is issued subject to the following:-

Reason(s):

1. It is considered that the proposed residential development would be unacceptable as:-
  - i. It is considered that the proposed residential development would be unacceptable as related traffic increases would be too great for the existing

- roads infrastructure and therefore would result in associated congestion and road safety concerns.
- ii. It is considered that the proposed residential development would be unacceptable as there are inadequate drainage proposals to guarantee that flood water from the application site will not be dispersed to other areas.
  - iii. It is considered that the proposed residential development would be unacceptable as a result of the loss of open space.
  - iv. It is considered that the proposed residential development would be unacceptable as a result of the incorporation of proposed flats in southern part of the application site being out of keeping with the character of the local area.

As a result of the above it is considered that the development would be contrary to policy ENV4 of the Falkirk Council Structure Plan, policies DEN6, DEN17, and DEN22 of the adopted Denny and District Local Plan, and policies SC2, SC6, SC12, ST7 and ST12 of the Falkirk Council Local Plan Finalised Draft (Deposit Version).

20 December 2007

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Director of Development Services



## **Position Statement**

### **Planning Appeal**

**Site :** Northfield, Dunipace  
**Client :** Falkirk Council

#### **Aims of Report**

To identify the key issues relating to the above appeal, associated risks for the Council and to identify a strategy to protect the Council's position.

#### **Background**

Following the submission of an appeal by Barton Wilmore, on behalf of Persimmon Homes, the Scottish Government's Directorate for Planning & Environmental Appeals (DPEA) has determined that the appeal should be considered by an inquiry. The decision to progress through inquiry is based on :-

1. The technical reasons for refusal.
2. The level of public interest

#### **Pre Inquiry Meeting**

A pre-inquiry meeting has been arranged for the evening of 20 August and is to be held in the local primary school.

The aim of this meeting is to sort out the arrangements for the inquiry. Outline statements of case may be required and we await confirmation from DPEA on this matter.

#### **Reasons for Refusal**

Following a meeting with relevant Council officials, consideration has now been given to the most appropriate course of action. There are a number of reasons, primarily technical in nature, given for refusal of the application. These are detailed below, followed by an assessment of their robustness.

##### ***Reason 1***

*It is considered that the proposed residential development would be unacceptable as related traffic increases would be too great for the existing roads infrastructure and therefore would result in associated congestion and road safety concerns.*



# Ryden

## **– Observations**

Transport Assessment (TA) was submitted as part of the application. The TA findings that the existing road infrastructure has sufficient capacity to accommodate the proposed development has been accepted by the Council's Transport Planning Unit. In view of this, limited scope to promote a robust defence. Although scope does exist for members of the public to put forward a subjective case, a unified body representing the residents views may be more effective than individual presentations.

## **- Recommendations**

Encourage, where possible, residents to make representations. Council to concede.

## **Reason 2**

*It is considered that the proposed residential development would be unacceptable as there are inadequate drainage proposals to guarantee that flood water from the application site will not be dispersed to other areas.*

## **– Observations**

Flood Risk Assessment prepared and accepted by Council's Consultant. In view of this very difficult to defend.

## **- Recommendations**

Concede

## **Reason 3**

*It is considered that the proposed residential development would be unacceptable as a result of the loss of open space.*

## **– Observations**

The Committee Paper states that the Draft Open Space strategy indicates that sufficient open space exists elsewhere. However, the strategy had not been subject to meaningful consultation or approved by Committee.

## **- Recommendation**

Develop case further, focusing on Open Space strategy.

## **Reason4**

*It is considered that the proposed residential development would be unacceptable as a result of the incorporation of proposed flats in southern part of the application site being out of keeping with the character of the local area.*

## ***– Observations***

The inclusion of 3 storey flats within the development is of little or no significance within the context of the characteristics of the area.

## **- Recommendation**

Concede

## ***Further Observations***

When considering a development which is the subject of an appeal, the opportunity exists to open the debate to all matters relating to the application. Given that the reasons for refusal, provide only limited scope to prepare a robust, defensive case, it would be prudent to consider other aspects of the application. Having reviewed the relevant papers and policy documents I would suggest that we focus on :-

## **Denny & District Local Plan**

The site in question is identified as Northfield, Dunipace with a capacity of 60 units and is included in Figure 3.2 "Brownfield Development Opportunities." From a site inspection and review of historical maps, it is clear that the site is not brownfield, but greenfield. Therefore, the allocation of the site under DEN 4 New Residential Development is flawed. Please note the supporting information for DEN 4 refers to the Northfield site as a Brownfield site.

It can be argued that the site was allocated within the adopted Local Plan on a false premise as it was not a brownfield site. In view of this, the adopted Local Plan reference to "open space is considered to be an appropriate alternative use" becomes more pertinent. The Local Plan also states that "environmental improvements could be pursued as a second phase to works described by Opportunity REC2". Policy REC2 Tygetshaugh (North) Dunipace promotes environmental improvements in the immediate vicinity of the site. Again, this adds some limited weight to the use of the land as open space.

It could also be argued that the Denny and District Local Plan adopted in June 1996 is significantly out of date and does not accord with the most recently approved Structure Plan.

## **Falkirk Council Local Plan Finalised Draft (Deposit Version) April 2007 (FCLP)**

The FCLP is a material consideration. The FCLP does not allocate the site for housing and this de-allocation was based on concerns relating to flooding and also revised Structure Plan requirements. Although difficult to defend the reason relating to flooding, the Structure Plan argument is worth exploring further.

# Ryden

## **Structure Plan Requirements**

The Structure Plan requirement for Denny / Dunipace was very significantly reduced from 1,800 units to 1,000 units by an alteration to the Falkirk Structure Plan, agreed by Council in March 2005. The Finalised Draft LP required to be consistent with the Structure Plan and the deposit version of the Falkirk Local Plan allocates sufficient housing land to meet Structure Plan requirements to 2020.

An additional, relatively large scale residential development considered within the context of Dunipace, would be inconsistent with the Structure Plan.

It must be noted that development of the site is given support by SC2 "Windfall Housing Development within the Urban / Village Limit". Although it should be noted, the supporting text focuses to a great extent on brownfield development. Also Policy SC2 gives support to development of open urban space whose loss can be justified in terms of Policy SC12, which requires open space audit, or site specific local audit, demonstrating that the area is surplus to requirements. This point is considered in more detail below:-

## **Open Space Audit**

The Open Space Audit against which the loss of this site was assessed was only in draft form, has no committee approval and has not been the subject of consultation. The status and robustness and therefore the relevance of the open space audit (draft) must be questioned.

There was no open space audit in accordance with the requirements of SPP11 Open Space and Physical Activity in place to support the loss of this land at the time of the application. Although it is understood the Council is now progressing with the audit.

## **Anticipated Costs**

It is very difficult to anticipate the likely costs associated with the appeal. However, I would anticipate that the Council's costs could range from £10k to £30k. Furthermore, it is prudent to consider that the appellants are likely to apply for costs and these could be again in the region of £10k to £30k.

Ged Hailey  
22 July 2008

**FALKIRK COUNCIL**

**Subject: ERECTION OF 55 DWELLINGHOUSES AND 36 FLATS WITH  
ASSOCIATED ROADS AND INFRASTRUCTURE AT LAND TO THE  
NORTH OF 44 NORTHFIELD ROAD, NORTHFIELD ROAD, DUNIPACE  
FOR PERSIMMON HOMES EAST SCOTLAND - 05/0912/FUL**

**Meeting: REGULATORY COMMITTEE**

**Date: 6 October 2008**

**Author: DIRECTOR OF DEVELOPMENT SERVICES**

**Local Member:** Councillor Jim Blackwood  
Councillor John McNally  
Councillor Martin David Oliver  
Councillor Alexander John Waddell

**Community Council:** Denny and Dunipace

**Case Officer:** Brent Vivian (Planning Officer), ext 4935

**1. BACKGROUND**

- 1.1 At the meeting on 28 November 2007 the Regulatory Committee refused planning permission for the above development for reasons relating to traffic impact/road safety concerns, flood risk, loss of open space and design concerns.
- 1.2 Members will recall that, at the meeting of this Committee on 6 August 2008, agreement was sought from Members on the proposed planning grounds to defend an appeal against the Council's refusal. This followed the Directorate for Planning and Environmental Appeals intimating that the appeal will be the subject of a Public Local Inquiry, and the appointment of planning consultants (Ryden) to prepare the Council's case for the Inquiry. A copy of the officer's report considered at the 6 August meeting is attached as Appendix 1. The position statement of the consultant in respect of the planning grounds to defend the appeal, which was considered at the 6 August meeting, is attached as Appendix 2.
- 1.3 The purpose of this report is to update Members on the Public Local Inquiry process and consider further the proposed planning grounds to defend the appeal.

- 1.4 A pre-inquiry meeting was held on 20 August and a note of this meeting has been sent to all relevant parties. It was advised at this meeting that all written submissions and all statements of case (of those parties who opt to take part in the inquiry) were due by 19 September. Copies of all documents that are to be referred to in the inquiry had to be lodged by 3 October and all witnesses must lodge their statement (precognitions) by 17 October. These timeframes dictate that the earliest practicable start date for the inquiry is Monday 10 November, subject to the availability of a suitable venue.
- 1.5 A web page on the Falkirk Council web-site is being prepared to allow interested parties to kept informed on the inquiry process. It is anticipated that all pre-inquiry documentation will be able to be accessed on the web-page.
- 1.6 At the 6 August Committee meeting, the Committee agreed:-
- (i) To a traffic consultant being engaged to review the validity of the traffic assessment and to report back to a future meeting of the Committee prior to finalising a decision on this particular matter.
  - (ii) That the planning consultant's advice be otherwise accepted.
- 1.7 In response to item (i), a traffic consultant, Alex Sneddon of Saville Bird & Axon, was appointed to review the validity of the Buchanans traffic assessment submitted with the application. He has considered three issues in this review (transport policy, traffic impact and road geometry) and has reported his findings to the Council's planning consultant.
- 1.8 On transport policy, he advises that there is nothing to pursue on accessibility grounds as Barnego Road is a bus route (within 400 metres walking distance of the site), there are local shopping facilities within the neighbouring estate and Dunipace itself lies within 1600 metres walking distance, in accordance with PAN 75.
- 1.9 On traffic impact, he advises that there is nothing to take issue with in the Buchanans Transport Assessment, therefore it becomes a subjective argument about whether Barnego Road and Northfield Road are capable of accommodating the additional development traffic. In that regard he states that a defence is made harder owing to the relatively new development areas already at the end of Northfield Road and although the present area feels quite congested (owing to parked vehicles and existing calming measures), that is arguably positive as it reduces vehicle speeds to the benefit of playing children. He concludes that traffic impact arguments that could be raised and successfully defended are therefore few and that if the applicant is willing to accept a condition to enhance existing traffic calming measures, the entire traffic impact argument would be undermined.
- 1.10 On traffic geometry, the consultant states that he instinctively feels that the proposed development really pushes at acceptable limits off this old road system, however, there is not anything around which a coherent argument could be structured to advance the Council's case. His detailed comments in relation to road geometry are summarised in a position statement prepared by the planning consultant, which is attached as Appendix 3.
- 1.11 In light of the findings of the traffic consultant, the planning consultant has set out a recommendation in his position statement, attached as Appendix 3. It is to concede on traffic impact matters but seek agreement over appropriate condition relating to traffic calming.

2. RECOMMENDATION

- 2.1 To accept the advice offered by Messrs Rydens in their position statement (Appendix 3) and therefore seek to defend the appeal on the grounds recommended in the Messrs Ryden position statement considered by the Committee at its 6 August meeting (Appendix 2).

A handwritten signature in black ink, appearing to be 'M. J. Bell', written over a light blue rectangular background.

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Acting Head of Planning & Transportation

Date: 30<sup>th</sup> September 2008