

**FALKIRK COUNCIL**

**Subject:** ERECTION OF DWELLINGHOUSE AT CAVALIER INN, CROSS BRAE, SHIELDHILL, FALKIRK, FK1 2EQ FOR MR MCMILLAN – P/09/0743/FUL  
**Meeting:** PLANNING COMMITTEE  
**Date:** 21 April 2010  
**Author:** DIRECTOR OF DEVELOPMENT SERVICES

**Local Members:** Councillor Gordon Hughes  
Councillor Stephen Fry  
Councillor John McLuckie

**Community Council:** Shieldhill and California

**Case Officer:** Stephen McClure (Planning Officer) ext: 4702

**UPDATE REPORT FOLLOWING COMMITTEE SITE VISIT**

1. Members will recall that this application was originally considered at the meeting of the Planning Committee on 24 March 2010 (copy of previous report appended), when it was agreed to continue the application and to undertake a site visit. This visit took place on 15 April 2010.
2. At the site meeting, it was highlighted to Members that the Cavalier Inn, of which the site is to the rear, had received permission to be converted to a residential flat. However, this has not as yet been implemented, and the property therefore can still be used as a public house without the need for further planning permission. It was also highlighted to Members that, given the proposed position of the dwelling, it would suffer from privacy issues, overlooking issues and overdevelopment of the plot.
3. The indicative position of the dwelling in relation to the boundary wall shown to assist Members on site. The estimated position of the top ridgeline of the roof was also pointed out.
4. Two members of the public from neighbouring dwellings also attended the meeting and raised concerns in respect of the the proposed dwelling which relate to loss of privacy, overlooking and overdevelopment of the site. The fact that the same type of application had been refused several times, including an appeal to Scottish Ministers was also raised.
5. Parking provision issues were raised; however, the Roads Development Co-ordinator explained that the parking and turning within the site was sufficient for the proposed dwelling. When asked if it would still be satisfactory if the Cavalier Inn was converted to flats, it was explained that each application has to be looked at individually. However, due to the land owned to the front and the removal of an extension at the rear of the Cavalier Inn, sufficient parking provision could be achieved.

6. Finally, it was also highlighted to Members that, if the Cavalier Inn remained as a public house, the Environmental Protection Unit would have concerns with the proposed dwelling and noise intrusion.

## **7. RECOMMENDATION**

- 7.1 It is therefore recommended that Committee refuse the planning application for the following reason:

- (1) The proposed development does not accord with the terms of Policy Rural 3 (Development Within Village Areas) of the Rural Local Plan, Policies SC2 (Windfall Housing Within Village Limits) and SC8 (Infill Housing and Sub Division of Plots) of the Falkirk Council Local Plan Finalised Draft (Deposit Version) or with the Falkirk Council Housing Layout and Design Supplementary Planning Guidance Note as the proposed dwelling would not provide occupants with a satisfactory level of privacy or residential amenity, the erection of a dwelling on this plot would adversely affect the privacy and residential amenity enjoyed by neighbouring properties. The required turning area and space for parking of two vehicles would further reduce garden ground, resulting in an unacceptable overdevelopment of this restricted site.

**Informative:**

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

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**Director of Development Services**

**Date: 20 April 2010**

### **LIST OF BACKGROUND PAPERS**

1. Letter of objection from Mr Grant McNeill, Grantoria, Main Street, Shieldhill, Falkirk FK1 2HA on 8 December 2009
2. Letter of objection from Mr & Mrs Alex & Gwen Dick, Alameda, Main Street, Shieldhill, Falkirk FK1 2HA on 5 December 2009
3. Falkirk District Council Local Plan
4. Falkirk Council Local Plan Finalised Draft (Deposit Version)
5. Falkirk Council Housing Layout and Design Supplementary Planning Guidance Note.

Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504702 and ask for Stephen McClure (Planning Officer).

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**Meeting:** PLANNING COMMITTEE  
**Date:** 24 March 2010  
**Author:** DIRECTOR OF DEVELOPMENT SERVICES

**Local Members:** Councillor Gordon Hughes  
Councillor Stephen Fry  
Councillor John McLuckie

**Community Council:** Shieldhill and California

**Case Officer:** Stephen McClure (Planning Officer) ext: 4702

**1. DESCRIPTION OF PROPOSAL / SITE LOCATION**

- 1.1 The application site is a parcel of land at the rear of a public house (currently closed and permission has been gained for conversion to flatted dwellings). The site has a shared access which is used by the public house and the current flatted dwelling above the public house. The site is surrounded on all sides by residential properties and does not have a direct street frontage. The site itself is relatively flat, but the surrounding land does slope downwards in a south to north direction. It is proposed to erect a one and a half storey dwelling in the yard/garden area at the rear of the public house (Cavalier Inn).

**2. REASON FOR COMMITTEE CONSIDERATION**

- 2.1 The application has been called in by Councillor J McLuckie.

**3. SITE HISTORY**

- 3.1 F/95/0970 – erection of dwellinghouse (outline) – refused 26 March 1996.
- 3.2 F/96/0406 – erection of dwellinghouse (outline) – refused 7 August 1996.
- 3.3 F/96/0669 – erection of dwellinghouse (detailed) – refused 7 November 1996. An appeal to Scottish Ministers was dismissed on 3 July 1997.
- 3.4 06/1021/OUT – erection of dwellinghouse (outline) – refused 15 December 2006.
- 3.5 P/07/0979/FUL – erection of dwellinghouse (detailed) – withdrawn 28 February 2008.

- 3.6 P/08/0672/FUL – erection of dwellinghouse (detailed) – refused 15 January 2009.
- 3.7 P/08/0819/FUL – change of use from public house to form flatted dwelling (detailed) - granted 18 December 2008.

#### **4. CONSULTATIONS**

- 4.1 Roads Development Unit have made comments regarding the requirements for the parking and turning facilities at the site. This would be achievable with the ground available and would have to be conditioned on any grant of approval.
- 4.2 Scottish Water have not objected to the proposal.
- 4.3 Environmental Protection Unit have made comment that if the public house remains closed and does not revert to the former use or similar, the Environmental Protection Unit would not have an objection regarding noise. It has however been requested that should a recommendation for approval be made, the applicant shall undertake a site investigation to identify ground contamination on the site.

#### **5. COMMUNITY COUNCIL**

- 5.1 Shieldhill and California Community Council did not comment on the proposal.

#### **6. PUBLIC REPRESENTATION**

- 6.1 Two letters of objection have been received. The issues raised can be summarised as follows:
- Concerns with the proposed height obscuring the view from the lower windows at the neighbouring property of Alameda.
  - The proposal has already been refused eight times.
  - There would be issues with parking and access to the property.
  - Extra accommodation would cause further traffic issues at an already congested location.
  - Overshadowing of neighbouring properties.
  - Reducing the value of neighbouring properties.
  - Previous refusal reasons still exist at the site.

## **7. DETAILED APPRAISAL**

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

Accordingly,

### **7a The Development Plan**

#### ***Falkirk Council Structure Plan***

7a.1 There are no relevant policies within the Falkirk Council Structure Plan.

#### ***Rural Local Plan***

7a.2 Policy RURAL 3 ‘Development within the Village Areas’ states:

*“That within the village areas as defined on the Village Maps :-*

- 1. Development will generally be acceptable provided that it is compatible with neighbouring uses and the character of the village and it accords with the Local Plan strategy and all other relevant District Council policies and standards of provision.*
- 2. Favourable consideration will only be given to business activities which are compatible with the residential character of the village and in particular, there will be a presumption against class 5 - 10 industrial uses, in terms of The Town and Country Planning (Use Classes) (Scotland) Order 1989.*
- 3. Development proposals should take cognisance of the District Council’s “Design Guide For Buildings In The Rural Areas” and any relevant supplementary design briefs.”*

7a.3 The use of the proposed property would be in keeping with surrounding properties, as this is mainly residential. However, the proposed design does not follow the Falkirk Council Design Guide for Buildings in the Rural Areas, especially with regards to layout and the proposed guidance on infill developments. The proposal therefore does not accord with Policy Rural 3.

7a.4 Accordingly, the proposal does not accord with the Development Plan.

### **7b Material Considerations**

7b.1 The material considerations are the Falkirk Council Local Plan Finalised Draft (Deposit Version), Falkirk Council Supplementary Guidance and assessment of public representations.

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

7b.2 Policy SC2 - ‘Windfall Housing Development Within The Urban / Village Limit’ states:

*“Housing development within the Urban and Village Limits, in addition to proposals identified within the Local Plan, will be supported where the following criteria are met:*

- (1) *The site is a brownfield one, or comprises urban open space whose loss can be justified in terms of Policy SC12;*
- (2) *The proposed housing use 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 physical infrastructure, such as roads and drainage, water supply, sewage capacity and community facilities, such as education and healthcare, have the capacity to accommodate the increase in use associated with the proposed development, or can be upgraded through appropriate developer contributions as required by Policy SC11;*
- (5) *In the case of small gap sites and sub-divided plots, Policy SC8 is satisfied; and*
- (6) *There is no conflict with any other Local Plan policy or proposal.”*

7b.3 Policy SC8 ‘Infill Development and Subdivision of Plots’ states:

*“Proposals for the erection of additional dwellinghouses within the curtilage of existing properties or on small gap sites will only be considered favourably where:*

- (1) *the scale, density, disposition and design of the proposed houses respect the architectural and townscape character of the area;*
- (2) *adequate garden ground can be provided to serve the proposed houses without an unacceptable impact upon the size or functioning of existing gardens;*
- (3) *adequate privacy will be afforded to both the proposed houses and neighbouring properties;*
- (4) *the proposal would not result in the loss of features such as trees, vegetation or walls, such that the character or amenity of the area would be adversely affected;*
- (5) *the proposed vehicular access and other infrastructure is of an adequate standard; and*
- (6) *the proposal complies with other Local Plan policies.”*

7b.4 It is not considered that this site could offer an acceptable level of residential amenity to the proposed dwelling. The application site is overlooked by neighbouring dwellings and is to the rear of a public house, which has been granted permission to be converted to flatted dwellings. However, this would not alleviate the issue of overlooking. It is also not considered that an acceptable level of private amenity space could be provided at the dwelling.

7b.5 It is also considered that the close proximity to the rear of the public house would not be in the best interests of the environmental amenity of the occupants of the proposed dwelling. Although the public house has received permission to convert to flatted dwellings, this has not been implemented. Environmental Protection has also stated that they would not be concerned in relation to noise, as long as the public house or a similar use was not reinstated. The environmental amenity may improve if the conversion to flatted dwellings is implemented, although the issue of overlooking would be increased.

7b.6 However, it is not considered that the current proposal could achieve an acceptable level of residential amenity. The proposed garden ground is not of an adequate size and does not provide an area of private garden ground due to the levels of neighbouring dwellings. The garden ground available is further reduced by the requirements for two parking spaces and a turning area within the curtilage of the dwelling. An adequate level of privacy would not be provided for both the proposed dwelling and the existing neighbouring properties. The privacy for the proposed dwelling would further be reduced if the public house at the site were to be converted into flatted dwellings.

7b.7 Although at present not trading, the close proximity of the proposed dwelling to the rear of a public house is not considered to be in the best interests of environmental amenity, as the public house could recommence operating without the need for further planning permission. This view is supported by the consultation response from Environmental Protection, who would only consider it favourable if the use as a public house or similar was not reinstated.

7b.8 The proposal therefore does not accord with Policy SC2 and SC8.

### ***Falkirk Council Supplementary Guidance***

7b.9 Falkirk Council Housing Layout and Design Supplementary Planning Guidance Note – the proposed dwelling does not meet the criteria set out in the guidance for backland developments. The current host property would continue to dominate the site; the amenity and size of the proposed private gardens would not meet that within the guidance and the resultant outlook from the proposed dwelling would create less than satisfactory residential amenity. The proposal therefore does not accord with the above Guidance Note.

### ***Assessment of Public Representations***

7b.10 A loss of view is not a material consideration.

7b.11 The proposal for a new dwelling at this location has been refused 5 times before, although there have been various designs submitted. Each application is assessed on its own merits.

7b.12 The Roads Development Unit has been consulted on the application and has stated the requirements for parking and turning within the site, which is achievable. It is not considered that there is an issue with this.

7b.13 The Roads Development Unit does not consider this area to be congested, and the proposed parking and turning can be achieved at the site.

7b.14 Due to the levels at the site, the proposed dwelling would not overshadow neighbouring properties to a level that would be considered unacceptable.

7b.15 Impact upon property value is not a material planning consideration.

7b.16 The proposal has been fully assessed on the information submitted and it is considered that previous concerns are still valid.

### **7c Conclusion**

7c.1 It is considered that the proposal is not acceptable development, as it would result in an unacceptable form of backland development and redevelopment of the site and lead to a lack of privacy resulting from overlooking for both the proprietor, occupants and neighbours. As such is not in accordance with the Development Plans for the reasons stated in this report. No material considerations would outweigh this conclusion.

## 8. RECOMMENDATION

8.1 It is therefore recommended that Committee refuse the planning application for the following reason:

- (1) The proposed development does not accord with the terms of Policy Rural 3 (Development Within Village Areas) of the Rural Local Plan, Policies SC2 (Windfall Housing Within Village Limits) and SC8 (Infill Housing and Sub Division of Plots) of the Falkirk Council Local Plan Finalised Draft (Deposit Version) or with the Falkirk Council Housing Layout and Design Supplementary Planning Guidance Note as the proposed dwelling would not provide occupants with a satisfactory level of privacy or residential amenity, the erection of a dwelling on this plot would adversely affect the privacy and residential amenity enjoyed by neighbouring properties. The required turning area and space for parking of two vehicles would further reduce garden ground, resulting in an unacceptable overdevelopment development of this restricted site.

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Director of Development Services

Date: 16<sup>th</sup> March, 2010

### LIST OF BACKGROUND PAPERS

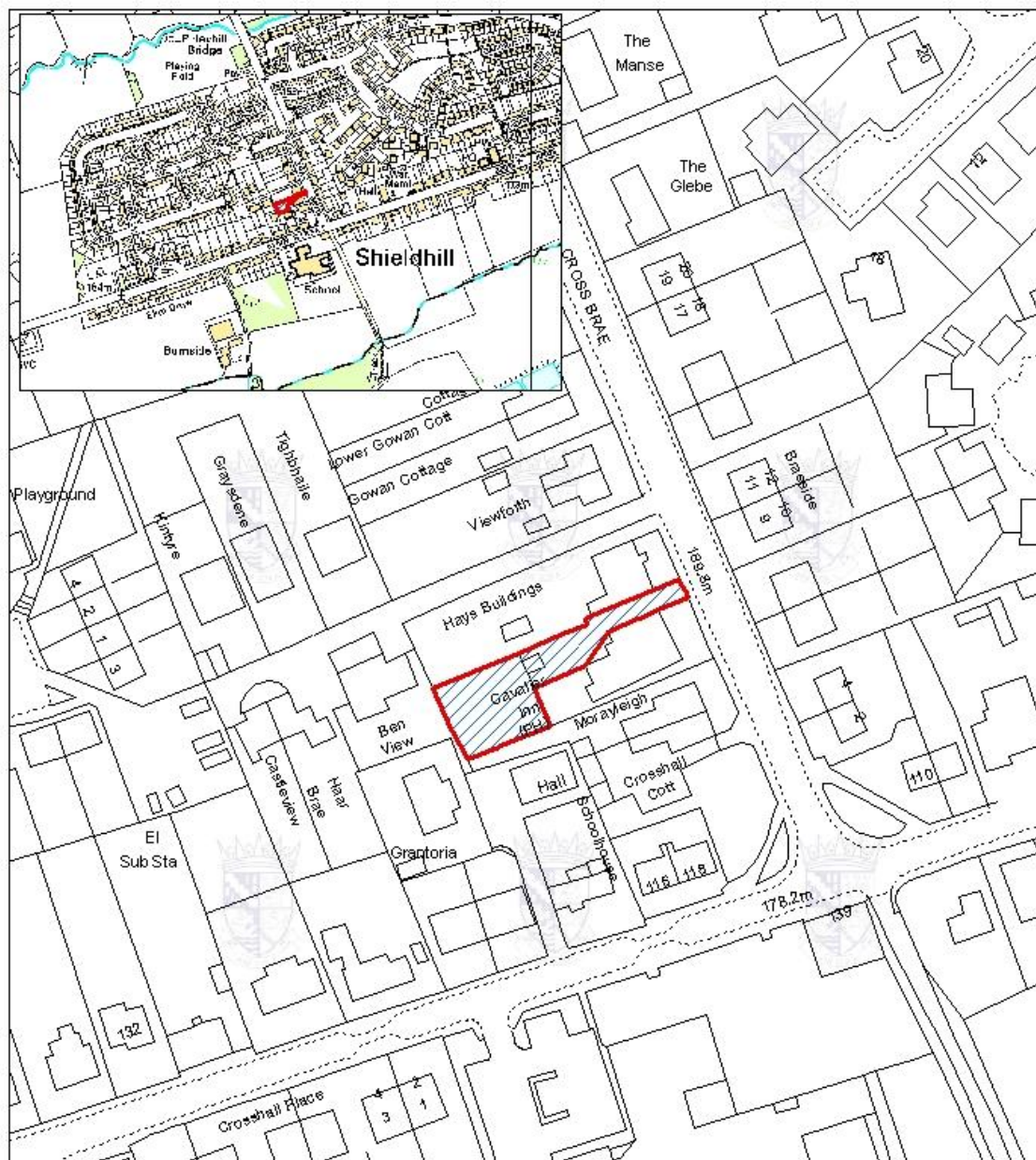
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