

**FALKIRK COUNCIL**

**Subject:** USE OF LAND FOR THE SITING OF PORTABLE STRUCTURES, ERECTION OF FENCING AND THE KEEPING OF DOGS (RENEWAL OF TEMPORARY PLANNING PERMISSION P/09/0161/FUL) AT DARNBOGUE FARM, PLEAN, FK2 8RY – P/10/0638/FUL

**Meeting:** PLANNING COMMITTEE

**Date:** 1 December 2010

**Author:** DIRECTOR OF DEVELOPMENT SERVICES

**Local Members:** Ward - Carse, Kinnaird and Tryst

Councillor Steven Carleschi  
Councillor Lynda Kenna  
Councillor Charles MacDonald  
Councillor Craig Martin

**Community Council:** Airth Parish

**Case Officer:** John Milne (Senior Planning Officer) Ext. 4815

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

- 1.1 The application site is located off a vehicular access track to Darnbogue Farm, some 500 metres from Moss Road and to the south from a small group of houses known as Fairfields.
- 1.2 The application is to extend a temporary permission previously granted under P/08/0161/FUL – use of land for the siting of portable structures, erection of fencing and keeping of dogs (temporary and retrospective) at Darnbogue Farm, Plean, which was granted on 5 November 2009 following consideration by the Planning Committee, for a period of 1 year. Conditions in relation to improved access arrangements onto Moss Road have been satisfactorily complied with.
- 1.3 The application site comprises 11 temporary buildings and temporary fencing for the keeping of dogs and livestock, with the addition of a feedstore (measuring 3 metres x 4 metres) container. The structures mostly comprise converted shipping containers, painted dark green.

**2. REASON FOR COMMITTEE CONSIDERATION**

- 2.1 The application has been called to Planning Committee by Councillor Craig Martin.

### **3. SITE HISTORY**

- 3.1 Agricultural notification for farm outbuilding – P/09/0421/AGR – was acknowledged on 15 July 2009 as development not requiring planning permission.
- 3.2 Planning application P/09/0161/FUL - use of land for the siting of portable structures, erection of fencing and keeping of dogs (temporary and retrospective) granted temporary planning permission 5 November 2009.

### **4. CONSULTATIONS**

- 4.1 The Roads Development Unit would require enhanced access provision should the use extend beyond the revised timescale requested.
- 4.2 Scottish Water has no objection to the proposal.
- 4.3 The Environmental Protection Unit advise that no evidence has been collected to give rise to concerns regarding noise, dog breeding or sale of pups. It should be noted that issues relating to breeding and sale of dogs are not material planning considerations.

#### ***Noise from Barking Dogs***

- The majority of noise complaints have generally been during night-time i.e. between 20:00 – 01:00 hours.
- Investigations have established that while dog barking from the site is audible, it falls below the criteria required for formal action in terms of Part 5 of the Antisocial Behaviour etc. (Scotland) Act 2004. The noise levels arising from the barking dogs which have been witnessed to date on the site, while audible, do not in the opinion of Environmental Health Officers constitute a statutory nuisance in terms of section 79 of the Environmental Protection Act 1990, as amended.
- Residents of the neighbouring houses, approximately 500m away, who are affected by the dog barking have been advised to these findings, and have also been advised that they may take a private action against the site operator in terms of the Civic Government (Scotland) Act 1982, section 49, which deals with Dangerous or Annoying Creatures. In terms of this legislation, there is a lesser burden of proof in respect of proving "annoyance" as the result of noise from barking dogs.

#### ***Alleged Breeding of Dogs***

- A number of reports from various sources have been received regarding the alleged breeding of dogs. Consequently officers have visited the site on a regular basis; however a sufficient level of evidence has not been collected at this time to establish that a business is being operated for the purpose of breeding dogs for sale.

### ***Alleged Sale of Puppies***

- A number of reports from various sources have been received regarding the alleged sale of puppies. Consequently Environmental Health officers have visited the site on a regular basis; however a sufficient level of evidence has not been collected at this time to establish that a business is being operated for the purpose of selling puppies.

4.4 The Scottish Society for the Prevention of Cruelty to Animals have no objection to the application.

4.5 Stirling Council have no objections.

## **5. COMMUNITY COUNCIL**

5.1 Airth Parish Community Council offer the following comments:-

- Homeowners complain of rats in the vicinity.
- The adjoining agricultural barn is used for boarding of dogs.
- Dogs bark at all times of the day and night. Noise readings should be undertaken.
- The site has been advertised as an equestrian centre.

## **6. PUBLIC REPRESENTATION**

6.1 4 letters of objection have been received from 3 individuals, raising the following concerns:-

- The facility is for dog breeding and sale.
- The applicant's trade credentials are questionable.
- The animals generate considerable noise nuisance to nearby residents.
- Rat movement in the area has increased.
- Conditions on site are of great concern, along with animal welfare issues.
- The applicant does not have a breeding licence.
- The visual appearance of the site is detrimental to amenity.
- The site is an inappropriate location, close to residential properties, and adversely affected by dogs barking and vehicular movements generated from 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 issues of a strategic nature in respect of the development.

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

7a.2 Policy RURAL 1 'New Development in the Countryside' states:

*"That within the countryside (as defined in paragraph 3.19), there will be a general presumption against new development except in the following circumstances :-*

- 1. Housing development absolutely essential to the pursuance of agriculture, forestry or other economic activity appropriate to a rural location. The occupation of new houses shall be limited to persons employed in agriculture as defined in Section 275(1) of the Town and Country Planning (Scotland) Act 1972, or to persons employed in forestry or other appropriate rural activities and the dependants of such persons.*
- 2. On the Slamannan Plateau as indicated on the Policies and Proposals Map, single dwellinghouses developed in conjunction with significant tree planting schemes. Such proposals will be considered on merit with due regard to the provisions of the District Council's "Guide to Tree Planting/Housing Proposals on Slamannan Plateau".*
- 3. Appropriate infill development where a clear gap site exists which would not contribute to ribbon, backland or sporadic development forms.*
- 4. Industrial/business development where there is an overriding national or local need and a rural site is the only suitable location.*
- 5. Development for tourism and countryside recreation purposes where the District Council is satisfied that the proposal requires a rural setting, is appropriate in terms of its type, scale and location and that it would enhance the image of the District. Proposals which accord with the District Council's Tourism Strategy are particularly welcomed.*
- 6. Telecommunications development and development relating to the temporary use of land particularly for the working of minerals. Such proposals will be considered on merit, with due regard to the relevant specialised policies of the District Council.*

*The scale, siting and design of those developments which are granted permission will be strictly controlled. Building designs compatible with the District Council's "Design Guide For Buildings In The Rural Areas" and sympathetic to vernacular architectural forms will be expected."*

7a.3 While the provision of a dog kennelling facility is not essential to a rural location, there are distinct benefits of such a use being located in such a semi-isolated location and affording some remoteness from established urban residential properties. Accordingly, while the development does not neatly fit into the criteria above, it is considered that the use is acceptable within a rural location and is considered to be in accordance with the Development Plan.

7a.4 Accordingly, the proposal accords with the Development Plan.

## **7b Material Considerations**

7b.1 Material consideration may be given to the policies contained within the Falkirk Council Local Plan Finalised Draft (Deposit Version) (April 2007) as amended by the Final Proposed Modifications (June 2010) and letters of public representation.

### ***Falkirk Council Local Plan Finalised Draft (Deposit Version) (April 2007) as amended by the Final Proposed Modifications (June 2010)***

7b.2 Policy EQ19 - 'Countryside' states:

*“(1) The Urban and Village Limits represent the desirable limit to the expansion of settlements for the period of the Local Plan. Land outwith these boundaries is designated as countryside and will be subject to the detailed policies for specific uses indicated in Table 3.3. Development proposals in the countryside for uses not covered by these policies will only be permitted where:*

- it can be demonstrated that they require a countryside location;*
- they constitute appropriate infill development; or*
- they utilise suitable existing buildings.*

*(2) In circumstances where development meets the relevant countryside policy criteria, the scale, siting and design of development will be strictly controlled to ensure that there is no adverse impact on the character of the countryside. In particular:*

- the siting should be unobtrusive, making use of natural features to integrate development into the landform and avoiding skylines;*
- building design should be sympathetic to vernacular building styles and comply with the design principles contained within the Council's 'Design Guide for Buildings in the Rural Areas'; and*
- boundary and curtilage treatments should be sympathetic to the rural area, with a preference for stone walling and hedging using native species.”*

7b.3 It is considered that a rural location is preferable for development of this nature, which would be difficult to integrate into an urban setting.

7b.4 Given that the application seeks a limited extension to the temporary permission previously approved, the building design considerations may be set aside as the structures are capable of being removed at the expiration of a stipulated timescale.

### ***Letters of Public Representation***

7b.5 The manner in which the current facility is operated is not a material planning consideration, in that a change of management would not influence the acceptability or otherwise of the use of the land.

7b.6 The management credentials of the applicant are not a material planning consideration, in that a change of management could occur without recourse to the Planning Authority.

7b.7 The conditions on site and welfare of the animals are not material planning considerations, more competently addressed by animal welfare authorities.

- 7b.8 The visual impact of the site is limited, given the rural location and relative distance from the nearest residential properties. However, the temporary nature of the structures does give rise to concerns in the longer-term in that the collection of structures – consisting of metal storage containers and wooden outbuildings – may be visually improved by more permanent structures specifically designed for the kenneling use.
- 7b.9 The level of noise generated from the site by resident dogs or noise arising from vehicular traffic generated by the facility has not been identified as a statutory noise nuisance by the Environmental Protection Unit.
- 7b.10 The use of the adjacent agricultural barn for kenneling purposes has been investigated and a limited number of dogs were found in the sheds. It is understood that these have been removed.

## **7c Conclusion**

- 7c.1 The proposed development does not offend policies within the Development Plan and no matters raised through consultation or representation would merit the refusal of planning permission.
- 7c.2 It is noted that the application seeks to extend the timescale for the temporary structures, while the applicant considers the submission of a further application for more permanent facilities.
- 7c.3 It is therefore considered that to extend the timescale for a further short period would not prejudice any eventual removal of the temporary structures, while the use of the land for kenneling purposes within a rural location is acceptable.

## **8. RECOMMENDATION**

- 8.1 It is recommended that temporary planning permission be granted subject to the following:-

- (1) This permission shall be valid for a limited period until 1 December 2011 or one calendar year from the date of this decision, whichever is the later, and by that time the use shall cease and the buildings and fencing shall be removed from the site.

### **Reason(s):-**

- (1) To allow the Planning Authority to control the use of the site.

**Informative(s):-**

- (1) For the avoidance of doubt, the plan(s) to which this decision refer(s) bear our online reference number(s) 01 and 02.

**Pp**

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**Director of Development Services**

**Date:** 24 November 2010

**LIST OF BACKGROUND PAPERS**

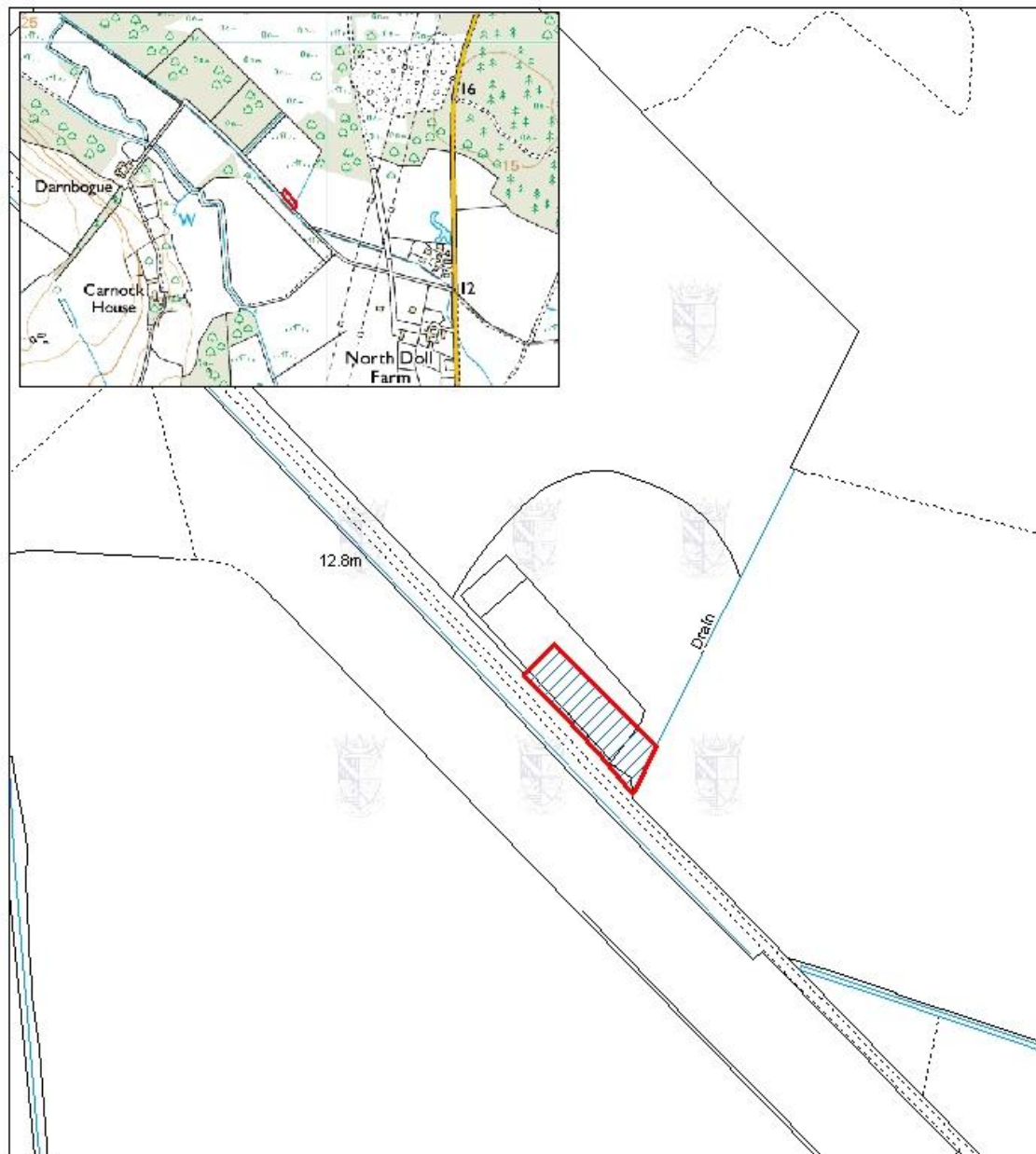
1. Falkirk Council Rural Area Local Plan.
2. Falkirk Council Local Plan Finalised Draft etc.
3. Letter of objection received from Claudia Taylor, Fairview House, 5 Fairfields, Falkirk FK2 8RY.
4. Letter of objection received from Jan Gilmour, 109 Rosebank Avenue, Falkirk FK1 5JR.
5. Two letters of objection received 15 and 26 October 2010 from Chris Donnelly.

Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504815 and ask for John Milne, Senior Planning Officer.

# Planning Committee

## Planning Application Location Plan **P/10/0638/FUL**

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



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