

FALKIRK COUNCIL

Subject: **ERECTION OF DWELLINGHOUSE FOR THE FISHERY
MANAGER AT LAND AT WHINNIE MUIR WOOD WEST OF
TORWOOD HEAD COTTAGE, LARBERT FOR MR RAYMOND
MCCLURG - P/10/0483/FUL**

Meeting: **PLANNING COMMITTEE**
Date: **1 December 2010**
Author: **DIRECTOR OF DEVELOPMENT SERVICES**
Ward – Bonnybridge and Larbert

Local Members: **Councillor Billy Buchanan**
Councillor Tom Coleman
Councillor Linda Gow

Community Council: **Larbert, Stenhousemuir and Torwood**

Case Officer: John Milne (Senior Planning Officer), ext. 4815

1. DESCRIPTION OF PROPOSAL / SITE LOCATION

- 1.1 The application site is adjacent to an existing commercial fishery at Whinnie Muir, close to Torwood. The fishery comprises a pond with a grassed island feature and is stocked with brown trout. The applicant has also installed a temporary caravan and related outbuilding, with roadway access from the A9.
- 1.2 The site of the dwellinghouse is an area of sloping ground, which sits below a landscaped ridgeline. Existing mature landscaping has been augmented by new planting, yet to reach maturity.
- 1.3 The proposed dwellinghouse would be constructed over 2 floors, with the following provision:-
 - On the ground floor, living room, family room, study/office, dining room, kitchen, utility room, 'shower room' and hall,
 - On the upper floor, 3 bedrooms, bathroom and landing.
- 1.4 The applicant has submitted a supporting statement, which indicates that the brown trout fishery has been in operation for over 30 months, comprising a stocked fishery, storage building, related plant and machinery, access road and parking area. Additional tree planting has been initiated and a temporary caravan is housed on site to accommodate the fishery manager.

- 1.5 The original operation of the fishery was based on a paying consortium and, while this customer base is still in place, the fishery has recently been opened up to members of the public to help increase revenue.
- 1.6 The applicant has, as part of the supporting statement, also included a design statement, business plan and development analysis.

2. REASON FOR COMMITTEE CONSIDERATION

- 2.1 The application site has been subject to previous consideration by the Planning Committee and does not wholly accord with Development Plan policy.

3. SITE HISTORY

- 3.1 05/0853/FUL - Formation of Wetland Pond - Granted.
- 3.2 05/0422/FUL - Formation of Wetland Pond - Withdrawn.
- 3.3 06/1116/FUL - Change of Use of Wetland Pond to Class 11 (Assembly and Leisure) Fishery, Erection of Temporary Residential Unit and Storage Building and Formation of Access Road and Car Park - Granted.
- 3.4 F/2005/0009 - Formation of Commercial Fishery Pond, associated Car Parking and Manager's Accommodation - Withdrawn.
- 3.5 P/10/0302/VCR - Erection of temporary residential accommodation (extension of time to condition 2 of planning permission 06/1116/FUL) – Withdrawn (see para 7a.6).
- 3.6 P/09/0519/FUL - Erection of dwellinghouse - Refused.

4. CONSULTATIONS

- 4.1 Falkirk Council's Environmental Protection Unit advise that an informative be imposed on any planning permission addressing the potential of contaminated land being encountered.
- 4.2 Falkirk Council's Roads and Design Unit wishes to ensure that the proposed dwellinghouse would not erode the car parking capacity for the fishery business.
- 4.3 The Scottish Environment Protection Agency do not object to the proposal.
- 4.4 Scottish Water raise no objections, but advise that the grant of any planning permission does not guarantee a connection to Scottish Water infrastructure.
- 4.5 Falkirk Council's Economic Development Unit has no objections to the application.
- 4.6 An Independent Rural Consultant advises that, while the presence of a dwellinghouse would not be essential to the operation of the fishery, there would be operational benefits.

5. COMMUNITY COUNCIL

5.1 Larbert, Stenhousemuir and Torwood Community Council object to the application based on the following:-

- The application is contrary to the Local Plan for the area.
- The size of the proposed house does not appear commensurate with that of the fishery.
- The Community Council would wish to receive more information and seek assurances on the future of the fishery, to ensure that justification for the house is demonstrated.

6. PUBLIC REPRESENTATION

6.1 5 letters of objection have been received, commenting that: -

- The proposed development is contrary to the Local Plan and planning policy in respect development in the countryside. The application site lies outwith the settlement boundary of Torwood.
- There is no need for accommodation adjacent to the “fish farm”. The fish are not livestock who can escape from fields nor do they need tending 24 hours per day.
- The perception locally is that the “fish farm” was created as a way to circumvent planning policy and obtain permission for a house in the woodland area contrary to policy. There is no detectable benefit to the local area from the “fish farm” in terms of jobs or amenity as it does not appear to employ anyone and no local people have been invited to use the fishery either on a membership basis or “pay as you go”. Indeed despite the “right to roam” legislation local people and others from the Larbert area who regularly walk in Torwood have been asked to leave the vicinity of the “fish farm”.
- Good planning policy requires that all of the stated objectives and policies of Falkirk Council are balanced. Given the pace of development within the Larbert area it is essential that rural and countryside areas are protected from development in order to achieve the stated policy objectives relating to biodiversity, wildlife, leisure and conservation. Good planning policy also requires that a distinction is maintained between the urban limits and the rural areas. Further development in Torwood, including the development by the “back door”, as this application is perceived should be resisted.
- There has been energetic campaigning by local people to protect the woodland areas of Torwood, backed up by support from the Community Council and the Woodland Trust. There is a strong perception that if this application were to succeed it would open up the woodland and further development would take place on the back of the currently proposed dwellinghouse.
- The formation of the fishery is a perceived means to an end, and if the dwellinghouse is approved, the fish farm would likely go out of business soon afterwards.

- The previous application for a dwellinghouse was refused and the reasons for refusal are equally valid for this application. The only change appears to be the size of the property which has been designed to allow for future extension.
- The proposal constitutes backland development.
- The proposed development seems excessive for a manager's house and a question arises as to why it is needed. Other fish farms have no accommodation as this area is currently 'supervised' from a caravan, it appears that a house is unnecessary.

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

Approved Falkirk Council Structure Plan

7a.1 Policy ENV.1 'Countryside and Protected Areas' states:

- "(1) There is a general presumption against development in areas defined as countryside, unless it can be demonstrated that a countryside location is essential or is an appropriate form of agricultural diversification. Where it is established that a countryside location is essential, development proposals will also be assessed in relation to Local Plan policies appropriate to specific protected areas as defined generally by Schedules ENV.1 and ENV.3.*
- (2) The policies applicable to countryside and protected areas within it, together with the detailed boundaries of each area, will be set out in Local Plans."*

7a.2 It is considered that the proposal does not strictly accord with the terms of the policy, as the proposal has not been demonstrated as 'essential', but that there is sufficient supporting information to justify a permanent residential presence on the application site as indicated in 7b.19.

Rural Area Local Plan

7a.4 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. *Small scale housing developments within the wooded policies of former country estates, where servicing costs will be met by the developer, where the development can be satisfactorily integrated into the landscape, where detailed development briefs have been drawn up by the District Council and provided that the proposed development does not lie within a site included in the "Inventory of Gardens and Designed Landscapes in Scotland".*
3. *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".*
4. *Appropriate infill development where a clear gap site exists which would not contribute to ribbon, backland or sporadic development forms.*
5. *Industrial/business development where there is an overriding national or local need and a rural site is the only suitable location.*
6. *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.*
7. *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.5 In this instance, the applicant has supported the proposal with sufficient information to demonstrate that the current fishery business is in profit and is operating effectively.
- 7a.6 A caravan has been previously granted temporary planning permission for a fishery manager to supervise operations. An application to extend this period P/10/0302/VCR was considered by the Planning Committee on 16 June 2010 when it was decided to refuse planning permission. The application was subsequently withdrawn as the required advertisement fee had not been paid. Whilst it is still present, the caravan is considered to be unauthorised.
- 7a.7 The interpretation of the word 'essential' within the above policy is critical to the application and is considered that whilst not absolutely 'essential' to the running of the fishery, there are specific benefits a dwellinghouse would achieve.
- 7a.8 In terms of design, the dwellinghouse is considered acceptable.
- 7a.9 Accordingly, the proposed development does not accord with the Development Plan.

7b Material Considerations

- 7b.1 The material considerations to be addressed are National Planning Advice, the policies within the Falkirk Council Local Plan Finalised Draft (Deposit Version) (April 2007) as amended by the Final Proposed Modifications (June 2010), points raised by the applicant, consultees and objectors.

National Planning Policy

- 7b.2 Scottish Planning Policy (February 2010) considers, in part, rural development and recognises that the planning system has a significant role in supporting sustainable economic growth in rural areas. In terms of housing, Scottish Planning Policy advises that Development Plans should support more opportunities for small scale housing development in all rural areas, including new build or conversion housing which is linked to rural businesses or would support the formation of new businesses by providing funding.
- 7b.3 In more accessible and densely populated rural areas, most new development should be in or adjacent to settlements.

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

- 7b.4 Policy SC3 - 'Housing Development In The Countryside' states:

"Housing development in the countryside will only be permitted in the following circumstances:

- (1) Housing essential to the pursuance of agriculture, horticulture or forestry, or the management of a business for which a countryside location is essential. In these instances, the applicant must demonstrate:*
 - The operational need for the additional house in association with the business*
 - That no existing dwelling which might have served that need has been sold or otherwise alienated from the holding*
 - That there are no reasonable opportunities for reusing or converting redundant buildings rather than building a new dwellinghouse*
 - That the business as a whole is capable of providing the main source of income for the occupant;*
- (2) Proposals involving the rehabilitation of former residential properties, or the conversion of farm and other buildings to residential use, where*
 - The building, by virtue of its existing character, makes a positive contribution to the rural landscape*
 - The building is in a reasonable state of repair, still stands substantially intact and is capable of beneficial restoration, as verified by a report and certificate from a qualified structural engineer*
 - The restored or converted building is of comparable scale and character to the original building*
 - In the case of former non-residential buildings, the building is no longer required for the purpose for which it was built; or*

- (3) *Appropriate infill opportunities within the envelope of an existing group of buildings, where the development would not result in ribbon, backland or sporadic development, and the proposal satisfies Policy SC8.”*

7b.5 In this instance, the proposal is not considered to be essential to the operation of the fishery business, but the applicant has contended that positive elements will arise through the permanent presence of the manager.

7b.6 With regard to the terms of the above policy, it is also confirmed that the business is capable of providing the main source of income for the occupant and there are no reasonable opportunities for conversion of redundant buildings for habitable purposes.

7b.7 The applicant has also endeavoured to demonstrate that there is operational need for the house in association with the fishery business.

7b.8 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.9 The applicant has submitted supporting information in the form of a supporting statement (7b.10-7b.16) that a countryside location is required, based on the presence of the fishery business and there are no issues arising as to the design of the proposed dwellinghouse.

Points raised by applicant

7b.10 The applicant, through a submitted planning support statement, considers that the fishery has been in operation for a period exceeding 30 months and has demonstrated that the fishery is in profit and operating effectively.

- 7b.11 The fishery requires 1 full time employee (the fishery manager) who will be responsible for feeding and checking the health of fish; restocking when necessary; checking water quality; ensuring there is no poaching or loss of stock to wildlife, or unauthorised access to the pond. Other duties include ensuring appropriate use of the fishery by customers and their safety; maintenance of grounds; and for the security related to the protection of the facility' including the fish stocks and related plant machinery.
- 7b.12 The applicant contends that the rural location of the fishery renders 24 hour security essential to the continued successful operation of the business.
- 7b.13 The current proposal seeks to address all of the matters of concern raised by Falkirk Council in its refusal of planning permission in March 2010.
- 7b.14 The applicant contends that, in line with the stated requirements of the Development Plan and Scottish Planning Policy, it has been shown that the proposal represents an appropriate form of rural development. Based on Falkirk Council's initially stated concerns, matters related to the viability and continued viability of the business, the requirement for a house, and the scale, design of the proposed dwellinghouse, have all been addressed. The proposed dwellinghouse, tied to the fishery businesses, is therefore fully justified and is an integral part of the business operation. This is a bone fide rural business which requires the provision of permanent on-site accommodation in order to allow it to properly function now and in the future.
- 7b.15 The site owner states that he remains committed to the operation and the development of the fishery as a leisure facility and visitor attraction within the Falkirk area. In the event that he is unable to secure permanent on-site accommodation, operational and security challenges would remain unresolved. This is an isolated site in the countryside with no natural supervision related to other properties, or public roads. Security of the business (fish, plant, machinery and vandalism) and safety (unauthorised access to the pond, plant and machinery) are therefore of paramount concern.
- 7b.16 The applicant's agent concludes that the development complies with the terms of the Development Plan and with Scottish Planning Policy. It is his view that there is a clear and justifiable case for the dwellinghouse tied to the fishery and on this basis the applicant would welcome the granting of planning permission.

Points raised by consultees

- 7b.17 Falkirk Council's Economic Development Unit advises that there is a sound business case on the profitability of the existing fishery business.
- 7b.18 It is noted that the cost of the new dwelling would be independently funded (i.e. no profit commitment from the fishery) and the fishery business is capable of providing the main source of income for the fishery manager.
- 7b.19 An independent Rural Business Consultant, acting on behalf of Falkirk Council, has advised that "there is no doubt that having a permanent presence will be beneficial to the business". It is his opinion that the business would benefit in terms of: -
- Security of both the fish stock and the fixed equipment.

- Reduced travelling time to and from the business premises and thereby reduction in costs and carbon footprint.
- Potentially a better work/life balance for the fishery manager which would improve employee retention.
- Improved safety from the point of an uninvited “out of hours visitor” falling into the water.
- An on-site presence is likely to lead to reduced insurance premiums for both theft cover and public liabilities.
- Increased ability to open the fishery for longer hours and to reduce staff costs, as an on-site employee could be on-call to attend to customers.

7b.20 Whilst all of the above reinforces the initial statement, that a permanent presence would be beneficial to the business it is not necessarily essential as the business could be operated, albeit less efficiently and profitability, from a reasonable distance. Furthermore, while fish do require some husbandry, unlike traditional farm animals such as cattle and sheep there is little requirement for 24 hour care.

Points raised by objectors

7b.21 The application site is outwith the village envelope of Torwood but that, alone, is not a reasoned justification for refusal of the application. The essential requirement is to show that the dwelling is justified in the location under consideration.

7b.22 The applicant has submitted details in relation to the responsibilities of the fishery manager, and these are considered substantial enough to support the proposal.

7b.23 One full-time post has been created through the fishery business.

7b.24 Good planning policy recognises that economic activity within the rural area should be supported where appropriate, but it is beyond a planning consideration whether the business may prove successful or fail in the future.

7b.25 Additional development in the area may be subject to further approach to the planning authority and would require to be assessed on their own merits.

7c Conclusion

7c1. The applicant has submitted sufficient information to enable analysis of the proposal in terms of design, economic viability and business requirement.

7c.2 The design aspect of the proposal is considered acceptable, while the concerns regarding potential extension and expansion as expressed by objectors would be subject to control by the planning authority on receipt of any further application for planning permission.

7c.3 The economic viability of the fishery business has been established, with the cost of the new dwelling not being absorbed by the business but provided by independent means.

- 7c.4 Falkirk Council's Economic Development Unit advise that the fishery business is in profit and has raised no concerns regarding the economic standing of the business.
- 7c.5 An independent Rural Business Consultant has advised that while a 24 hour presence on the site may not be considered essential, there are a number of benefits to be gained from a dwellinghouse on site.
- 7c.6 The nature of the commercial fishery is such that the husbandry element of stock is not as essential as some agricultural businesses, but there are other benefits to be gained from a permanent presence within a rural location, relatively isolated from any natural surveillance.
- 7c.7 It is therefore concluded that the justification for a dwellinghouse is finely balanced, not meeting the 'essential' status of requirement as prescribed in Development Plan policy, but showing sufficient reasoning as to merit support of the proposal in promoting the continued economic viability of an established rural business.

8. RECOMMENDATION

- 8.1 It is recommended that the Committee indicate that it is minded to grant planning permission subject to :-**
- (a) the satisfactory completion of an agreement within the terms of Section 75 of the Town and Country Planning (Scotland) Act 1997 in respect of :-**
 - (i) the occupation of the dwellinghouse hereby approved shall be limited to a person solely, mainly, or last employed in the local area in the associated commercial fishery, or other occupation appropriate to a rural location, or a dependant of such a person residing with him or her, or a widow or widower of such a person,**
 - (ii) the dwellinghouse shall remain in the ownership of the commercial fishery located at Whinnie Muir Wood and shall not be sold or rented independently, nor be separated from the planning unit (as indicated in Drawing ref RMDL/254/Section 75 dated June 2009).**
 - (b) and thereafter, on the conclusion of the foregoing matters, remit to the Director of Development Services to grant planning permission subject to the following conditions: -**
 - (1) The development to which this permission relates must be begun within three years of the date of this permission.**

(2) Development shall not begin until a scheme to deal with contamination on the site has been submitted to and approved in writing by the Planning Authority. The scheme shall contain details of proposals to deal with contamination to include:

- i. the nature, extent and types(s) of contamination on the site.
- ii. measures to treat/remove contamination to ensure the site is fit for the use proposed.
- iii. measures to deal with contamination during construction works.
- iv. condition of the site on completion of decontamination measures.

Before the dwellinghouse is occupied the measures to decontaminate the site shall be fully implemented as approved by the Planning Authority.

(3) Prior to the commencement of any works on site, details of the materials to be used on the external surfaces of the buildings, and in the construction of any hard standings/walls/fences, shall be submitted to and approved in writing by the Planning Authority. The development shall thereafter be carried out using the approved materials or such alternatives as may be agreed in writing with the Planning Authority.

(4) Before the building is occupied, the car parking shown on the Approved Plan shall be completed.

(5) Before any work is commenced on site, details of the height, location and construction of all fences, walls and other means of enclosure shall be submitted to and approved by the Planning Authority.

(6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended), no further development shall take place on the site without prior written approval or planning permission having been granted by the Planning Authority.

Reason(s):-

(1) To accord with the provisions of Section 58 of the Town and Country Planning (Scotland) Act 1997.

(2) To ensure the ground is suitable for the proposed development.

(3) To enable the Planning Authority to consider this/these aspect(s) in detail.

(4) To ensure that adequate car parking is provided.

(5-6) To enable the Planning Authority to consider this/these aspect(s) in detail.

Informative(s):-

- (1) For the avoidance of doubt, the plan(s) to which this decision refer(s) bear our online reference number(s) 01, 02, 03, 04 and 05.

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Director of Development Services

Date: 24 November 2010

LIST OF BACKGROUND PAPERS

1. Approved Falkirk Council Structure Plan.
2. Falkirk Council Local Plan Finalised Draft (Deposit Version) (April 2007) as amended by the Final Proposed Modifications (June 2010).
3. Scottish Planning Policy (February 2010).
4. Letter of Objection from Mr Gordon Millar Rowandale, Glen Road, Torwood, Larbert received on 31 August 2010.
5. Letter of Objection from Torwood Community Woodlands, Willowdene, Glen Road, Torwood, Larbert received on 7 September 2010.
6. Letter of Objection from Ms Yvonne Weir, Larbert, Stenhousemuir & Torwood Community Council, c/o 92 Stirling Road Larbert, FK5 4F received on 12 August 2010.
7. Letter of Objection from Alison Neilson, Willowdene, Glen Road, Torwood, Larbert received on 25 August 2010.
8. Letter of Objection from Lyndsey G Pettigrew, Kelimar, Glen Road, Torwood, Larbert received on 25 August 2010.
9. Letter of Objection from Mrs E Bell, Netherlee, Glen Road, Torwood, Larbert received on 25 August 2010.

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/10/0483/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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