

FALKIRK COUNCIL

Subject: **ERECTION OF DWELLINGHOUSE WITH INTEGRATED DOMESTIC GARAGE AT KERSIE BANK, KERSIE TERRACE, SOUTH ALLOA, STIRLING FK7 7NJ FOR MR GARY PATERSON – P/09/0849/FUL**

Meeting: **PLANNING COMMITTEE**

Date: **23 March 2011**

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: Julie Seidel (Planning Officer), Ext. 4880

UPDATE REPORT

1. Members will recall that this application has previously been considered by the Planning Committee, the last time being on 23 February 2010. At this meeting Members agreed to continue the application to allow preparation of an update report, from the Director of Development Services, in relation to financial issues associated with VAT.
2. Since the last meeting of the Planning Committee, the applicant's solicitor has written to Falkirk Council's Legal Services requesting that the Section 75 legal agreement, previously signed by both parties, now be released to the Keeper of the Registers of Scotland. This action would trigger approval of planning permission and the release of the decision notice, in accordance with the Committee's decision of 21 April 2011.
3. It is therefore recommend that, if Members are still minded to grant planning permission, that the Section 75 legal agreement be released to the Keeper of the Registers of Scotland.
4. A report in response to Members' questions on VAT and related matters will be presented to a future Planning Committee meeting. Further questions have resulted in the need for legal as well as accountancy advice.

5. RECOMMENDATION

5.1 It is therefore recommended that Committee either release the Section 75 Legal Agreement to the Keeper of the Registers of Scotland (thus resulting in the issue of the planning permission) or refuse planning permission for the following reason(s):

- (1) The application does not accord with Policy ENV. 1 'Countryside and Protected Areas' of the Falkirk Council Structure Plan and Policy SC3 'Housing Development in the Countryside' of the Falkirk Council Local Plan as it has not been demonstrated that a countryside location is essential for the proposed dwellinghouse and the proposed dwellinghouse is not considered to represent an appropriate infill opportunity. The proposed development therefore represents unjustified development in the countryside.**

Informative(s):

- (1) For the avoidance of doubt, the plan(s) to which this decision refers bear our reference number(s) 01 - 10 and additional information.**

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Director of Development Services

Date 15 March 2011

LIST OF BACKGROUND PAPERS

- 1. Falkirk Council Structure Plan.**
- 2. Falkirk Council Local Plan.**
- 3. Scottish Planning Policy.**

Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504880 and ask for Julie Seidel (Planning Officer).

FALKIRK COUNCIL

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DOMESTIC GARAGE AT KERSIE BANK, KERSIE TERRACE,
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PATERSON – P/09/0849/FUL

Meeting: PLANNING COMMITTEE

Date: 23 February 2011

Author: DIRECTOR OF DEVELOPMENT SERVICES

Local Members: Ward - Carse, Kinnaird and Tryst
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Councillor Lynda Kenna
Councillor Charles MacDonald
Councillor Craig Martin

Community Council: Airth Parish

Case Officer: Julie Seidel (Planning Officer), Ext. 4880

UPDATE REPORT

1. Members will recall that this application has previously been considered by the Planning Committee, the last time being on 21 April 2010. It was agreed that Members were minded to grant the application subject to appropriate conditions and the conclusion of a Section 75 legal agreement, restricting occupancy of the dwellinghouse to the manager, operator or other person employed full time in the adjacent business, Paterson Garden Buildings.
2. Although signed by the relevant parties, the agreement has not been sent to the Registers of Scotland as the applicant's representative has requested that it be put on hold as the applicant has concerns about potential VAT issues in relation to the property.
3. With a number of months having elapsed since the signing of the agreement, the applicant was notified that unless we heard from them in relation to progressing registration within 21 days, the application would be referred back to the Planning Committee with a recommendation to refuse planning permission.
4. The applicant failed to respond to the case officer within the specified time period (1 January 2011). However, an email was received on 8 February 2011. The applicant advised that conclusion of the required Section 75 legal agreement would mean that VAT could not be reclaimed for the proposed dwellinghouse, this position being confirmed by the applicant's accountant.

5. Finance Services have looked into this and advise that, normally, the construction of a new dwellinghouse would be zero rated for VAT purposes. In this instance the proposal would not benefit from zero rating and VAT would be charged at the standard rate, as the occupation of the proposed dwellinghouse would be restricted by the Section 75 legal agreement. A condition restricting occupancy of the dwellinghouse would similarly incur standard VAT charges.
6. The applicant submitted a letter, via his solicitor, on 10 February 2011. The applicant now wishes planning permission to be granted without the required Section 75 legal agreement.
7. The proposed development is assessed as being contrary to the Development Plan, namely Policy ENV.1 'Countryside and Protected Areas' of the Falkirk Council Structure Plan and Policy SC3 'Housing Development in the Countryside' of the Falkirk Council Local Plan (since this application was last considered by the Committee, the Falkirk Council Local Plan has been adopted). It has not been demonstrated that a countryside location is essential for the proposed dwellinghouse and the proposed dwellinghouse is not considered to represent an appropriate infill opportunity. The proposed development represents unjustified development in the countryside. Material considerations are therefore required to justify setting aside the terms of the Development Plan and approve the application.
8. Members considered that planning permission should be granted subject to a legal agreement which would justify a departure from the Development Plan. The applicant now requests that planning permission be granted without a legal agreement. In the absence of such an agreement there is no justification or operational need for the proposed dwellinghouse within this countryside location. It is considered that the payment of VAT in relation to the proposed dwellinghouse is not a material planning consideration and would not provide justification for the proposed dwellinghouse, within the countryside, without the restriction of occupancy. It is therefore recommended that the Planning Committee now refuse planning permission.

9. RECOMMENDATION

- 9.1 It is therefore recommended that Committee refuse planning permission for the following reason(s):
 - (1) **The application does not accord with Policy ENV. 1 'Countryside and Protected Areas' of the Falkirk Council Structure Plan and Policy SC3 'Housing Development in the Countryside' of the Falkirk Council Local Plan as it has not been demonstrated that a countryside location is essential for the proposed dwellinghouse and the proposed dwellinghouse is not considered to represent an appropriate infill opportunity. The proposed development therefore represents unjustified development in the countryside.**

Informative(s):

- (1) For the avoidance of doubt, the plan(s) to which this decision refer(s) bear our reference number(s) 01 - 10 and additional information.

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Pp Director of Development Services

Date 15 February 2011

LIST OF BACKGROUND PAPERS

1. Falkirk Council Structure Plan.
2. Falkirk Council Local Plan.
3. Scottish Planning Policy.

Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504880 and ask for Julie Seidel (Planning Officer).

FALKIRK COUNCIL

Subject: ERECTION OF DWELLINGHOUSE WITH INTEGRATED
DOMESTIC GARAGE AT KERSIE BANK, KERSIE TERRACE,
SOUTH ALLOA, STIRLING FK7 7NJ FOR MR GARY
PATERSON – P/09/0849/FUL

Meeting: PLANNING COMMITTEE

Date: 21 April 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: Julie Seidel (Planning Officer), Ext. 4880

UPDATE REPORT

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 to undertake a site visit. This visit took place on 15 April 2010.
2. Members viewed the site of the application, the applicant's business premises and also the proposed access. It was noted that there were no proposals to fell existing trees within the site.
3. In support of the application, the applicant referred to the site's location in relation to the village limit and existing developments within South Alloa. He referred to the success of his business, his wish to live close to the premises due to his working hours, and the need to provide security. He confirmed that the house would be for his use and that there was no intention to develop the site for further housing.
4. Following a question from Members, the applicant confirmed that if permission were to be granted, he would be willing to accept an occupancy restriction by means of a Section 75 Agreement or by condition.
5. No matters were raised which would amend the original recommendation to refuse planning permission.

6. RECOMMENDATION

6.1 It is therefore recommended that Committee refuse the planning application for the following reason(s):

- (1)** The application does not accord with Policy ENV. 1 'Countryside and Protected Areas' of the approved Falkirk Council Structure Plan, Policy Rural 1 'New Development in the Countryside' and policy RURAL 2 'Village Limits' of the adopted Rural Local Plan and Policy SC3 'Housing Development in the Countryside' of the Falkirk Council Local Plan Finalised Draft (Deposit Version) as it has not been demonstrated that a countryside location is essential for the proposed dwellinghouse and the proposed dwellinghouse is not considered to represent an appropriate infill opportunity. The proposed development therefore represents unjustified development in the countryside.

Informative(s):

- (1)** For the avoidance of doubt, the plan(s) to which this decision refer(s) bear our reference number(s) 01 - 10 and additional information.

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Director of Development Services

Date: 20 April 2010

LIST OF BACKGROUND PAPERS

1. Falkirk Council Structure Plan.
2. Rural Local Plan.
3. Falkirk Council Local Plan Finalised Draft (Deposit Version).
4. Scottish Planning Policy

Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504880 and ask for Julie Seidel (Planning Officer).

FALKIRK COUNCIL

Subject: ERECTION OF DWELLINGHOUSE WITH INTEGRATED DOMESTIC GARAGE AT KERSIE BANK, KERSIE TERRACE, SOUTH ALLOA FK7 7NJ FOR MR PATERSON - P/09/0849/FUL

Meeting: PLANNING COMMITTEE

Date: 24 March 2010

Author: DIRECTOR OF DEVELOPMENT SERVICES

Local Members: Councillor Steven Carleschi
Councillor Lynda Kenna
Councillor Charles MacDonald
Councillor Craig Martin

Community Council: Airth Parish

Case Officer: Julie Seidel (Planning Officer) ext 4880

1. DESCRIPTION OF PROPOSAL / SITE LOCATION

- 1.1 This application seeks detailed planning permission for the erection of a single dwellinghouse.
- 1.2 The application site is located within the countryside and currently forms part of the existing 'Patersons Garden Buildings' site. Access would be taken via the existing business access from Kersie Terrace.

2. REASON FOR COMMITTEE CONSIDERATION

- 2.1 The application has been called in by Councillor Craig Martin.

3. SITE HISTORY

- 3.1 F/2004/0505 - extension to workshop - granted on 19 July 2004.
- 3.2 F/2004/0865 - extension to existing yard to form storage area, car park, lorry turning facility and extension to display - granted on 21 December 2004.
- 3.3 05/1013/REM - erection of fence and landscaping works - granted on 29 November 2005.
- 3.4 06/1102/FUL - extension to existing building to provide additional covered storage area - refused on 6 August 2007.
- 3.5 P/07/0167/ADV - display of non-illuminated advertisement - granted on 6 March 2007.

- 3.6 P/07/0965/FUL - extension to existing building to provide additional covered storage - granted on 20 March 2008.

4. CONSULTATIONS

- 4.1 Scottish Water has no objections.
- 4.2 Scottish Natural Heritage (SNH) has no objections. SNH comment that it is unlikely the proposal will have a significant effect on any qualifying interests of the Firth of Forth Special Protection Area (SPA) either directly or indirectly. An appropriate assessment is not required.
- 4.3 The Roads Development Unit request that the applicant confirms that the parking area and turning head is in compliance with the Design Guidelines and Construction Standards for Roads in the Falkirk Council Area. The Unit also advise of a condition relating to visibility at the vehicular access.
- 4.4 The Environmental Protection Unit request the undertaking of a contaminated land assessment and the submission of measures to protect the proposed dwelling from noise associated with the adjacent business.
- 4.5 The Scottish Environment Protection Agency (SEPA) has no objections. SEPA comment that the development will not be at risk from coastal flooding.

5. COMMUNITY COUNCIL

- 5.1 The Airth Parish Community Council has made no comment on the application.

6. PUBLIC REPRESENTATION

- 6.1 In the course of the application, no letters of representation were received.

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 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 Policy ENV.1 'Countryside and Protected Areas' seeks to protect the countryside from development unless it can be demonstrated that a countryside location is essential or is an appropriate form of agricultural diversification. It has not been demonstrated that a countryside location is essential for the proposed dwellinghouse and the proposal is not an appropriate form of agricultural diversification. The application fails to accord with policy ENV.1.

7a.3 Policy ENV.3 'Nature Conservation' states:

“The protection and promotion of nature conservation interests will be an important consideration in assessing all development proposals. Accordingly:

- (1) Any development likely to have a significant effect on a designated or potential European Site under the Habitats or Birds Directives (Special Areas of Conservation and Special Protection Areas) or on a Ramsar or Site of Special Scientific Interest (see Schedule Env.3), must be subject to an appropriate assessment of the implications for the sites conservation objectives. The development will only be permitted where the appropriate assessment demonstrates that:*
- (a) it will not adversely affect the integrity of the site, or;*
- (b) there are no alternative solutions and there are imperative reasons of overriding national public interest.*
- (2) Sites of local or regional importance, including Wildlife Sites and Sites of Importance for Nature Conservation, will be defined in Local Plans. The designation of Sites will be based on Scottish Wildlife Trust criteria. Development likely to have an adverse impact on any such site or feature will not be granted planning permission unless it can be clearly demonstrated that there are reasons which outweigh the need to safeguard the site or feature. Until such areas are defined in Local Plans, identified or potential sites will be afforded the same protection.*
- (3) Local Plans will identify opportunities for enhancing the natural heritage including new habitat creation, the identification of 'wildlife corridors' and measures to ensure the protection of priority local habitats and species as identified in the forthcoming Falkirk Local Biodiversity Action Plan.*

- (4) *The aims and objectives of the forthcoming Falkirk Local Biodiversity Action Plan and any associated Species Action Plans and Habitat Action Plans will be a material consideration in assessing any development proposal likely to impact on local priority species and habitats.”*

7a.4 Policy ENV.3 'Nature Conservation' seeks to protect and promote nature conservation interests. SNH comment that it is unlikely the proposal will have a significant effect on any qualifying interests of the Firth of Forth Special Protection Area (SPA) either directly or indirectly and as such the application accords with policy ENV.3.

7a.5 Policy ENV.4 'Coastal Planning and Flooding' states:

“The Council will apply the following general principles with regard to coastal planning and flooding issues:

- (1) *There will be a general presumption against development in the undeveloped coastal zone (as indicated generally on the key diagram), unless it is clearly demonstrated that a coastal location is essential for that development.*
- (2) *In assessing proposals for development within the coastal zone or coastal defence measures on the developed coast, particular attention will be paid to the likely implications in terms of flooding, existing and future coastal defence works, nature conservation, landscape impact, water pollution and the need to work in partnership with other agencies to promote the integrated management of the estuary and its resources.*
- (3) *The Coastal zone north of the River Carron will be a priority area for evaluating the feasibility for managed retreat and other coastal zone management measures.*
- (4) *In areas where there is a significant risk of flooding, there will be a presumption against new development which would be likely to be at risk or would increase the level of risk for existing development. Where necessary the Council will require applicants to submit supplementary information to assist in the determination of planning applications.”*

7a.6 Policy ENV.4 'Coastal Planning and Flooding' seeks to prevent development in areas where there is a significant risk of flooding. The existing ground level of the application site is above the currently agreed flood levels for the River Forth and as such the proposal will not be at risk of coastal flooding and accords with the terms of policy ENV.4.

Rural Local Plan

7a.7 The application site lies outwith any urban or village limit, within the countryside under the adopted Rural Local Plan.

7a.8 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.9 Policy RURAL 1 'New Development in the Countryside' seeks to protect and conserve the open nature and character of the countryside whilst at the same time encouraging a level of beneficial development appropriate to the rural location. This policy has a general presumption against new development in the countryside except in limited circumstances. In this instance the relevant potential exceptions are Criteria 1 and 3. With regard to Criterion 1, it has not been demonstrated that the proposed dwellinghouse is essential to the pursuance of agriculture or any other economic activity requiring a rural location. With regard to Criterion 3, the proposed dwellinghouse would not occupy a clear gap in an existing development pattern and would arguably contribute to further sporadic, ribbon development at this countryside location. The proposed development is therefore not considered to represent appropriate infill development at this location. The proposal is contrary to policy RURAL 1.

7a.10 Policy RURAL 2 'Village Limits' states:

"That the boundary of the village areas as indicated on the Village Maps is regarded as the desirable limit to the growth of the villages at least for the period of the Local Plan. Accordingly, there will be a general presumption against proposals for development which would either extend the village areas beyond this limit or which would constitute undesirable sporadic development in the countryside."

7a.11 Policy RURAL 2 'Village Limits' seeks to prevent ribbon development and intrusion into open countryside. The proposal is not infill development as the application site is separate from the existing business buildings to the south-west of the application site. There are no buildings to the south-east of the application site and as such the proposal would contribute to sporadic, ribbon development in the countryside. The application is contrary to policy RURAL 2.

7a.12 Policy RURAL 12 'Ecological Sites' states:

"That to protect and conserve wildlife and other natural features of significance :-

- 1. There will be an overriding presumption against development which would adversely affect sites designated as a Special Protection Area, a Special Area of Conservation or a Ramsar site, Sites of Special Scientific Interest or any sites proposed by the UK Government or Scottish Natural Heritage for such designation.*
- 2. Development likely to adversely affect Listed Wildlife Sites and local or non-statutory nature reserves will not normally be permitted.*
- 3. Other sites of high nature conservation value will be safeguarded wherever possible.*
- 4. Where development is to be approved which could affect any site of high nature conservation value, appropriate measures will be required to conserve, as far as possible, the site's biological or geological interest and to provide for replacement habitats or features where damage is unavoidable,*
- 5. Appropriate site management will be encouraged wherever possible,*
- 6. Local nature reserves will be designated as appropriate."*

7a.13 Policy RURAL 12 'Ecological Sites' seeks to protect and conserve significant wildlife and other natural features of significance. SNH comment that it is unlikely the proposal will have a significant effect on any qualifying interests of the Firth of Forth Special Protection Area (SPA) either directly or indirectly and as such the application accords with policy RURAL 12.

7a.14 Accordingly, the proposal does not accord with the Development Plan.

7b Material Considerations

7b.1 The following matters were considered to be material in the consideration of the application:

- Falkirk Council Local Plan Finalised Draft (Deposit Version);
- Scottish Planning Policy;
- Responses to consultation; and
- Information Submitted in support of the proposal.

Falkirk Council Local Plan Finalised Draft (Deposit Version).

7b.2 The application site lies outwith any urban or village limit, within the countryside, under the emerging Local Plan, Falkirk Council Local Plan Finalised Draft (Deposit Version).

7b.3 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.4 Policy EQ19 'Countryside' of the above Local Plan sets out the detailed policies for consideration of development proposals in the countryside. In this instance the detailed policy is Policy SC3 'Housing Development in the Countryside'.

7b.5 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.6 Policy SC3 'Housing Development in the Countryside' continues the general presumption of the Development Plan against new housing development in the countryside except in limited circumstances. The relevant potential exceptions in this instance are 1 and 3. With regard to 1, it has not been demonstrated that the proposed dwellinghouse is essential for the pursuance of an activity for which a countryside location is essential. With regard to 3, the proposed dwellinghouse would not be sited within the envelope of an existing group of residential buildings and it would arguably contribute towards sporadic development at this countryside location. The proposed dwellinghouse is therefore not considered to represent an appropriate infill opportunity. The application does not accord with policy SC3.

7b.7 Policy EQ24 'Ecological Sites and Features' states:

- “(1) *Development likely to have a significant effect on Natura 2000 sites (including Special Protection Areas, Special Areas of Conservation, and Ramsar Sites) will be subject to an appropriate assessment. Where an assessment is unable to conclude that a development will not adversely affect the integrity of the site, development will only be permitted where there are no alternative solutions; and there are imperative reasons of overriding public interest, including those of a social or economic nature. These can be of a social or economic nature except where the site has been designated for a European priority habitat or species. Consent can only be issued in such cases where the reasons for overriding public interest relate to human health, public safety, beneficial consequences of primary importance for the environment or other reasons subject to the opinion of the European Commission (via Scottish Ministers)..*
- (2) *Development affecting Sites of Special Scientific interest will not be permitted unless it can be demonstrated that the overall objectives of the designation and the overall integrity of the designated area would not be compromised, or any adverse effects are clearly outweighed by social or economic benefits of national importance.*
- (3) *Development affecting Wildlife Sites, Sites of Importance for Nature Conservation, Local Nature Reserves, wildlife corridors and other nature conservation sites of regional or local importance will not be permitted unless it can be demonstrated that the overall integrity of the site will not be compromised, or any adverse effects are clearly outweighed by social or economic benefits of substantial local importance.*
- (4) *Development likely to have an adverse effect on species which are protected under the Wildlife and Countryside Act 1981, as amended, the Habitats and Birds Directives, or the Protection of Badgers Act 1992, will not be permitted.*
- (5) *Where development is to be approved which could adversely affect any site of significant nature conservation value, the Council will require mitigating measures to conserve and secure future management of the site's natural heritage interest. Where habitat loss is unavoidable, the*

creation of replacement habitat to compensate for any losses will be required along with provision for its future management.

- (6) *The Council, in partnership with landowners and other relevant interests, will seek the preparation and implementation of management plans for sites of nature conservation interest.”*

7b.8 Policy EQ24 'Ecological Sites and Features', sets out the Council's policy for protecting the network of sites of ecological importance within the area. SNH comment that it is unlikely the proposal will have a significant effect on any qualifying interests of the Firth of Forth Special Protection Area (SPA) either directly or indirectly. The application accords with policy EQ24.

7b.9 Policy EQ28 'The Coastal Zone' states:

“The Council will promote an integrated approach to the management of the coastal zone, and will support the provisions of the Forth Integrated Management Strategy. Development and other land management proposals within the coastal zone will be assessed in terms of:

- (1) Impacts on the amenity, ecology and water quality of the coastal environment (see Policies EQ24 and EQ25);*
- (2) The requirement to safeguard the undeveloped coast, as defined on the Proposals Map, from further development unless it is proven that the development is essential, a coastal location is essential, and no suitable sites exist within the developed coast;*
- (3) Long-term flooding risk (see Policy ST12), and compatibility with existing coastal defence strategies, including the desirability of working with natural coastal processes where possible and the need to recognise the wider impacts where intervention is unavoidable; and*
- (4) Appropriate promotion of the recreational potential of the coastal zone, including the development of the Forth Foreshore Path and linked coastal access networks, providing it is compatible with Policy EQ24 and the protection of coastal habitats and species.”*

7b.10 Policy EQ28 'The Coastal Zone' provides a list of criteria against which proposals within the coastal zone will be considered. The application site is adjacent to the River Forth and as such is considered to be within the coastal zone. The application is unlikely to have a significant impact on the amenity, ecology and water quality of the coastal environment and as such the application does not offend the terms of policy EQ28.

7b.11 Policy ST12 - 'Flooding' states:

“In areas where there is significant risk of flooding, there will be a presumption against new development which would be likely to be at risk, would increase the level of risk for existing development or would be likely to require high levels of public expenditure on flood protection works. Applicants will be required to provide information demonstrating that any flood risks can be adequately managed both within and outwith the site.”

7b.12 Policy ST12 'Flooding' seeks to prevent new development in areas which are likely to be at significant risk from flooding. The existing ground level of the application site is above the currently agreed flood levels for the River Forth and as such the proposal will not be at risk of coastal flooding and therefore accords with the terms of policy ST12.

- 7b.13 The emerging District wide Local Plan supports the policies set out in the Development Plan, Falkirk Council Structure Plan and Rural Local Plan covering this site and described earlier in this report. The proposed development is contrary to the terms of the Falkirk Council Local Plan Finalised Draft (Deposit Version).

Scottish Planning Policy

- 7b.14 Scottish Planning Policy 'A Statement of the Scottish Government's Policy on Nationally Important Land Use Planning Matters' promotes opportunities, through the Development Plan, for small scale housing development in all rural areas, including new clusters and groups, extensions to existing clusters and groups, replacement housing, plots on which to build individually designed houses, holiday homes and new build or conversion housing which is linked to rural businesses or would support the formation of new businesses by providing funding. All new development should respond to the specific local character of the location, fit in the landscape and seek to achieve high design and environmental standards, particularly in relation to energy efficiency. Planning authorities should apply proportionate standards to access roads to enable small developments to remain viable.
- 7b.15 Scottish Planning Policy promotes the Development Plan as the means by which to identify opportunities for housing in the countryside. In this instance the Development Plan and the Falkirk Council Local Plan Finalised Draft (Deposit Version) are considered to provide an appropriate policy framework to support a range of sustainable development opportunities for housing in the countryside. The proposed development has been found, in this report, to be contrary to the relevant policies of these plans.

Responses to Consultation

- 7b.16 The Environmental Protection Unit advise that contamination is a material consideration and should be dealt with at the application stage. The area surrounding the application site has been recorded as producing ground gas readings of methane at elevated concentrations. Other contaminative activities relating to the site and surrounding area have also been identified. The applicant was advised on 12 January 2010 that a contaminated land assessment and noise mitigation details are required. To date the required information has not been submitted. The other issues raised through consultation are noted.

Information Submitted in Support of the Proposal

- 7b.17 The applicant has submitted a letter of support for the proposal as follows:
- The applicant's business was set up in 1993 and moved to Kersie bank in 2000. Eight people are employed on a permanent full time basis and the business has built up an excellent reputation;
 - The business has helped with work experience from Falkirk College and Alloa Academy;
 - The proposed house is in keeping with the surrounding area of South Alloa and will not intrude in anyone's privacy;
 - The house is required for security reasons, to protect the machinery and stock and to enable the applicant to run a successful business; and

- The house is required due to a change in family circumstances.

7b.18 The points raised by Mr Paterson are noted. However, these fail to demonstrate the operational need for a house in association with the business, particularly as the business has been operating at this location without the need for a dwellinghouse since 2000. The applicant was given an opportunity to provide further information to support the proposal but, to date, further supporting information has not been received.

7c Conclusion

7c.1 The proposed development, for the erection of a dwellinghouse, is contrary to the Development Plan for the reasons detailed in this report. Material considerations are therefore required to justify setting aside the terms of the Development Plan and approve the application. In this instance it is considered that the weight of material considerations, as detailed in this report, do not support a departure from the above mentioned policies in the Development Plan.

7c.2 Accordingly, the application is recommended for refusal.

8. RECOMMENDATION

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

- (1) The application does not accord with Policy ENV. 1 'Countryside and Protected Areas' of the approved Falkirk Council Structure Plan, Policy Rural 1 'New Development in the Countryside' and policy RURAL 2 'Village Limits' of the adopted Rural Local Plan and Policy SC3 'Housing Development in the Countryside' of the Falkirk Council Local Plan Finalised Draft (Deposit Version) as it has not been demonstrated that a countryside location is essential for the proposed dwellinghouse and the proposed dwellinghouse is not considered to represent an appropriate infill opportunity. The proposed development therefore represents unjustified development in the countryside.

Informative(s):

- (1) For the avoidance of doubt, the plan(s) to which this decision refer(s) bear our reference number(s) 01 - 10 and additional information.

Pp

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Director of Development Services

Date: 16 March 2010

LIST OF BACKGROUND PAPERS

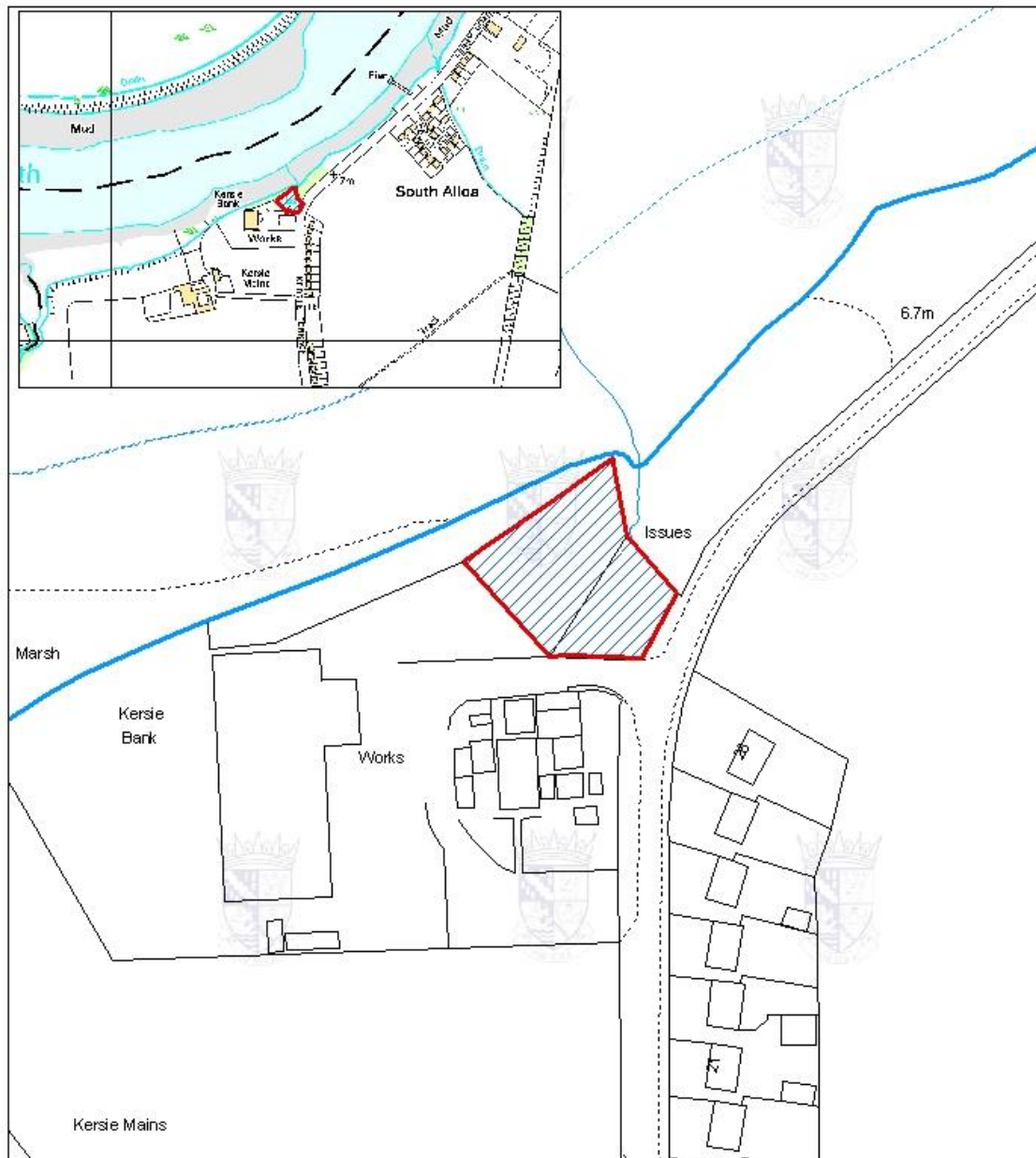
1. Falkirk Council Structure Plan.
2. Rural Local Plan.
3. Falkirk Council Local Plan Finalised Draft (Deposit Version).
4. Scottish Planning Policy

Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504880 and ask for Julie Seidel (Planning Officer).

Planning Committee

Planning Application Location Plan **P/09/0849/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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