

# TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

STATEMENT OF CASE  
PREPARED BY BARTON WILLMORE

ON BEHALF OF  
PERSIMMON HOMES EAST SCOTLAND  
(THE APPELLANT)

PURSUANT TO PLANNING APPEAL REF P/PPA/240/228

LAND NORTH OF 44 NORTHFIELD ROAD, DUNIPACE

SEPTEMBER 2008

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## 1.0 INTRODUCTION

- 1.1 In September 2005, Persimmon Homes East Scotland submitted a detailed planning application to Falkirk Council (ref No. 05/0912/FUL), which sought permission for the erection of a residential development and associated engineering operations. At the time of its initial submission, the proposals involved, inter alia, the erection of 67 dwellinghouses. During the course of their consideration of this application, Falkirk Council requested that various changes be made to the mix of housing proposed for the site and at the point of its determination by them, the proposed housing element of the development comprised the erection of 55 dwellinghouses and 36 flats.
- 1.2 By Notice dated 20 December 2007, Falkirk Council refused planning permission in respect of application 05/0912/FUL.
- 1.3 The reasons stated within this Notice for the refusal of planning permission are:
- i. **It is considered that the proposed residential development would be unacceptable as related traffic increases would be too great for the existing road infrastructure and therefore would result in associated congestion and road safety concerns.**
  - ii. **It is considered that the proposed residential development would be unacceptable as there are inadequate drainage proposals to guarantee that flood water from the application site will not be dispersed to other areas.**
  - iii. **It is considered that the proposed residential development would be unacceptable as a result of the loss of open space.**
  - iv. **It is considered that the proposed residential development would be unacceptable as a result of the incorporation of proposed flats in the southern part of the application site being out of keeping with the character of the local area.**
- 1.4 With regards to Reason for Refusal No. iv, it is noted that during the course of the Pre-Inquiry Meeting which took place on 20 August 2008, the consultants appointed to represent the Council at the Inquiry, advised that the Council wished to withdraw this

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Reason for Refusal. The Council's position was confirmed by email dated 15/09/08 from Ryden LLP to the Appellant's agent.

## **2.0 STATEMENT OF CASE**

### **The Appeal Site and Proposals**

- 2.1 The Appeal site extends to some 3.96ha in area and lies to the north of Northfield Road/John Davidson Drive, Dunipace. The site is roughly triangular in shape and is bounded by the Avon Burn and an area of "community" woodland to the north and east, by an unnamed tributary of the Avon Burn and existing housing to the south and by the south bound carriageway of the M80 motorway to the west.
- 2.2 The site is low lying and slopes gently downwards from its north western corner. A relatively flat area of land is located at the south eastern corner of the site, adjacent to the confluence of the Avon Burn and the unnamed tributary which flows along the southern boundary of the site.
- 2.3 The Appeal site is not in active use and comprises a mix of open unmanaged grass land and rough, self seeded scrub. A line of mature trees runs along the side of the site which bounds onto the Avon Burn, with a number of mature trees also being present along the site boundary with the M80 motorway.
- 2.4 The line of a disused road, which is bounded by unmaintained hedgerows, runs through the western half of the Appeal site, in roughly a north/south direction.
- 2.5 The Appeal proposals involve the erection of a total of 91 residential units, comprising 55 dwellinghouses and 36 flats. These dwellinghouses would be accessed off a new road which would lead into the site from the existing road end at the northern end of Northfield Road. This new road runs northwards through the site, terminating at a standard "T" shaped turning head at the northern end of the site. A small section of roadway loops off the west side of the main site road, providing access to those units located in the south western section of the site.
- 2.6 A toddlers play area is proposed for the central part of the site.

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- 2.7 The formation of the site access road requires the construction of a new bridge crossing over the unnamed tributary of the Avon Water. This bridge would be located a short distance to the north of the existing northern end of Northfield Road.
- 2.8 The Appeal proposals also involve a number of associated works, the most important of which involve the provision of a surface water drainage system, a surface water attenuation overspill area, compensatory flood storage areas and a noise attenuation barrier running parallel to the line of the M80 motorway.
- 2.9 As part of the agreed range of measures designed to mitigate the potential flood risk, ground levels across the site will be raised to provide for finished floor levels which reflect a freeboard of 600mm above the anticipated level of the 200 year flood event. A freeboard of a minimum 350mm above the anticipated 200 year flood event level relative to the Avon Burn will be provided in terms of finished ground levels across the site.
- 2.10 The proposed residential units, totalling 91, comprise a mix of 55 dwellinghouses (20 terraced units, 10 semi-detached units and 26 detached units) and 36 flatted units. All of the proposed dwellinghouses would stand a full two storeys in height, with the proposed flatted units standing three storeys in height.
- 2.11 During the course of the Council's consideration of the Appeal proposals, discussions took place between the Appellant and the Council regarding the need to ensure first of all the availability of sufficient capacity within the catchment primary school and secondly, the need to make a suitable financial contribution towards the cost of the upgrading of Herbertshire Castle Park.
- 2.12 The Appellant has accepted both the legitimacy of these two requirements and the level of contribution associated therewith.
- 2.13 The Appeal proposals have taken cognisance of all relevant planning policies and have responded fully and appropriately to all issues raised by the Council, and those parties who were consulted by the Council, during their assessment of the application itself. In particular, it is noted that the proposed scheme of flood mitigation measures and the proposed enhancements to the local road infrastructure have been fully endorsed, respectively, by The Scottish Environmental Protection Agency and the Council's Transportation Planning Unit.
- 2.14 The case to be presented on behalf of the Appellants at the Inquiry will provide evidence in relation to the Appeal proposals which will demonstrate that:

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- The Appeal proposals can be fully and reasonably justified against the provisions of both the approved development plan, under the terms of which the Appeal site is formally allocated for residential development purposes, and the emerging Falkirk Council Local Plan and further, that in line with the provisions of Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997, there are no material considerations which would undermine the acceptability of the Appeal proposals in development plan terms.
  - That the Appeal proposals, as demonstrated within the TA submitted in support of the application, the terms of which have been accepted without reservation by the Council, will not give rise to any unacceptable increase in the levels of traffic and congestion or any consequential rise in road safety concerns and that enhancements can be made to the existing traffic calming measures along Barnego Road and Northfield Road which will improve access overall, to the benefit of the local community. Further evidence will be presented which will demonstrate that, as has already been accepted by the Council, the Appeal site is accessible by public transport and by walking and cycling and consequently will support sustainable travel patterns in line with the terms and provisions of both SPP17 and PAN75.
  - That the proposed scheme of flood mitigation which is proposed as an integral part of the Appeal proposals is, as has been established clearly by SEPAs acceptance of the details thereof, sufficient to ensure that the proposed development will not give rise to any increased flood risk to properties lying outwith the boundary of the Appeal site or to the displacement of flood water to any land outwith the boundary of the proposed compensatory storage area and that consequently, the proposed development is in accordance with national planning policy advice and both structure and local plan policy.
  - That the Appeal proposals will not give rise to any unacceptable loss of open space. Evidence will demonstrate that the Appeal site is formally allocated for residential development purposes within the current approved development plan and that consequently, the development thereof as proposed under this Appeal cannot be reasonably argued to give rise to the loss of open space as defined and protected within the development plan.
  - Further evidence will demonstrate that the Appeal site is of low recreational and open space value, with its low significance as an area of open space being clearly demonstrated by the lack of any relevant designation as such within the terms of the emerging Falkirk Council Local Plan.

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2.15 Standing the terms of the Council's undertaking to formally withdraw Reason for Refusal No. 4, pending sight of the Statements of Case of the Council and the Relevant Persons, we would wish to reserve the Appellants position as regards the nature of any evidence which may require to be presented to the Inquiry in respect of this matter. However, evidence will be led as required to demonstrate that the Appeal proposals represent an appropriate design solution and that the development proposed is not incompatible with the pattern of existing development in the locality.

### **Conclusion**

2.16 From an assessment of the Reasons for Refusal set out within the Decision Notice and in light of the various planning issues identified, the Appellant's case will conclude by arguing that the Appeal should be allowed.

## **3.0 CONDITIONS AND PLANNING OBLIGATIONS**

3.1 Within her report to the 28 November 2007 meeting of the Council's Regulatory Committee, dated 23 November 2008, the Council's Director of Development Services recommended that detailed planning permission be granted in respect of the Appeal proposals, subject first of all to the satisfactory completion of an agreement in terms of Section 69 of the Local Government (Scotland) Act 1973 and secondly, subject to a number of conditions.

3.2 The Appellants can confirm that the extent and purpose of the financial contributions that would be governed by the Section 69 Agreement and the terms of those conditions proposed by the Council's Director of Development Services are acceptable to them.

## **4.0 DOCUMENTS**

4.1 It is anticipated that the Appellant will make reference to the following documents in the course of their evidence:

BW1: Flood Risk Assessment, April 2005 and associated addendum updates

BW2: Proposed Development, Northfield Road, Dunipace – Transport Assessment, August 2005

BW3: Correspondence between CB and Falkirk Council Transport Unit

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- BW4: Proposed Development, Northfield Road, Dunipace – Updated Transport Assessment, September 2008
- BW5: Road Accident Statistics – 2004-2008
- BW6: Colin Buchanan Drawing Number CB/15477/01
- BW7: Falkirk Council Local Transport Strategy
- BW8: Drainage Design and Site level Establishment Summary “E”
- BW9: Surface Water Attenuation Calculations
- BW10: Proposed Mitigation Measures for Water Vole and Otter, August 2007
- BW11: Road Traffic Noise Assessment

4.2 It is also anticipated that reference will be made to the following plans/documents which we understand will be produced as “core documents” by Falkirk Council.

- All documentation associated with Planning Application Ref No. 05/0912/FUL, including all forms, certificates and drawings, as originally submitted and thereafter amended in October 2006 and all responses from statutory consultees and third party letters of representation
- Scottish Planning Policy SPP1 – The Planning System (2002)
- Scottish Planning Policy SPP3 – Planning for Homes (Revised 2008)
- Scottish Planning Policy SPP7 – Planning and Flooding (2004)
- Scottish Planning Policy SPP11 – Open Space and Physical Activity (2007)
- Scottish Planning Policy SPP17 – Planning for Transport ((2005)
- Scottish Planning Policy SPP23 – Planning and the Historic Environment (2008)
- National Planning Policy Guideline NPPG11 – Sport, Physical Recreation and Open Space (1996)
- National Planning Policy Guideline NPPG14 - Natural Heritage (1999)
- Planning Advice Note PAN37 – Structure Planning (1996)
- Planning Advice Note PAN49 – Local Planning (1996)
- Planning Advice Note PAN60 – Planning for Natural Heritage (2000)
- Planning Advice Note PAN65 – Planning and Open Space (2008)
- Planning Advice Note PAN67 – Housing Quality (2003)
- Planning Advice Note PAN75 – Planning for Transport (2005)

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- Planning Advice Note PAN76 – New Residential Street (2005)
  - Circular No. 12/1996 – Town and Country Planning (Scotland) Act 1972: Planning Agreements
  - Designing Places – A Policy Statement for Scotland: Part 1 Part 2
  - Falkirk Council Structure Plan 2007
  - Falkirk Council Structure Plan 2007 – Report of Survey
  - Falkirk Council Structure Plan 2007 – Report of Survey, Technical Appendices
  - Denny and District Local Plan – 1996
  - Falkirk Council Local Plan – Finalised Draft Deposit Version
  - Falkirk Council Local Plan - Finalised Draft Deposit Version - Pre-Inquiry Modifications
  - Falkirk Council Local Plan – SEA
  - Falkirk Council Local Plan – SEA – Addendum 1
  - Falkirk Council Local Plan – SEA – Addendum 2
  - Falkirk Council Local Plan – Denny Issues Paper
  - Falkirk Council Housing Land Audit 2007/2008
  - Falkirk Council Housing Land Audit 2006/2007
  - Falkirk Council Housing Land Audit 2006/2007 – Denny Map
  - Falkirk Council Housing Land Audit 2005/2006
  - Falkirk Council Housing Land Audit 2004/2005
  - Falkirk Council SPG – Housing layout and Design
  - Falkirk Council SPG – Biodiversity and Development

## **5.0 REPRESENTATION**

- 5.1 The Appellants will be represented at the Inquiry by Mr. Chris Smylie, Partner, Maclay Murray & Spens LLP, Quartermile One, 15 Lauriston Place, Edinburgh, EH3 9EP.

## **6.0 EVIDENCE TO BE LED**

- 6.1 The Appellant will lead evidence in support of the Appeal proposals on the following issues:

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1. Transportation and Road Safety
  2. Flooding
  3. Planning Policy and related matters
  4. Design (TBC)

## **7.0 WITNESSES**

7.1 At present, the Appellant intends to lead four witnesses, as follows:

1. Claire Carr of Colin Buchanan Associates will speak to transportation and road safety issues.
2. David Bassett of JBA Consulting will speak to flooding.
3. Andrew Bennie of Barton Willmore will speak to Planning Policy and related matters.
4. Roy Mitchell will speak to design related issues.

7.2 Depending on the Statements of Case of the other parties to the Inquiry, the Appellant reserves the right to add to or amend the list of Witnesses and/or to provide additional written evidence and to cover other matters, once the nature of the evidence to be led by the other parties to the Inquiry becomes clear.