AGENDA ITEM 16

FALKIRK COUNCIL

Subject:	**MODIFICATION OF PLANNING AGREEMENT ATTACHED TO PLANNING PERMISSION P/08/0296/FUL REMOVING THE REQUIREMENT TO MAKE A TRANSPORT CONTRIBUTION OF £550,000 AT LAND TO THE WEST OF 21 OLD MILL WAY, KIRKLAND DRIVE, STONEYWOOD FOR MACTAGGART & MICKEL - P/13/0074/75M**
Meeting:	**PLANNING COMMITTEE**
Date:	**22 August 2013**
Author:	**DIRECTOR OF DEVELOPMENT SERVICES**
Local Members:	**Ward - Denny and Banknock** **Councillor Jim Blackwood** **Councillor Brian McCabe** **Councillor John McNally** **Councillor Martin David Oliver**
Community Council:	**Denny and District**
Case Officer:	Brent Vivian (Senior Planning Officer), Ext. 4935

1. DESCRIPTION OF PROPOSAL / SITE LOCATION

1.1 The application seeks a modification to the Planning Obligation attached to planning permission P/08/0296/FUL for the redevelopment of the former Carrongrove Paper Mill, Stoneywood, to provide for a mixed use development including 182 residential units. Phase 1 of the new development, for 27 affordable housing units and new road infrastructure, is currently under construction.

1.2 The Planning Obligation binds the applicant to make phased payments in relation to education, recreational facilities and off-site cyclepath and road infrastructure. The total value of the financial contributions secured by the Planning Obligation is £1,101,750 (which is subject to increase by indexation).

1.3 The application seeks removal of the provisions of the Planning Obligation which relate to the transport contribution (£550,000). Clause 3 of the Planning Obligation provides for staged payments of the transport contribution and also includes a provision which states that:

> *"The Transport Contribution shall be refunded by the Council to the party that made the payment in question to the extent that Transport Contribution has not been disbursed by the Council towards the provision of a roundabout at the junction of Nethermains Road and Glasgow Road, Denny within 10 years of the date of receipt of the last installation of such payment by the Council".*

The provision of a roundabout at the junction of Nethermains Road and Glasgow Road forms part of the infrastructure works to deliver the Denny Eastern Access Road (DEAR).

1.4 The staged payments of the transport contribution are tied to the occupation of Mainstream Units (as opposed to Affordable Units) and subsequent anniversary dates of the preceding payment. As Phase 1 of the development currently under construction is for affordable housing, no installments of the transport contribution have been received yet.

1.5 The applicant has submitted that the reasons for the application relate to:-

(a) Two material changes in circumstances, being an increase in abnormal development costs associated with Phase 1 piling and a planning application by Bett Homes which includes part construction of the Denny Eastern Access Road (DEAR) and specifically the delivery of a new roundabout at the Nethermains Road/Glasgow Road junction (see paragraph 3.5 below); and

(b) The transport contribution fails to meet the relevant tests for Planning Obligations made under Section 75 of the Town and Country Planning (Scotland) Act 1997.

2. REASON FOR COMMITTEE CONSIDERATION

2.1 The application requires consideration by the Planning Committee as the application to which the Planning Obligation relates (Ref : P/08/0296/FUL) was considered by the Planning Committee on 24 February 2010. An update report was subsequently considered by the Planning Committee on 2 November 2011. In both cases the Committee decided they were minded to grant planning permission subject to several matters being concluded, including the satisfactory completion of a Section 75 Planning Obligation.

3. SITE HISTORY

3.1 Planning application ref : P/08/0296/FUL for the redevelopment of a former paper mill to provide 129 dwellinghouses and 53 flats, 750m² of commercial floorspace, road infrastructure including a new roundabout, open space, landscaping, woodland management, public path provision and conversion of a Listed Building to business use was granted in May 2012, following the satisfactory completion of a Section 75 Planning Obligation.

3.2 Listed building consent ref : P/08/0488/LBC for external and internal alterations to Carrongrove House was approved in April 2009.

3.3 Planning application ref : P/12/0364/VRC to vary condition 33 of planning permission P/08/0296/FUL, to allow occupation of the Phase 1 affordable housing units prior to construction of a mini-roundabout at the junction of Stirling Street and Nethermains Road, was refused by the Planning Committee on 31 October 2012.

3.4 Planning application ref : P/13/0262/FUL for alterations to Fankerton Weir for hydro-electric generation and fish passage, installation of a 600 metre long pipeline and construction of a turbine house was received in May 2013 and is pending consideration.

3.5 Planning application ref : P/12/0546/FUL for the provision of 307 dwellinghouses (including 46 affordable houses) at land to the south of Mydub Farm, Glasgow Road, Denny and Denny Eastern Access Road (DEAR), including provision of greenspace, sustainable urban drainage and associated infrastructure was received in September 2012 and is pending consideration.

4. CONSULTATIONS

4.1 The Transport Planning Unit consider that there remains ample justification to require a transportation contribution from this development site towards the DEAR, based on the relative proportional traffic impact of the proposed development on Denny Cross/DEAR. They caution that removal of the transport contribution would lead to a funding shortfall for the construction of the DEAR which may necessitate an increase in the relative payments of the other development sites contributing towards the DEAR. They advise that the transport contribution, towards a roundabout at the junction of Nethermains Road/Glasgow Road, was previously agreed with the applicant in order to address one of the key outstanding transport issues associated with the proposed development, and that much work went into agreeing the contribution trigger dates in order to phase the payments and reduce the upfront burden on the developer. They advise that the transport contribution was agreed prior to the Council having a formally adopted methodology to fund delivery of the DEAR and that this matter is now the subject of supplementary planning guidance. (The Falkirk Council Supplementary Planning Guidance Note for Delivery of the DEAR was approved by the Falkirk Council Executive on 18 June 2013). They advise that, under this new supplementary planning guidance, the contribution required by the applicant would increase from the previously agreed £550,000.

5. COMMUNITY COUNCIL

5.1 The Denny and District Community Council has not made any representations in relation to this application.

6. PUBLIC REPRESENTATION

6.1 No public representations have been received in relation to this application.

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 COM.5 'Developer Contributions' states:

> *"The Council will ensure that proper provision is made to meet the physical and social infrastructure needs of new development and to mitigate the impact of such development on the locality. Where it is required to make a proposal acceptable in land use planning terms, serve a planning purpose and is directly related to the proposed development, developer funding for on- or off-site works will be sought in respect of:*
>
> *(1) environmental enhancement required to mitigate, or compensate for landscape, townscape or ecological impacts;*
> *(2) physical infrastructure required to make the development acceptable, particularly transport provision required to ensure that the development meets sustainability criteria;*
> *(3) community and recreational facilities required to meet demand generated by the development.*
>
> *The required provision will be reasonable and related to the scale and nature of the proposed development, taking into account the relevant Council standards and will be specified within Local Plans and development briefs as appropriate. Examples of the range of matters which developers may be asked to address are provided in Schedule COM.5."*

7a.2 This policy requires the Council to ensure that proper provision is made to meet the infrastructure needs of new development and to mitigate the impact of new development on the locality. This was the basis for requiring the developer contributions secured by the Planning Obligation and it is considered that the transport contribution, towards the provision of a roundabout at the Nethermains Road/Glasgow Road junction, continues to represent a reasonable contribution in scale and kind for this development and satisfies the criteria as detailed in this policy. It is accepted that this matter would need to be reviewed if planning permission were granted to another party which secured delivery of, or funding towards delivery of, a roundabout at the Nethermains Road/Glasgow Road junction. However, no such permission has been granted and whilst planning permission ref : P/12/0546/FUL (see paragraph 3.5 of this report) includes infrastructure works towards delivery of the DEAR, this application is currently pending consideration and therefore no decision on the application has yet been taken by the Council.

7a.3 The applicant has submitted that the introduction of affordable housing into the proposed development reduces traffic generation, and that the economic downturn has had a notable effect on background traffic levels. However, if the applicant considers that the previously agreed assumptions about trip rates, trip distribution and background traffic levels are no longer relevant and therefore justify a review of the previously agreed transport contribution, then the case would have to be made in a revised transport assessment. This case has not been made, and in any event would not support the current application which seeks to entirely remove the transport contribution. A further consideration is that the Transport Planning Unit have advised, that under the Council's new Supplementary Planning Guidance for delivery of the DEAR, the level of the contribution would increase from that previously agreed.

7a.4 The applicant has also referred to the availability of alternative mitigation at the Nethermains Road/Glasgow Road junction in order to address the traffic impacts of the proposed development and replace the previously agreed transport contribution. The measures referred to included extending the existing give way lines on Nethermains Road. However, the Transport Planning Unit have advised that these measures were old measures put forward for a previous scheme for the Carrongrove site which were audited at the time and rejected by the Transport Planning Unit due to inaccurate modeling of the mitigation measures. Notwithstanding this, the trigger for the DEAR transport contribution is based on the relative proportional traffic impact of the proposed development site on Denny Cross/DEAR, from which a contribution towards the provision of the roundabout was felt to represent a reasonable contribution in scale and kind for this development.

7a.5 In the light of the above comments, it is considered that the previously agreed transport contribution continues to be justified and therefore that the application is contrary to this policy.

Falkirk Council Local Plan

7a.6 The Falkirk Council Local Plan identifies opportunity TR.DEN01, being a new bypass road (DEAR) to address capacity problems at Denny Cross which will be further exacerbated by new development. It states that Phase 1 from Broad Street to the new Denny High School has been completed, funded by Falkirk Council, and the remainder of the route will require to be developer funded. The previously agreed transport contribution is in keeping with this advice that the remainder of the route will be developer funded.

7a.7 Policy SC11 - 'Developer Contributions To Community Infrastructure' states:

> *"Developers will be required to contribute towards the provision, upgrading and maintenance of community and recreational facilities required to meet demand generated from new development. The nature and scale of developer contributions will be determined by the following factors:*
>
> *(1) Specific requirements identified against proposals in the Local Plan or in development briefs;*
> *(2) In respect of open space, recreational, and education provision, the general requirements set out in Policies SC13 and SC14;*
> *(3) In respect of other community facilities, any relevant standards operated by the Council or other public agency; and*
> *(4) Where a planning agreement is the intended mechanism for securing contributions, the principles contained in Circular 12/1996."*

7a.8 The considerations under this policy have been considered in relation to Policy COM.5 of the Falkirk Council Structure Plan. Accordingly, the application is also considered to be contrary to this policy.

7a.9 Accordingly, the application does not accord with the Development Plan.

7b Material Considerations

7b.1 The material considerations in respect of this application are Planning Circular 3/2012 (Planning Obligations and Good Neighbour Agreements), the Falkirk Local Development Plan (Proposed Plan), Falkirk Council's Supplementary Planning Guidance Note (SPG) for Delivery of Denny Eastern Access Road (DEAR), the consultation responses and the submissions by the applicant in support of the application.

Planning Circular 3/2012 (Planning Obligations and Good Neighbour Agreements)

7b.2 This Circular replaced Planning Circular 1/2010 (Planning Agreements) which in turn replaced Planning Circular 12/1996 (Planning Agreements). The Circular sets out the circumstances in which Planning Obligations can be used and promotes strict compliance with the tests set out in the circular, as well as consideration of the economic viability of proposals and alternative solutions alongside options of phasing or staging payments. The Circular states that Planning Obligations can be used to overcome obstacles in the grant of planning permission such as negative impacts on land use, the environment and infrastructure.

7b.3 The Circular states that Planning Obligations made under Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended) should only be sought where they meet the following tests:

- Necessary to make the proposed development acceptable in planning terms;
- Serve a planning purpose and, where it is possible to identify infrastructure provision requirements in advance, should relate to development plans;
- Relate to proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area;
- Fairly and reasonably relate in scale and kind to the proposed development; and
- Be reasonable in all other respects.

7b.4 The transport contribution under question is attached to the Planning Obligation for planning permission P/08/0296/FUL and is considered to meet the relevant tests as set out in the circular, for the reasons detailed in this report. As such, the contribution overcame a significant obstacle to the grant of planning permission in helping fund the delivery of a major road infrastructure project (DEAR) to accommodate traffic growth exacerbated by planned new development in the area. In addition, it was agreed that the contribution payments would be phased in order to reduce the upfront burden on the applicant given the challenging financial conditions, and other issues raised by the applicant in relation to economic viability (considered in paragraphs 7b.12 to 7b.14 of this report). In light of these comments, the previous agreed transport contribution is considered to be supported by Planning Circular 3/2012.

Falkirk Local Development Plan (Proposed Plan)

7b.5 The Proposed Falkirk Local Development Plan was approved by the Council for consultation in March 2013, with the period for representations running from April to June 2013. It is expected to be adopted in early 2015, at which point it will replace the current Structure Plan and Local Plan. It provides the most up to date indication of Falkirk Council's views in relation to Development Plan policy and constitutes a material consideration in the determination of planning applications.

7b.6 The Proposed Plan identifies the DEAR as an infrastructure project (INF14) which has been carried forward from the existing plan. It describes the DEAR as providing an eastern bypass of Denny Town Centre and access to the south-east Denny strategic growth sites at Mydub Farm. It states that the DEAR will be funded from developer contributions from impacting sites.

7b.7 The Proposed Plan contains Policy INF02 (Developer Contributions to Community Infrastructure) which is similar to the policies of the Structure Plan and Local Plan detailed in this report, which the application has been assessed in this report as being contrary to. A similar conclusion can therefore be reached in assessment of the application against this policy.

Falkirk Council Planning Guidance Note (SPG) for Delivery of Denny Eastern Access Road (DEAR)

7b.8 This SPG, which was approved by the Council's Executive on 18 June 2013, sets out the approach to the funding and phasing of DEAR and promotes the sharing of costs based on the level of traffic impact of each development as a percentage of the overall traffic impact from all of the contributing sites in the area on Denny Cross and/or DEAR. The SPG calculates the sharing of costs between the development sites and reduces the cost sharing to take account of the £550,000 contribution agreed for the Carrongrove development site. As indicated earlier in this report, the Transport Planning Unit have advised that the transport contribution for the Carrongrove site would increase under the SPG.

7b.9 The SPG acknowledges that the Mydub site will play a pivotal role in how the DEAR proceeds but that the Council will retain discretion to undertake Prudential Borrowing or utilise capital funding for the project cost in order to enable it to carry out the works and repay / recoup the borrowing or funding through developer contributions. However, the SPG indicates that the way forward in the short term is likely to be for the Mydub developer to construct an initial stretch of road at the Glasgow Road end of the route, sufficient in length to access their development site via a roundabout. As indicated in this report, planning application P/12/0546/FUL which includes infrastructure works towards delivery of the DEAR has been submitted but no decision on the application has yet been taken. Amongst other things, the scale and nature of the road infrastructure works proportionate to this application, and the mechanism for delivery of the works, are currently under consideration.

Consultation Responses

7b.10 The consultation response from the Transport Planning Unit is summarised in paragraph 4.1 of this report. The Transport Planning Unit consider that there remains ample justification to require a transport contribution from this site towards the DEAR and therefore are opposed to removing the previously agreed transport contribution from the Planning Obligation.

Submissions by the Applicant

7b.11 The applicant's reasons for making this application are summarised in paragraph 1.5 of this report. The reasons relating to the Bett Homes application (ref: P/12/0546/FUL) and the relevant tests under the Planning Circular not being met have already been considered in this report.

7b.12 The applicant has referred to an increase in abnormal development costs associated with Phase 1 piling as a further reason for making the application. Phase 1 of the development is for 27 affordable housing units and the abnormal costs associated with the Phase 1 piling is indicated at around £150,000 (excluding VAT). The applicant has previously highlighted the viability issues faced by the project whilst the Planning Obligation secured developer contributions totalling £1,101,750. Whilst an updated financial appraisal has been submitted with the current application, the original appraisal for the current scheme has not, therefore it is not possible to compare current overall abnormal development costs and overall total costs against those costs at the time the Planning Obligation was agreed. Whether there has been a change in circumstances in relation to overall costs and the viability of the scheme has therefore not been demonstrated.

7b.13 Whilst it is not accepted that there is a justifiable case in relation to development costs, it is noted that the Phase 1 piling quote is around £150,000 whilst the applicant seeks removal of the agreed £550,000 transport contribution in its entirety. In addition, the applicant has advised that the ground conditions across the site are similar to Phase 1, therefore it is likely that the balance of the site will also require an abnormal foundation, adding approximately £860,000 to the development costs. However, no information has been submitted to substantiate this.

7b.14 Nothwithstanding the above mentioned deficiencies, it is questioned whether the costings for the foundations, which arguably should have been identified in the initial intrusive site investigations, could justify dispensing with a contribution towards delivering essential road infrastructure in the area.

7c Conclusion

7c.1 The application seeks to modify the Planning Obligation attached to planning permission P/08/0296/FUL by removing the requirement to make a transport contribution of £550,000. This report sets out the relevant considerations and concludes that the application is contrary to the Development Plan, the principle of a transport contribution towards the provision of the DEAR can be justified and the reasons put forward by the applicant to justify removal of the transport contribution cannot be supported. However, the report notes that the transport contribution was identified to help fund a roundabout at the Nethermains Road/Glasgow Road junction and that this matter may need to be reviewed if planning permission is granted to another party which secured delivery of, or funding towards delivery of, this essential infrastructure work. The application is therefore recommended for refusal for the reasons detailed below.

8. RECOMMENDATION

8.1 It is therefore recommended that the Planning Committee refuse to modify the Planning Obligation attached to planning permission P/08/0296/FUL for the following reason(s):-

(1) The agreed transport contribution forming part of the Section 75 Planning Obligation is considered to meet the relevant tests as set out in Planning Circular 3/2012 (Planning Obligations and Good Neighbour Agreements).

(2) Granting the application would be contrary to Policy TRANS.3 of the Falkirk Council Structure Plan and Policy ST7 of the Falkirk Council Local Plan, which require the identification of suitable measures to mitigate the impact of development proposals on the road network.

(3) Granting the application is not supported by Falkirk Council's Supplementary Planning Guidance Note for Delivery of Denny Eastern Access Road (DEAR), which sets out a cost sharing approach to the funding of DEAR based on the level of the traffic impact of each development as a percentage of the overall traffic impact from all of the proposed development sites in the area on Denny Cross and/or DEAR. The contribution of the proposed development to the overall traffic impact was identified and agreed in the assessment of planning application P/08/0296/FUL.

(4) It has not been demonstrated that there has been any change of circumstances to justify granting the application contrary to the terms of the Falkirk Council Development Plan.

Pp .....……
Director of Development Services

Date: 13 August 2013

LIST OF BACKGROUND PAPERS

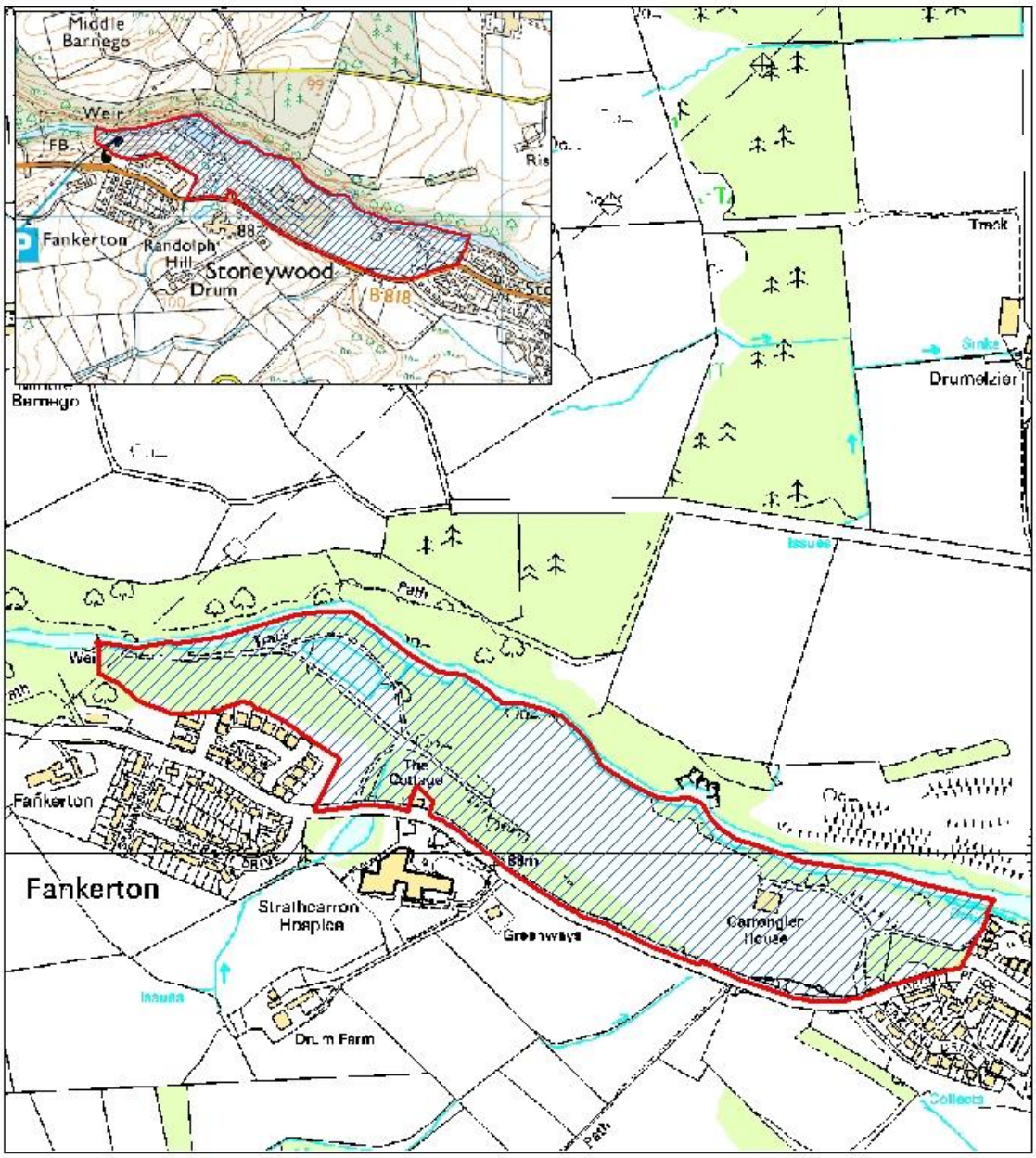
1. Falkirk Council Structure Plan.
2. Falkirk Council Local Plan.
3. Falkirk Local Development Plan.
4. Falkirk Council's Supplementary Planning Guidance Note (SPG) for Delivery of Denny Eastern Access Road (DEAR).
5. Planning Circular 3/2012 : Planning Obligations and Good Neighbour Agreements.

Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504935 and ask for Brent Vivian, Senior Planning Officer.

Planning Committee

Planning Application Location Plan P/13/0074/75M

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



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