

FALKIRK COUNCIL

Subject: MODIFICATION OF PLANNING OBLIGATION UNDER SECTION 75 OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 ATTACHED TO PLANNING PERMISSION P/09/0386/FUL TO THE EXTENT THAT ALL REFERENCES TO AND REQUIREMENTS FOR THE EDUCATION PAYMENT ARE REMOVED AT 55 - 91 (ODD) HAZEL ROAD, BANKNOCK, BONNYBRIDGE, FK4 1LQ, & 118 - 138 (EVEN) HAZEL ROAD, BANKNOCK, BONNYBRIDGE, FK4 1LQ FOR LINK GROUP LTD - P/14/0216/75M

Meeting: PLANNING COMMITTEE

Date: 20 August 2014

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: Banknock, Haggs and Longcroft

Case Officer: Brent Vivian (Senior Planning Officer), Ext. 4935

1. DESCRIPTION OF PROPOSAL / SITE LOCATION

- 1.1 The application seeks to modify the Section 75 Planning Obligation attached to planning permission P/09/0386/FUL so that the requirement for an education contribution of £30,000 is removed.
- 1.2 The application site is located at the eastern end of Hazel Road and Hawthorn Drive, in the south-east corner of Banknock. Planning permission P/09/0386/FUL was for the erection of 30 dwellinghouses which are currently under construction.

2. REASON FOR COMMITTEE CONSIDERATION

- 2.1 The application requires consideration by the Planning Committee as the application to which the Section 75 Planning Obligation relates (ref P/09/0386/FUL) was determined by the Directorate of Planning and Environmental Appeals.

3. SITE HISTORY

- 3.1 Planning application P/09/0386/FUL for the erection of 30 dwellinghouses and associated works was refused by the Planning Committee on 22 September 2010. The refusal of planning permission was appealed to the Directorate of Planning and Environmental Appeals (DPEA) and the appeal was allowed. Planning permission was subsequently granted on 5 July 2011 following the satisfactory completion of a Section 75 Legal Agreement (Planning Obligation) in respect of:-
- The payment of a financial contribution of £22,500 towards the provision, upgrade and maintenance of recreational facilities at Hollandbush Park, Banknock;
 - The payment of a financial contribution of £30,000 towards the upgrade of the A80/M80 slip road junctions; and
 - The payment of a financial contribution of £30,000 towards the improvement of education facilities at Denny High School.
- 3.2 The DPEA Reporter found that the financial contributions had been agreed with the applicant, the need for the contributions arose directly for the development proposal and they were compatible with relevant Local Plan policies and the advice contained in Circular 1/2010: Planning Agreements.
- 3.3 The Section 75 Planning Obligation requires the payment of the financial contributions (together with the Indexation Figure) no later than 7 days after the issue by the Council's Building Standards Unit of a Completion Certificate for the 22nd unit. The applicant is therefore entitled to construct the approved development up to the point where this threshold is reached, prior to making the contribution payments.
- 3.4 Planning application P/13/0802/75D to discharge the Section 75 Planning Obligation attached to planning permission P/09/0386/FUL was withdrawn on 28 February 2014. This was because the applicant wished to explore removal of certain aspects of the Planning Obligation rather than discharge of the Obligation in full. As a result, the two current applications to modify the Planning Obligation were submitted.
- 3.5 Planning application P/14/0223/75M for modification of the Section 75 Planning Obligation attached to planning permission P/09/0386/FUL to the extent that all references and requirements for a transport payment are removed, is also to be considered by the Planning Committee.
- 3.6 Planning application P/14/0349/FUL for the construction of an underground attenuation tank was validated on 16 June 2014 and is pending consideration.

4. CONSULTATIONS

- 4.1 Education Services remain of the view that the agreed education contribution of £30,000 is still required in order to address a longer term capacity issue at Denny High School arising from the cumulative impact of new housing development in the school catchment area.

5. COMMUNITY COUNCIL

5.1 The Banknock, Haggs and Longcroft Community Council have not made any representations.

6. PUBLIC REPRESENTATION

6.1 One objection to the application has been received, on the following grounds:-

- Astounded by this application to remove the Obligation; and
- The applicant made a previous application to remove an Obligation but the application was withdrawn.

7. DETAILED APPRAISAL

7.1 Under Section 75 of the Town and County Planning (Scotland) Act 1997 (as amended by the Planning etc. (Scotland) Act 2006, planning obligations are secured through an appropriate legal document to bind the owners and future owners of a particular subject to pay a financial (or otherwise) contribution towards infrastructure to support a development proposal subject to a planning application.

7.2 Section 75A of the 2006 amendment establishes a formal process by which a party to the planning obligation may apply to discharge or modify the obligation.

7.3 Scottish Government Circular 3/2012 (Planning Obligations and Good Neighbour Agreements) sets out the circumstances in which planning obligations and good neighbour agreements can be used. The circular states that planning obligations should only be sought where they meet all of the following tests:-

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

- 7.4 The planning application for the housing development (ref P/09/0386/FUL) was determined prior to Circular 3/2012, when Circular 1/2010 (Planning Agreements) was in force. The policy tests under both these circulars are the same and it follows that, if the education contribution had been considered under Circular 3/2012, the contribution would still have been sought.
- 7.5 The applicant has submitted a Supporting Statement prepared by Ryden, dated April 2014, which concludes that the education contribution fails the reasonableness, scale and kind, relationship to the proposed development and the planning purpose tests of the circular. According to the applicant, the key issue in this case is timing. The applicant contends that the capacity issues relating to Denny High School were not identified at the time of the application and therefore should not apply.
- 7.6 In response to the applicant's submissions, each policy test of Circular 3/2012 is considered in turn.

Necessity Test

- 7.7 The education contribution is considered to meet the 'necessity test' as it is required to help address a longer term capacity issue at Denny High School arising from the cumulative impact of new housing development. Whilst the applicant contends that the key issue is timing, it is evident from the Denny High School roll projections from the 2008/9 session (when the application was submitted) that a capacity issue was projected by 2017/18. A longer term capacity issue was therefore indicated in the roll projections at the time of the application and remained an issue up until determination of the application and remains an issue today.
- 7.8 In addition, the applicant considers that capacity issues emerge '*due to overly ambitious pupil product from new housing that has no basis in the reality of the Falkirk Housing Market*'. This is not demonstrated or substantiated in the assessment. However, it can be noted that 2100 new houses are allocated in the Falkirk Local Development Plan (Proposed Plan) just within the six large sites at Mydub 1 and 2, Dennyloanhead, Banknock, Carrongrove Mill and the Old Denny High School Site. Current projections estimate growth that will see the school reaching and exceeding its capacity by 2019/2020. Even if the projected build-out rate was reduced by 50%, the school can be expected to reach capacity by 2022. In addition, the pupil yield ratio of 0.14 pupils per house for non-denominational secondary schools is a robust average that has been confirmed in four separate analyses of all new housing in the Falkirk Council area over a 10 year period leading up to 2002, 2005, 2008 and 2011.
- 7.9 In addition, a Section 75 Planning Obligation is necessary to secure the contribution and ensure that the developer and any successors in title are bound by the Obligation to make the payment.

Planning Purpose Test

- 7.10 The contribution is considered to meet the 'planning purpose test' as the policy basis for the contribution was rooted in the Falkirk Council Local Plan in its various stages whilst the application was under consideration and as supported by the Supplementary Planning Guidance for Education and New Housing Development at the time.

- 7.11 The general policy justification for taking the education contribution is provided by Policy COM.5 (Developer Contributions) of the Falkirk Council Structure Plan and Policies SC11 (Developer Contributions to Community Infrastructure) and SC14 (Education and New Development) of the Falkirk Council Local Plan. The Falkirk Council Structure Plan formed part of the Development Plan at the time the application was under consideration, whilst the Falkirk Council Local Plan Finalised Draft Deposit Version as amended by the final proposed modifications June 2010 was a material consideration when the application was determined by the Planning Committee. The plan had been adopted by the time of the appeal decision. The wording of Policies SC11 and SC14 is the same in both the Finalised Draft Deposit Version April 2007, the Finalised Draft Deposit version as amended by the final proposed modifications June 2010 and the adopted version December 2010. Therefore there has been no change to the relevant planning policies to justify a change in stance in respect of the requirement for an education contribution.
- 7.12 The applicant's assessment dated April 2014 suggests that capacity issues at Denny High School first emerged in the final proposed modifications June 2010. However, both the Finalised Draft Deposit Version April 2007 and the adopted version December 2010 contained the following wording under the heading 'Recreation and Community Facilities' contained in the Denny and Dunipace Settlement Statement:-
- In terms of school capacity, Dunipace Primary School may require extension to cope with projected roles, whilst longer-term pressures may occur at Denny High School, Denny Primary and Head of Muir Primary.'*
- An issue of capacity at Denny High had therefore been identified in the emerging Falkirk Council Local Plan by the time of submission of the planning application in June 2009.
- 7.13 The above-referred to Policies SC11 and SC14 are supported by Falkirk Council's Supplementary Planning Guidance (SPG) for Education and New Housing Development. The latest version of the SPG is dated August 2011 and the version of the SPG that the application was considered against was dated February 2007. The education contribution of £30,000 (£1,000 per unit) reflected the requirement under the February 2007 guidance.
- 7.14 The adopted Local Plan prior to December 2010 was the Bonnybridge and Banknock Local Plan of 1982 (altered 1995). This plan was extremely out of date, and the fact that it did not contain any policies in relation to developer contributions reflected this and cannot be given any weight to support removal of the education contribution, on the basis that this was the adopted Local Plan at the time the education contribution was considered by the Council.

Relationship to Proposed Development Test

- 7.15 The contribution is considered to meet the 'relationship to the proposed development test' as it relates to the impact of the development in contributing to the cumulative impact of new housing development on school infrastructure. The application site is in the Denny High School catchment area and will contribute to the collective pressure expected from housing growth. Individual developments cannot be treated in isolation with the scale of growth planned in this area. A pro-rata contribution from all housing developments is the only appropriate mechanism for apportioning the financial impact on essential schools infrastructure.

Scale and Kind Test

- 7.16 The contribution is considered to meet the 'scale and kind test' as it reflected the education contribution rate applicable at the time, as set out in the SPG dated February 2007. That rate was £1,000 per unit and the contribution of £30,000 fairly reflected the sum of the pupil yield ratio for the development (4 pupils) and the cost per pupil which, at that time, was based on £8,000 per pupil.

Reasonableness Test

- 7.17 The contribution is considered to meet the 'reasonableness test' for the reasons detailed in relation to the other policy tests. In addition, under the current SPG, a contribution of £2,100 per house would have been required, based on a cost per pupil of £16,068 which is the lowest regional index from the 2009 Government Department of Education metric. Given the pupil yield ratio from the development of 4 pupils and, at a cost per pupil of £16,068, the contribution is less than half the current requirement and substantially less than what will actually be needed to cover the pro-rata impact of the development. This serves to underline the reasonableness of the contribution, as does the agreed phasing which allows for a substantial portion of the development to be occupied prior to the education contribution being paid.

8. CONCLUSION

- 8.1 The application seeks to modify the Section 75 Planning Obligation attached to planning permission P/09/0386/FUL, so that the requirement for an education contribution of £30,000 is removed. Removal of the contribution can only be justified under the terms of the policy tests of Scottish Government Planning Circular 3/2012. This report has assessed the application against these policy tests and concludes that the education contribution satisfies all of the policy tests and therefore that the education contribution is justified for the reasons detailed in the report.
- 8.2 It is therefore recommended that the Planning Obligation should continue in effect without the modification specified in this application.

9. RECOMMENDATION

- 9.1 It is therefore recommended that the Planning Committee refuse to modify the Section 75 Planning Obligation attached to planning permission P/09/0386/FUL to remove all references to and requirements for the education contribution. The reason being that the education contribution is considered to satisfy all of the policy tests of Scottish Government Planning Circular 3/2012.

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Director of Development Services

Date: 11 August 2014

LIST OF BACKGROUND PAPERS

1. Falkirk Council Structure Plan January 2007.
2. Falkirk Council Local Plan December 2010.
3. Falkirk Council Local Plan finalised draft deposit version April 2007.
4. Falkirk Council Local Plan finalised draft deposit version as amended by the finalised proposed modifications June 2010.
5. Banknock and Bonnybridge Local Plan 1982 (altered 1995).
6. Falkirk Council Supplementary Planning Guidance for Education and New Housing Development February 2007.
7. Falkirk Council Supplementary Planning Guidance for Education and New Housing Development August 2011.
8. Scottish Government Circular 3/2012 (Planning Obligations and Good Neighbour Agreements).
9. Scottish Government Circular 1/2010 (Planning Agreements).
10. Letter of Objection from Mr John McCann, 108 Hazel Road, Banknock, FK4 1LQ on 1 May 2014.

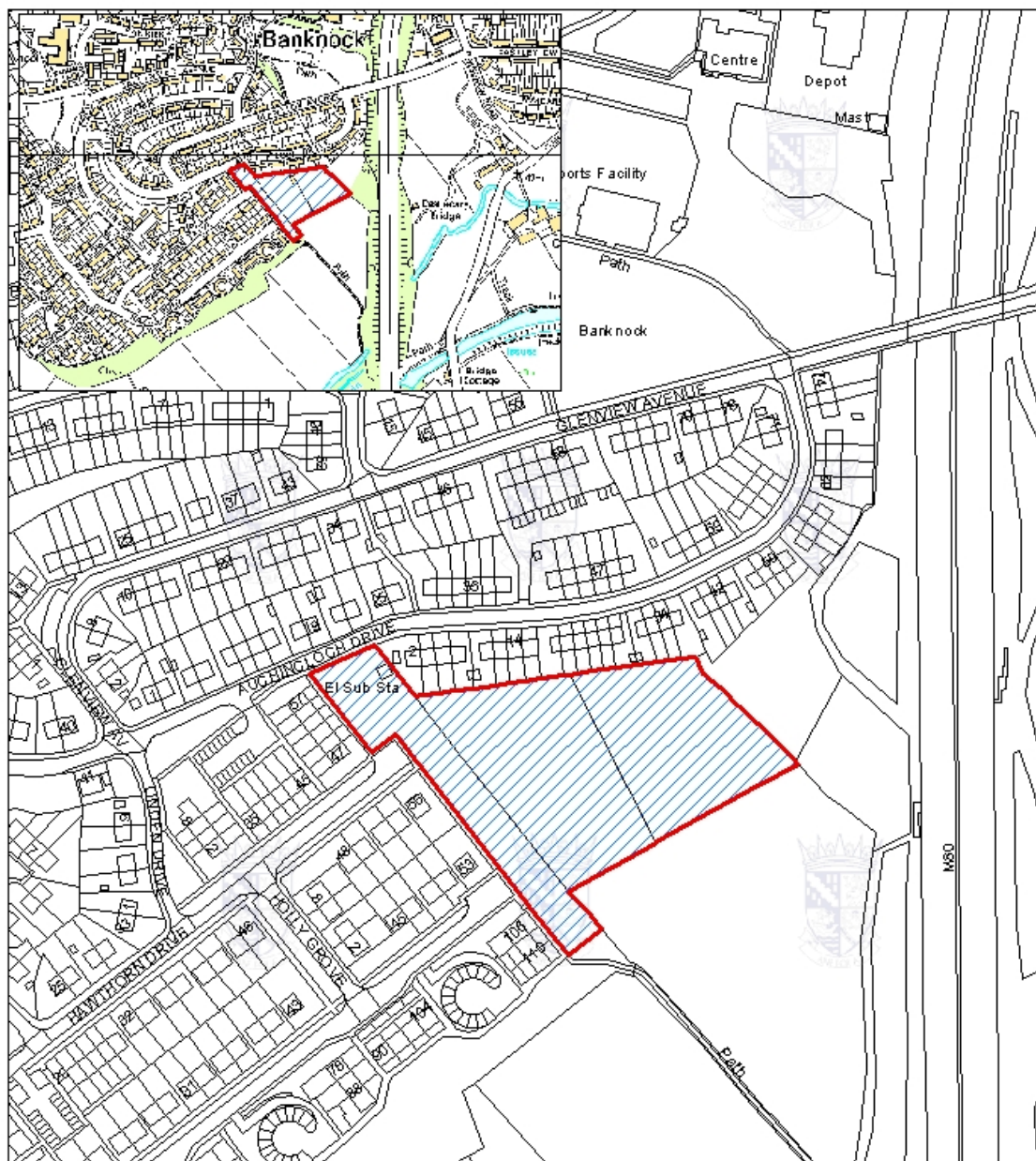
Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504935 and ask for Brent Vivian, Senior Planning Officer.

Planning Committee

Planning Application Location Plan

P/14/0216/75M

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



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