

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 TRANSPORT 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/14/0223/75M

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 a transport 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 A803/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/14/0216/75M 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 an education payment are removed, is also to be considered by the Planning Committee under a separate report.
- 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 The Council's Transport Planning Unit remains of the view that the agreed transport contribution of £30,000 is still required in order to help fund an upgrade of the A803/M80 slip road junctions to address a traffic capacity issue arising from the cumulative impact of new housing development in the 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;
- The applicant made a previous application to remove an Obligation but the application was withdrawn; and
- The roads in the area need upgrading and the current state of them and the traffic build-up are a disgrace.

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 particular subjects. They may secure payment of a financial 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 transport 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 transport contribution fails the reasonableness, scale and kind, and relationship to the development tests of the circular. More importantly, the applicant contends that the transport contribution fails the planning purpose test of the circular due to contradictory guidance in the Banknock and Haggs SIRR Development Framework (Supplementary Planning Guidance), June 2009, in respect of the contributing sites to fund the A803/M80 slip road junction upgrades.
- 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 transport contribution is considered to meet the 'necessity test' as it is required to help fund an upgrade of the A803/M80 slip road junctions to address a traffic capacity issue arising from the cumulative impact of new housing development in the area.
- 7.8 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

- 7.9 The contribution is considered to meet the 'planning purpose test' as the policy basis for the contribution is rooted in the Falkirk Council Local Plan and supported by the Banknock and Haggs SIRR Development Framework.
- 7.10 The general policy justification for taking the transport contribution is provided by Policy COM.5 (Developer Contributions) of the Falkirk Council Structure Plan and Policy SC11 (Developer Contributions To Community Infrastructure) 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 Policy SC11 is the same in 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 a transport contribution.

- 7.11 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 transport contribution, on the basis that this was the adopted Local Plan at the time the transport contribution was required by the Council.
- 7.12 The above referred to policies are supported by Falkirk Council's Supplementary Planning Guidance (SPG) entitled 'Banknock and Haggs SIRR Development Framework'. This guidance is dated June 2009 and was a material planning consideration at the time of the application (received on 4 June 2009).
- 7.13 The sites to contribute to the necessary capacity upgrade of the A803/M80 slip road junctions are identified in paragraph 5.6.8 of the Banknock and Haggs SIRR Development Framework. The subject site (H.B & B17, Auchincloch Drive, Banknock) is one of the identified sites. However, the applicant contends that there is a contradiction in the Development Framework as paragraph 2.4.7 of this guidance states that the provisions of the Development Framework will not apply to the Auchincloch Drive site (amongst others) as:-

"it is considered that these sites are capable of overcoming their own infrastructural constraints independently of one another".

- 7.14 In response to this, it is recognised that it may have been preferable if the wording of paragraph 2.4.7 had been caveated to explain that, other than the provisions relating to the junction improvements at the A803/M80 slip roads outlined at paragraphs 5.6.8 and 5.6.9, the Development Framework does not apply to the Auchincloch Drive site (amongst others). However, the intent of the document becomes clear when it is read as a whole. In particular, paragraphs 5.6.7 to 5.6.9 specifically refer to the need for the development sites within the corridor between Coneypark and Dennyloanhead to provide a proportionate financial contribution towards the slip road junctions. As detailed above, the Auchincloch Drive site is specifically mentioned in paragraph 5.6.8 as a contributing site.

- 7.15 However, the applicant contends that:-

"..... developers who base their investment decisions on documents such as Supplementary Guidance and Development Frameworks need clarity and certainty in these documents in order to make sound decisions. It is unreasonable to assume the intentions of the policy can be read from the document as a whole"

- 7.16 In response to this, the applicant should have been clear about the requirement for a transport contribution, given the advice of Council officers at both pre-application stage and during consideration of the application. Indeed, the pre-application advice of the Council's Transport Planning Officer (dated 31 March 2009) identified a transport contribution requirement of around £30,000 towards upgrade of the A803/M80 slip road junctions and should have left the applicant in no doubt that the Development Framework applied to the Auchincloch Drive site in respect of this matter. This pre-application advice was reiterated in the formal response from the Transport Planning Unit (dated 30 June 2009) to the planning application.

Relationship to Proposed Development Test

- 7.17 The contribution is considered to meet the 'relationship to the proposed development test' as modeling work carried out for the Falkirk Council Structure Plan and subsequently for the Banknock and Haggs SIRR confirmed that the slip road junctions will require to be upgraded in order to accommodate new development in the area. The contribution is related to the relative potential traffic impact of the proposed development on the A803/M80 slip road junctions and has been considered in relation to the cumulative traffic impact of new development in the area. Individual developments cannot be treated in isolation as it is unlikely that any individual site could fund the necessary upgrade works. A pro-rata contribution from the identified housing sites is the only appropriate mechanism for apportioning the cost of funding this essential road infrastructure.

Scale and Kind Test

- 7.18 The contribution is considered to meet the 'scale and kind test' as it was calculated based on the relative potential impact of the proposed development on the A803/M80 slip road junctions. This approach was adopted for the Banknock and Haggs SIRR Development Framework and is considered to be a fair and equitable basis on which to base contributions towards the upgrade of the slip road junctions. In this case, the relatively small contribution of £30,000 equates to £1,000 per dwelling, which does not appear to be an unreasonable amount per dwelling.

Reasonableness Test

- 7.19 The contribution is considered to meet the 'reasonableness test' for the reasons detailed in relation to the other policy tests. In addition, the current cost estimate for the upgrade of both A803/M80 slip road junctions, including necessary land acquisition, is now around £1.45M (at April 2014 prices). The small contribution from this site therefore accounts for only around 2% of the overall cost. It is also worth noting that if the contribution was now being re-assessed, the required contribution level would be much higher due to the increased construction costs. 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 transport 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 a transport 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 concluded that the transport contribution satisfies all of the policy tests and therefore that the transport 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 transport contribution. The reason being that the transport 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. Banknock and Hags SIRR Development Framework (Supplementary Planning Guidance) June 2009.
7. Scottish Government Circular 3/2012 (Planning Obligations and Good Neighbour Agreements).
8. Scottish Government Circular 1/2010 (Planning Agreements).
9. Letter of Objection from Mr John McCann, 108 Hazel Road, Banknock, FK4 1LQ on 1 May 2014.

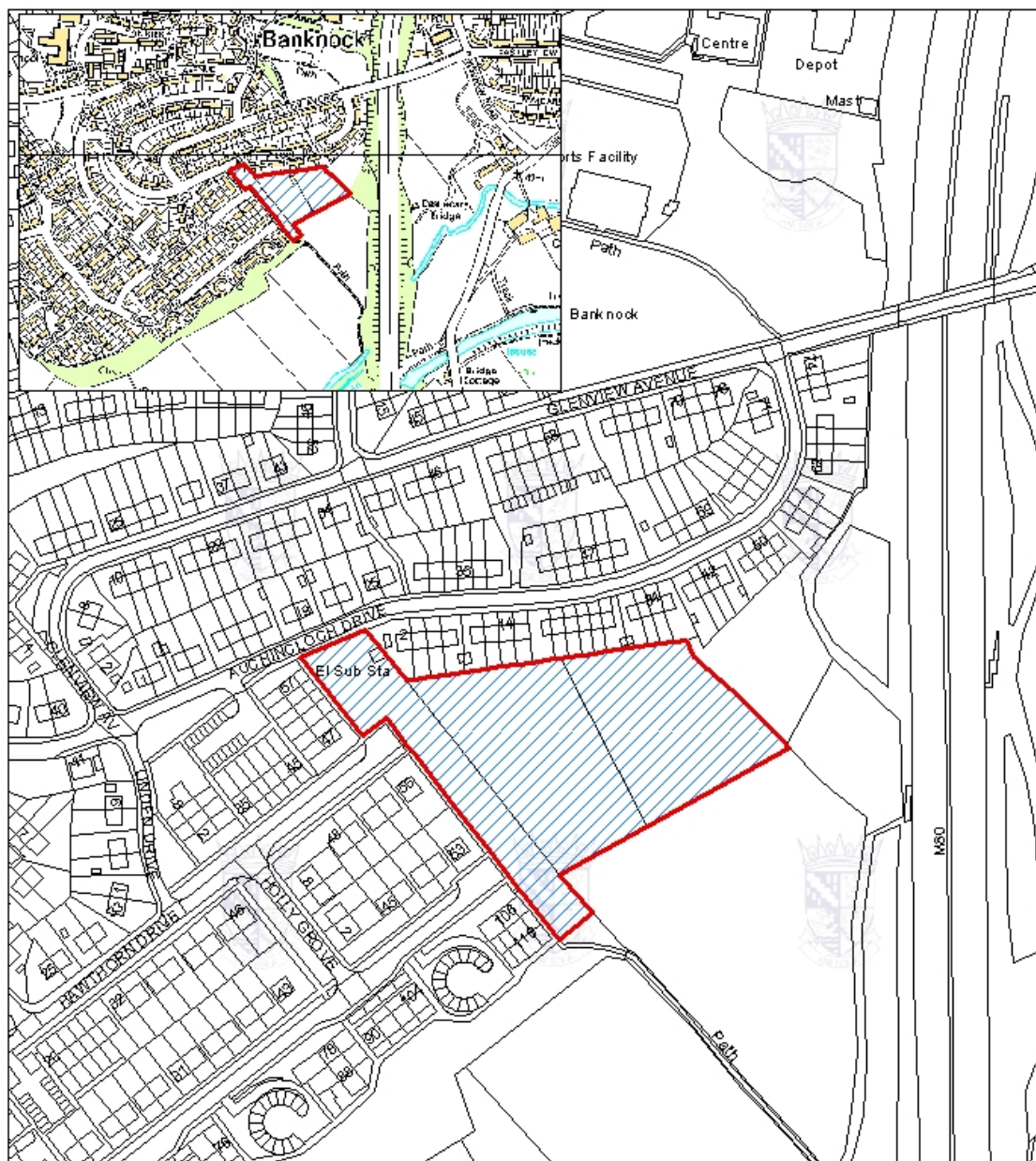
Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504935 and ask for Brent Vivian, Senior Planning Officer.

Planning Committee

Planning Application Location Plan

P/14/0223/75M

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



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