

FALKIRK COUNCIL

Subject: CHANGE OF USE OF LAND TO FORM EXTENSION TO GARDEN GROUND, ERECTION OF OUTBUILDINGS AND FENCING (RETROSPECTIVE) AT CULLOCH VIEW, MOSSCASTLE ROAD, SLAMANNAN, FALKIRK, FK1 3EL, FOR MRS ROSALIND FERRIER-SMITH - P/15/0101/FUL

Meeting: PLANNING COMMITTEE

Date: 19 August 2015

Author: DIRECTOR OF DEVELOPMENT SERVICES

Local Members: Ward - Upper Braes

Councillor Gordon Hughes
Councillor John McLuckie
Councillor Rosie Murray

Community Council: No Community Council

Case Officer: Katherine Chorley (Planning Enforcement Officer), Ext. 4704

UPDATE REPORT FOLLOWING SITE VISIT

1. Members will recall that this application was originally considered by the Planning Committee on 25 June 2015 (copy of previous report appended (appendix 2)), when it was agreed to continue the application for a site visit. A further update paper was provided prior to the site visit and a copy of this report is also appended (appendix 1), which detailed the assessment of objections. The site visit took place on 3 August 2015.
2. Members are reminded that the application currently under consideration is a retrospective application for the change of use of land to form extension to garden ground, erection of outbuildings and fencing. The application is not for alterations to levels.
3. At the site visit, the Development Management Co-ordinator summarised the report, the applicant, supporters and objectors all spoke and asked questions. Members of the Planning Committee and a Local Member were heard.
4. The applicant advised that they were not made aware of any particular issues with the land when it was purchased. They wanted to convert it to garden ground. A small area at the front of the plot had not been completed as additional top soil was required, this was noted on site. The applicant advised that they may look to replace the metal shed in the future and plant a small hedge along the frontage. The applicant advised that they had photographs which showed the ground levels as being slightly higher and these could be provided to the Council. Only limited amounts of soil had been imported to the site to provide a top layer for grass to seed.

5. The applicant advised that they had left drainage points open to the rear of the site and some time later the Council had spent two weeks clearing the drains out at this location. These drains have remained accessible and the applicant was not aware of flooding in the street in the last two years.
6. Four local residents made comments in support of the application. They advised that the garden was not causing flooding, the property next-door did however flood and flood waters run along the road from the Culloch Burn near the bridge. They considered that the owners had made a good job of the garden and it was a pleasure to look at, it had been a mess four years ago. One resident asked what the Council were doing to improve the flooding situation in the area.
7. The Senior Flooding Officer advised that the Council was aware of flooding issues in Slamannan, and there were a number of on-going reports and comments from neighbours. The Council are working with Scottish Water and it was noted that consideration needed to be given to the whole catchment area. The whole area has now been modelled, and the Council are looking at areas of need with an integrated approach to the whole situation. Much of the infrastructure was however owned by Scottish Water, rather than the Council. The Convener requested an update on progress at the next Planning Committee. Additional information is provided where possible at paragraph 27 A2.
8. Two local residents spoke to object to the application. One resident advised that they had discovered after purchasing the adjacent property (Burnside Cottage) that it was located in the flood plain and had been subjected to flooding in the past. The objectors believed that the Council had previously acknowledged that the application site formed the lowest point and the flow route for flood water to the Culloch Burn. There was now also a hump in the middle of the site which had not previously existed. One objector posed a number of questions to the Council. It was agreed that these be passed to the Planning Case Officer to provide responses within the update report. These questions are set out in more detail at paragraph 27.
9. One objector advised that they believed the Council held evidence to show that land raising had occurred and a disc of information was passed to the Planning Case Officer at the site visit. A copy of the Indicative Flood Map for Slamannan was also submitted and a quote read from the 2008 delegated report for the application for a new dwelling on the site.
10. An objector asked if the land formed a flow route for flood water. The case officer advised that this was not within their area of expertise and could only advise as to whether planning permission was required. The case officer reiterated that whether something required planning permission or not, was not dependent on its location within a flood plain. As such, whether it formed a flow route or was located on a flood plain was not relevant to determining if planning permission was required.

11. It was noted on site that there was a fall in levels from West to East across the site, and that water would naturally follow this route. A member questioned if a drainage channel along the boundary may assist with preventing flooding at Burnside Cottage and this was suggested to the applicant. It was also noted the slight difference in levels between the grassed area and area still to be grassed at the front of the site.
12. The applicant advised that a drainage channel may be possible, however there were a number of pipes underneath the garden which they had previously come across when digging in this area. They advised however that if they were given engineering information on what this channel needed to entail then the work could be carried out. In addition to this the applicant advised that the top soil had increased the ground levels by no more than 2 inches, again referring to the area still to be grassed.
13. A member questioned the possibility of a drainage channel or soakaway as a condition, should planning permission be granted.
14. The Senior Flooding Officer advised that homeowners were generally responsible for addressing flooding in their own property. However the Council had in the past provided advice to the occupant of the adjacent property.
15. A member observed that he was not aware of this site flooding, however the adjacent land had in the past flooded. There have been a number of reports and issues in this area which are ongoing. It was noted that the farmer had put in drainage channels on the land opposite the development site.
16. The local member referred to point 7a.9 in the report to the planning committee meeting on 25 June 2015 and asked the Roads Development Unit why they had recommended no additional land raising take place and why a condition was proposed to remove permitted development rights from the property.
17. Officers advised that because of flooding concerns in this area the condition is considered necessary. The condition would restrict further development occurring without the submission of a planning application. This should ensure that the Council can consider the potential impact of any further development in relation to flooding.

Submission of Additional Information

18. The objectors continued to raise concerns that there had been a change in levels and submitted further information to the Case Officer at the site visit. This information has now been analysed and is available on the Council's website. The information included a number of photos, videos, a SEPA indicative flood map, a Fairhurst Indicative flood extent map, the Fairhurst Flood Risk review March 2009, a drawing marked 'important levels Mosscastle Road' and the delegated report for application P/08/0629/OUT.
19. The videos and two photographs could not be retained, for Data Protection reasons. The drawing titled 'Important Levels Mosscastle Road' does not show the levels within the development site and does not therefore help establish what if any level changes occurred. This drawing could not be retained as it was Copyright protected.

20. Copies of the indicative flood and indicative flood extent maps are not relevant to determining whether planning permission is required. The SEPA plan could not be retained as it was copyright protected. Many of the photographs provided were also provided at the time of the enforcement investigation. However new photographs from 2005 were also submitted and these did not form part of the original investigation. A number of photographs provided by one objector will be provided to the Planning Committee on the day of the meeting on 19 August 2015 and will be made available online to help establish the history of the site.
21. On submission, the Case Officer carried out further research into the matter. One photograph (1-2005) was taken in June 2005 by the objector. This shows the land subject to this application. It appears to show a relatively flat site with soil rising up to the right and left boundaries. It does not however show the land on which Culloch View itself was constructed.
22. A flood risk assessment submitted in 2005, associated with the planning application (F/2005/0078) for Culloch View made reference to the land being sufficiently higher than Burnside Cottage so as to be at no risk of flooding. The property would be located some 1.5m above the flood plain and in line with the property to the west, Avondale. It was noted in the document that the proposed finished floor level was 100m above local datum while Burnside Cottage adjacent was below 98.5m above local datum. This gives an indication of levels prior to development being carried out.
23. An application for outline planning permission (P/08/0629/OUT) to construct a house adjacent to Culloch View (on land now occupied by the additional garden ground) was submitted in 2008. Within the documentation it was noted that the low point on Mosscastle Road ran adjacent to the development site. In addition to this, the agent advised that the house approved in 2005 (Culloch View) was nearing completion. The application was also accompanied by the same Flood Risk Assessment submitted with the 2005 application and referred to the same site levels mentioned above. It was noted by an objector to the development that spoil from the construction of Culloch View had been deposited on this land. These comments were noted in the delegated report. The officer established that the storage of material on this land did not require planning permission under the terms of Class 14 of the General Permitted Development Order 1992. This allows a temporary use of land while operations are being carried out on, in, under or over that land or on land adjoining that land, subject to certain conditions. One of the conditions requires that any adjoining land on which development permitted by this Class has been carried out shall as soon as reasonably practicable, be reinstated to its condition before that development was carried out. Photograph 2-2008, taken by the Roads Development Unit, shows the building materials stored on the land.
24. Various photographs taken by an objector following commencement of construction of the house, and available from public sources such as Google Street view, show the land overgrown and with building materials remaining in place. Photograph 3-2011 taken in February 2011 by an objector shows the state of the land prior to the current applicant taking ownership. The building material and waste from the construction of Culloch View are visible. This photograph also clearly indicates the height of the land in the context of the fencing along the boundary with Culloch View. A check of building warrant information shows that a completion certificate for Culloch View was not issued until December 2012.

25. The applicant took ownership of the property and land in January 2013 and proceeded to remove the waste material and some levelling was also carried out. Photograph 4-2013 submitted by an objector shows the land with much of the waste material removed and the levels reinstated to similar levels as those shown in photograph 1-2005. This work was in accordance with the requirements of the condition associated with Class 4 set out in paragraph 23 above. Top soil and gravel were then imported by the applicants. Photograph 5-2014 taken by the Case Officer shows the height of the land following completion of the works. This also shows the height of the land in relation to the fence running along the side of Culloch View. The final photograph (6-2015), again taken by the Case Officer, shows the land which remains to be covered with top soil and seeded.
26. With the new photographs provided by the objector, the history of the site is now clear. It can be established that there have been two events of relevance. Material was placed on the land in association with the construction of Culloch View. At the time this work did not require planning permission in accordance with Class 14 of the Act. This material was then removed by the applicant in 2013, following completion of the house in 2012. The top soil and gravel were imported onto the site and as has previously been established planning permission was not required for this work.

Additional Questions

27. One objector had a number of questions which were submitted to the Case Officer at the site visit, as confirmed in paragraph 8 of this report. These are set out below and responses have been provided by appropriate officers at A1-A18 of this report.

Q1 Is Flooding and Drainage a planning issue?

A1 As explained at the site visit, flooding and drainage are not determining issues as to whether a scheme requires planning permission. However, if planning permission is required for the works then flooding and drainage issues would be taken into account by Planning Officers in coming to a recommendation. Please see paragraph 7a.6 to 7a.9 and 7b.8 to 7b.11 of the 25 June 2015 Committee Report for further consideration of these matters.

Q2 Could you clarify, is this site the flow route for waters in times of flood?

A2 The SEPA indicative flood maps are purely indicative but their modelled predictions including depth and velocity infer that even during a high probability flood event, floodwater from the Culloch burn flows along Mosscastle Road and joins any out of bank flows in the vicinity of Burnside cottage/Culloch View. These maps do not indicate flow routing and cannot be used to identify individual properties at risk.

The most recent models which form part of the Integrated Catchment Study (ICS) produced by Scottish Water are still in draft format, the main source of floodwater to the site is out of bank flows from the Culloch Burn at upstream bridges. There is an acknowledgement in the draft that surface water flowing from the field in the South contribute during an event but are not the key flooding mechanism.

Q3 In the report you have accepted that some changes in levels have occurred, can you expand on that assertion?

A3 Please refer to paragraph 1.3 of the 25 June 2015 Committee Report and paragraph 26 above.

Q4 Has land raising occurred on the application site?

A4 Please refer to A3 above.

Q5 What methods have you used to determine what the changes in levels are?

A5 The following information was used to determine whether there had been a breach of planning control:

- Historical planning applications and enquiries
- 'Slamannan Flood Files' Pre 2000 to Jan 2013 DVD
- Various site visits carried out by various officers
- Discussions with owners and owners landscapers
- Photographs provided by owners
- Google StreetView
- Fairhurst Floor Risk Review, Slamannan
- Historical aerial photos
- Historical maps

Q6 How exactly were the level changes measured and what were was it measured against?

A6 Please refer to A5 above

Q7 Did you refer to previous reports that are indicative of the levels before drawing your conclusions?

A7 Please refer to A5 above

Q8 How are these level changes going to affect property and people in relation to flooding?

A8 As explained at the site visit and in paragraph 26 above, there is no evidence to suggest that there has been a significant change in levels which would require the benefit of planning permission. This application is for the change of use of the land to form extension to garden ground, erection of outbuildings and fencing. Please see paragraph 7a.6 to 7a.9 and 7b.8 to 7b.11 of the 25 June 2015 Committee Report for further consideration of these matters.

Q9 Have you done a comparative study?

A9 Please refer to A5

Q10 What were the levels at the rear and front of the site and is there a gradient fall from front to rear?

A10 No comprehensive topographical survey was available to review. The SEPA indicative floodmaps are based on a digital terrain model. The errors associated with this are covered in the caveats associated with its use.

Q11 In the previous application for this site (P/08/0629/OUT) the Council advised that it is difficult to envisage how the application site can be developed and gave a number of reasons, all of which are material considerations, because they were written by the Council itself. How are these to be addressed?

- A11 The application was for outline planning permission for a new dwellinghouse, not the change of use to garden ground, and the erection of garden buildings and fencing on the site. As such the considerations are different and each case is assessed on its own merits. The applicant for P/08/0629/OUT submitted a flood risk assessment for the wrong development site and was not willing to update the assessment and take into account comments from the Roads Development Unit. The applicant failed to demonstrate that the proposed development would not constitute a flood risk and the application was therefore refused on this basis. This does not mean that the site could never be developed for other uses. SEPA have advised that they have no objections to the scheme currently under consideration as set out in paragraph 7a.8 of the 25 June 2015 Committee Report.
- Q12 Has the water flow from the burn breaching its banks to the east, and surging of the sewage and drainage network been taken into consideration by way of any flooding appraisal?*
- A12 Anecdotal evidence from residents and the SEPA indicative floodmaps point to the main flood mechanism as out of bank flows from the east travelling along Mosscastle Road. The current ICS report discussed as the site visit is still in draft format and therefore it would not be appropriate to use this to inform planning decisions.
- Q13 Has the water table been taken into consideration as a contributory factor?*
- A13 No - see comments for A12.
- Q14 Shouldn't there have been a flood risk assessment in light of the fact that the flood waters not only affect Burnside Cottage but also other properties and people in Mosscastle Road?*
- A14 Please refer to the Roads Development Unit response at paragraph 4.1 of the 25 June 2015 Committee Report and the SEPA response provided at paragraph 7a.8.
- Q15 What would be the effects on the flooding on Mosscastle Road from all additional sources?*
- A15 Please refer to SEPA indicative floodmaps, although volumes and joint probability are not considered as in the comments for A12 the main source of floodwater is from out of bank flows from the Culloch Burn, it is appreciated that surface contributes but is not the main mechanism.
- Q16 7a.9 of the Appraisal recommends that fencing should be of an open construction so as not to inhibit overland flow. Is the fencing that is in place considered suitable for this purpose?*
- A16 Please refer to 7a.9 of the 25 June 2015 Committee Report which goes on to confirm that the fencing which has been erected is of an open construction. For clarity, the fencing as constructed is suitable for this purpose.
- Q17 How have you established this given that the flow rate and water volume from all contributing sources are unknown?*
- A17 Further assessment was not considered necessary by the Flood Prevention Team.
- Q18 Scottish water has recommended the applicants contact them directly in relation to the application. What was the outcome?*
- A18 Please refer to paragraph 1.4 of the 25 June 2015 Committee Report. Scottish Water advised that they have no objection to the scheme. Further discussions between the applicant and Scottish Water are a civil matter and contact should be made directly with the applicant.

Local Development Plan

28. Since the Planning Committee meeting on 25 June 2015, the Council have adopted the Falkirk Local Development Plan. It replaces the previous Structure Plan and Local Plan and includes a number of Supplementary Guidance documents which now have statutory status. The decision on the application should be made in the context of the Local Development Plan policies and not the Structure Plan or Local Plan policies previously mentioned in the Planning Committee in June 2015.

Assessment of Public Representations

29. Following the production of the 25 June 2015 for the Planning Committee agenda, two representations in support of the application have been received. These have been summarised below.

- Owners have taken a derelict eyesore and created beautiful garden.
- Do not understand why there have been complaints.
- Improved landscape and desirability of the local area.
- Do not appreciate having council taxes wasted on such a trivial matter.
- Council has more pressing matters to deal with.
- Fully support application.
- Changes have helped enhance the whole area.
- Road is well used by residents and any improvements are welcome.
- As a council tax payer, do not understand why such a simple thing like planting flowers warranted expense and time spent.

30. The comments in support of the application are noted.

31. It is considered that the additional issues raised at the site visit and through neighbour notification would not alter the previous recommendation to grant planning permission, contained in the report to Planning Committee on 25 June 2015.

32. RECOMMENDATION

- 32.1 It is therefore recommended that the Planning Committee grant planning permission subject to the following condition:-**

- 1) **Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 as amended (or any order revoking, re-enacting or modifying that Order)(with or without modification) no development shall be carried out on the site beyond that hereby granted planning permission without the prior written approval of the Local Planning Authority;**

Reason(s):-

- 1) **To allow the Local Planning Authority to control any further development in relation to visual amenity and any potential increase in flood risk as a result of the development.**

Informative(s):-

- 1) For the avoidance of doubt, the plan(s) to which this decision refer(s) bear our online reference number(s) 01A, 02A and 03.
- 2) Scottish Water have requested that the applicant contact them directly regarding existing infrastructure under the site. The applicants have been made aware of this, however a further copy of the information can be provided on request.

.....
pp Director of Development Services

Date: 11 August 2015

LIST OF BACKGROUND PAPERS

1. Falkirk Council Local Plan
2. Falkirk Council Local Development Plan
3. Falkirk Council Supplementary Guidance
4. Letter of objection received from Mr James Robertson, Craigavon, Mosscastle Road, Slamannan, Falkirk, FK1 3EL on 21 April 2015.
5. Letter of objection received from Mr Adam Mair, Burnside Cottage, Mosscastle Road, Slamannan, Falkirk, FK1 3EL on 14 April 2015.
6. Letter of objection received from Mr William Robertson, Arluchairt, Mosscastle Road, Slamannan, Falkirk, FK1 3EL on 22 April 2015.
7. Letter of support received from Mr James Constable, Ladysland, Mosscastle Road, Slamannan, Falkirk, FK1 3EL on 15th June 2015.
8. Letter of support received from Mr George Wylie, Skaig-Mur, Mosscastle Road, Slamannan, Falkirk, FK1 3EL on 18th June 2015.

Any person wishing to inspect the background papers listed above should telephone Falkirk Council on 01324 504704 and ask for Katherine Chorley, Planning Enforcement Officer.

FALKIRK COUNCIL

Subject: CHANGE OF USE OF LAND TO FORM EXTENSION TO GARDEN GROUND, ERECTION OF OUTBUILDINGS AND FENCING (RETROSPECTIVE) AT CULLOCH VIEW, MOSSCASTLE ROAD, SLAMANNAN, FALKIRK, FK1 3EL, FOR MRS ROSALIND FERRIER-SMITH – P/15/0101/FUL

Meeting: PLANNING ON SITE COMMITTEE

Date: 3 August 2015

Author: DIRECTOR OF DEVELOPMENT SERVICES

Local Members: Ward - Upper Braes

Councillor Gordon Hughes
Councillor John McLuckie
Councillor Rosie Murray

Community Council: No Community Council

Case Officer: Katherine Chorley (Planning Enforcement Officer), Ext. 4704

**REPORT IN SUPPLEMENT TO THAT SUBMITTED TO PLANNING COMMITTEE
ON 25 JUNE 2015**

1. Report

- 1.1 It was noted, following the submission of the report to the Planning Committee on 25 June 2015 for the application at Culloch View, that the normal paragraph relating to the assessment of public representations had been inadvertently missed from the report. The public representations are a material consideration in the determination of the application and as such the additional paragraph is set out in full below.

Assessment of Public Representations

1.2

- The concerns raised in relation to land raising have been addressed in the main body of the report.
- The application was screened in relation to the EIA regulations and no assessment was considered necessary.
- It is not considered that the change of use from open space to an appropriate residential use would have a detrimental impact on neighbouring properties in terms of amenity. The single storey nature of the buildings also ensures that they would not impact on neighbours.
- Access for maintenance is a civil matter to be addressed by the owners of the infrastructure and the owners of the land.

- Neighbour notification was carried out in accordance with the relevant legislation and all properties with a postal address within 20m of the development site were notified. An advertisement was also posted in the Falkirk Herald.
- The comments in relation to withdrawing objections are noted.
- If neighbours are aware of engineering works which may require the consent of SEPA it would be appropriate for them to contact SEPA directly.
- Application P/08/0629/OUT was an outline application for a new house on the land. This was for a different type of development and each case must be assessed on its own merits in the context of current legislation and guidance. This application was refused on the grounds that the applicants failed to demonstrate that the development would not constitute a flood risk. This was, amongst other things, on the basis that the submitted flood risk assessment was not detailed enough. It does not signify that the site is unsuitable for any form of development. The Report of Handling for the application does not state that the application site is the lowest point at Mosscastle Road. This was a comment raised by a neighbour during the neighbour notification process.
- The Falkirk Council Biennial Flood Reports provide details of flood events, they do not provide evidence of land raising at the site. The Flood Study report, 'Slamannan Flood Files' DVD and Fairhurst Plan extracts do not show evidence of significant land raising at the application site.

1.3 It is recommended that Committee note these comments. An updated report will be submitted to the meeting of the Planning Committee on 19 August 2015.

.....
pp Director of Development Services

Date: 21 July 2015

LIST OF BACKGROUND PAPERS

1. Falkirk Council Local Plan
2. Falkirk Council Local Development Plan – Proposed Plan
3. Falkirk Council Supplementary Guidance
4. Letter of objection received from Mr James Robertson, Craigavon, Mosscastle Road, Slamannan, Falkirk, FK1 3EL on 21 April 2015.
5. Letter of objection received from Mr Adam Mair, Burnside Cottage, Mosscastle Road, Slamannan, Falkirk, FK1 3EL on 14 April 2015.
6. Letter of objection received from Mr William Robertson, Arluchairt, Mosscastle Road, Slamannan, Falkirk, FK1 3EL on 22 April 2015.

Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504704 and ask for Katherine Chorley, Planning Enforcement Officer.

FALKIRK COUNCIL

Subject: CHANGE OF USE OF LAND TO FORM EXTENSION TO GARDEN GROUND, ERECTION OF OUTBUILDINGS AND FENCING (RETROSPECTIVE) AT CULLOCH VIEW, MOSSCASTLE ROAD, SLAMANNAN, FALKIRK, FK1 3EL, FOR MRS ROSALIND FERRIER-SMITH – P/15/0101/FUL

Meeting: PLANNING COMMITTEE

Date: 25 June 2015

Author: DIRECTOR OF DEVELOPMENT SERVICES

Local Members: Ward - Upper Braes

Councillor Gordon Hughes
Councillor John McLuckie
Councillor Rosie Murray

Community Council: No Community Council

Case Officer: Katherine Chorley (Planning Enforcement Officer), Ext. 4704

1. DESCRIPTION OF PROPOSAL / SITE LOCATION

- 1.1 The application site consists of an area of land between Culloch View and Burnside Cottage on Mosscastle Road, Slamannan. The application site is set back from the road owing to a Scottish Water facility and associated parking area on the frontage. The land runs adjacent to the boundary with the original house and extends at half width down to the Culloch Burn. Historical maps of the site do not show a clear use, although the land may previously have been associated with surrounding agricultural land.
- 1.2 The applicant seeks retrospective planning permission for the change of use of the land to form private garden ground. The plans also include the retention of four garden buildings and the erection of fencing around the site. Much of the fencing had already been constructed at the time the application was submitted, the remaining fencing running along the front of the site was repositioned during consideration of the application. The application description has therefore been amended to confirm that the works are retrospective.
- 1.3 Concerns have been raised through the neighbour notification process in relation to land raising at the site. It is acknowledged that some changes in levels have occurred. The site had previously been used for the storage of building materials and waste associated with the development of the dwelling house, Culloch View. This material was removed and the land cleared of weeds. This has been replaced with soil to the rear and gravel along the frontage. Evidence provided during the enforcement investigation has not shown a significant increase in levels, while there have been changes these would not constitute development and thus do not require the benefit of formal planning permission.

- 1.4 A variety of infrastructure passes through the site and the applicants have been made aware of this. Scottish Water have advised that they have no objection to the scheme and have recommended that the applicants contact them directly.

2. REASON FOR COMMITTEE CONSIDERATION

- 2.1 The application has been called to the Planning Committee at the request of Councillor Gordon Hughes.

3. SITE HISTORY

- | | | | | |
|-----|---------------|-------------------|------------|--------------------------------------|
| 3.1 | P/08/0629/OUT | Outline - Refused | 11.12.2008 | Erection of Dwellinghouse. |
| 3.2 | F/2005/0078 | Detail - Granted | 07.04.2006 | Erection of Dwellinghouse and Garage |
| 3.3 | F/90/0830 | Detail - Granted | 26.09.1990 | Erection of Pumping Station |

4. CONSULTATIONS

- 4.1 The Roads Development Unit advised that the proposal is considered acceptable from a road safety point of view and no conditions are requested in this respect. This application is in an area which is very sensitive to flooding. Historically overland flow from surface water ponding from both Mosscastle Road and the agricultural land to the south of this area discharges through this land to the Culloch Burn. Therefore any changes in the layout of the garden area must be carefully considered as there is a risk that any alterations in particular to ground levels and through the introduction of, for example, outbuildings and upstands has the potential to increase neighbouring flood risk by altering these overland flow routes. This is a separate issue from potential risk from the watercourse to the rear of the property. There should be no ground raising or the importing of soil which results in a net increase in ground levels, without further consideration by the Council. The Unit advises against moving fencing towards the road as this could increase flood risk during a pluvial event to neighbouring property, any new fencing should be of open construction so as not to inhibit any overland flow.
- 4.2 The Environmental Protection Unit recommend informatives on contamination and noise during construction. As development is retrospective these would not be necessary, should planning permission be granted.
- 4.3 The site is located in a coal referral area, however the Coal Authority raise no objections to the application, due to the particular circumstances of the case - mainly a change of use of land together with the placing of outbuildings and fencing on paved/gravel surfaces. The Coal Authority recommend an informative, should planning permission be granted.

5. PUBLIC REPRESENTATION

- 5.1 In the course of the application, 3 contributors submitted letters to the Council. The salient issues are summarised below.
- Concerns over land raising;

- No flood risk assessment has been provided;
- Proposal does not accord with policy Coastal Planning and Flooding, European Flood Directive 2009. Scottish Planning Policy SSP7 or Local Plan Flood Policies;
- Environmental Impact Assessment may be required;
- Concerns over potential for increased flooding;
- Impact on character of area from flooding;
- Impact on functional flood plain;
- Impact on landscape and AGLV (Area of Great Landscape Value);
- Detrimental to public amenity;
- Detrimental to local residents enjoyment of their properties;
- Impact on road safety, convenience of road users and access for emergency services;
- Risk to public and animal health from flood water contaminated with sewerage;
- Site is described in Councils paperwork as a route back to the Culloch Burn for flood water and is also described as the lowest point at Mosscastle Road and acts as a collecting point for flood water and a route for flood water to reach the burn. Reference is made to P/08/0629/OUT which was refused planning permission;
- Drainage infrastructure passes through the site which requires access for maintenance;
- Proper neighbour notification has not been carried out;
- Decision on P/08/0629/OUT shows that site is unsuitable for development;
- Engineering works have been carried out without consent from SEPA;
- Request that following additional information be considered;
- Falkirk Council Development Services Culloch Burn Slamannan Flood Study Report and associated topographical study;
- Fairhurst Document submitted at Local Plan inquiry 2009;
- Slamannan Flood Files DVD 2000-2013;
- Falkirk Council biennial flood reports 1999-2007;

5.2 It is noted that two objections may be withdrawn if a suitable route for flood water of sufficient size can be agreed within the site.

6. 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 There are no strategic issues.

Falkirk Council Local Plan

7a.2 Policy EQ1 'Sustainable Design Principles' states:

"New development will be required to achieve a high standard of design quality and compliance with principles of sustainable development. Proposals should accord with the following principles:

- (1) Natural and Built Heritage. Existing natural, built or cultural heritage features should be identified, conserved, enhanced and integrated sensitively into development;*
- (2) Urban and Landscape Design. The scale, siting and design of new development should respond positively and sympathetically to the site's surroundings, and create buildings and spaces that are attractive, safe and easy to use;*
- (3) Accessibility. Development should be designed to encourage the use of sustainable, integrated transport and to provide safe access for all users;*
- (4) Resource Use. Development should promote the efficient use of natural resources, and take account of life cycle costs, in terms of energy efficient design, choice and sourcing of materials, reduction of waste, recycling of materials and exploitation of renewable energy;*
- (5) Infrastructure. Infrastructure needs and their impacts should be identified and addressed by sustainable mitigation techniques, with particular regard to drainage, surface water management, flooding, traffic, road safety and noise; and*
- (6) Maintenance. Proposals should demonstrate that provision will be made for the satisfactory future management and maintenance of all public areas, landscaping and infrastructure."*

7a.3 Policy EQ1 of the Local Plan requires that new development incorporates a high standard of design quality and compliance with the principles of sustainable development. There are no existing natural, built or cultural heritage features within the site. The buildings and fencing are proportionate in size and are in keeping with the intended use of the land as private garden ground. The development would have no impact on accessibility, resource use and does not contain any areas of publicly accessible land requiring maintenance. Issues associated with infrastructure are addressed later in the report. The proposal is considered to comply with policy EQ1 of the Local Plan.

7a.4 Policy SC12 - 'Urban Open Space' states:

"The Council will protect all urban open space, including parks, playing fields and other areas of urban greenspace, which is considered to have landscape, amenity, recreational or ecological value, with particular reference to the areas identified on the Proposals Map. Development involving the loss of urban open space will only be permitted where:

- (1) There is no adverse effect on the character and appearance of the area, particularly through the loss of amenity space planned as an integral part of a development;*
- (2) In the case of recreational open space, it can be clearly demonstrated from a settlement and neighbourhood audit that the area is surplus to recreational requirements, and that its release for development will be compensated for by qualitative improvements to other open space or recreational facilities;*
- (3) The area is not of significant ecological value, having regard to Policies EQ24 and EQ25; and*

- (4) *Connectivity within the overall open space network is not threatened and public access routes in or adjacent to the open space will be safeguarded."*

7a.5 The application site, which is within the Slamannan village limit, does not constitute publicly accessible open space and was not formed as an integral part of a development. It is an area of open space located between two dwellinghouses and its loss would not have a detrimental impact on the character and appearance of the area. The application site does not form recreational open space and is not contained within the open space audit and strategy. The site is also not noted for having significant ecological value. There are no public access routes in or adjacent to the open space and as such connectivity would not be impacted by the change of use. The loss of open space is acceptable in this case and the development complies with policy SC12.

7a.6 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."

7a.7 In areas where there is a significant risk of flooding, policy ST12 advises that 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. The application is in an area which is very sensitive to flooding, historically overland flow from surface water ponding from both Mosscastle Road and the agricultural land to the South of this area flows through this land to the Culloch Burn at the rear. Changes to the layout of the garden area need to be carefully considered as there is a risk that alterations to ground levels have the potential to increase neighbouring flood risk by altering overland flow routes. It has been explained previously that the land has been raised slightly, however this is not something within the control of the planning authority as it did not require planning permission.

7a.8 The Scottish Environment Protection Agency (SEPA) have been consulted in relation to the potential flood risk associated with the site. Their hydrologists have confirmed they have no objections to the proposal and do not consider that the change of use would have a significant effect on the storage capacity of the functional floodplain. Furthermore applications for the erection of garden sheds are generally outside the scope of Scottish Planning Policy provided they do not have a detrimental effect on the functional floodplain or local flood risk. Given the above comments, a flood risk assessment was not considered necessary in this case.

7a.9 The Roads Development Unit have recommended that there should be no additional ground raising or importing of soil which results in a net increase in ground levels. They have also advised against moving the fencing closer to the road as this could increase flood risk during a pluvial event. However, it is recommended that fencing should be of open construction so as not to inhibit overland flow. The fencing has already been relocated closer to the road and is of an open construction. There are no new buildings proposed as part of the application, other than those already on site. Owing to the sensitive nature of the site it is recommended that permitted development rights be removed for additional fencing, extensions, garden buildings and engineering operations. This would allow the Council to control future development on the site and ensure future changes do not have an impact on flooding in the local area.

7b Material Considerations

- 7b.1 The material consideration to be assessed are the Falkirk Council Local Development Plan, Flooding and Sustainable Urban Drainage Systems Supplementary Planning Guidance and consideration of the site in relation to coal mining legacy.
- 7b.2 The Proposed Falkirk Local Development Plan (FLDP) 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 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.3 The following policies of the Falkirk Local Development Plan are relevant to the determination of this application.
- 7b.4 Policy INF03 – ‘Protection of Open Space’ states:

“The Council will protect all urban open space, including parks, playing fields and other areas of urban greenspace, which is considered to have landscape, amenity, recreational or ecological value. Accordingly:

1. *Development involving the loss of urban open space will only be permitted where:*
 - *There is no adverse effect on the character or appearance of the area, particularly through the loss of amenity space planned as an integral part of a development;*
 - *There will be no significant adverse effect on the overall recreational amenity of the local area, taking account of the Council's open space standards (defined within the Open Space Strategy) and its release for development will be compensated for by qualitative improvements to other parts of the green network in the local area;*
 - *The area is not of significant ecological value (this can include areas that are not specifically designated for ecological features, but which are important in supporting the qualifying features of Natura 2000 sites); and*
 - *Connectivity within, and functionality of, the wider green network is not threatened and public access routes in or adjacent to the open space will be safeguarded.*
2. *Where development would also involve the loss of playing fields or sports pitches, it must additionally be demonstrated that:*
 - *The proposed development is ancillary to the principal use of the site as a playing field; or*
 - *The proposed development involves a minor part of the playing field which would not affect its use and potential for sport and training; or*
 - *The playing field which would be lost would be replaced by a new playing field of comparable or greater benefit for sport and in a location which is convenient for its users, or by the upgrading of an existing playing field to provide a better quality facility either within the same site or at another location which is convenient for its users and which maintains or improves the overall playing capacity in the area; or*
 - *The Council's pitch strategy has shown that there is a clear excess of sports pitches to meet current and anticipated future demand in the area, and that the site could be developed without detriment to the overall quality of provision.”*

- 7b.5 INF03, protection of open space, reads in a similar way to policy SC12 although with an additional section on the loss of playing fields and sports pitches. The development is considered to comply with both the existing and emerging policies.

7b.6 Policy D02 – ‘Sustainable Design Principles’ states:

“New development will be required to achieve a high standard of design quality and compliance with principles of sustainable development. Proposals should accord with the following principles:

- 1. Natural and Built Heritage. Existing natural, built or cultural heritage features should be identified, conserved, enhanced and integrated sensitively into development;*
- 2. Urban and Landscape Design. The scale, siting and design of new development should respond positively and sympathetically to the site’s surroundings, and create buildings and spaces that are attractive, distinctive, welcoming, adaptable, safe and easy to use;*
- 3. Accessibility. Development should be designed to encourage the use of sustainable, integrated transport and to provide safe access for all users;*
- 4. Climate Change & Resource Use. Development should promote the efficient use of natural resources and the minimisation of greenhouse gas emissions through energy efficient design, choice and sourcing of materials, reduction of waste, recycling of materials and exploitation of renewable energy;*
- 5. Infrastructure. Infrastructure needs and their impacts should be identified and addressed by sustainable mitigation techniques, with particular regard to drainage, surface water management, flooding, traffic, road safety and noise; and*
- 6. Maintenance. Proposals should demonstrate that provision will be made for the satisfactory future management and maintenance of all public areas, landscaping and infrastructure.*

Masterplans will be required for significant development proposals requiring a co-ordinated approach to design and infrastructure, and should demonstrate how the above principles have been incorporated into the proposals. Masterplans should be informed by a development framework or brief where relevant.

7b.7 Policy D02 of the emerging Local Development Plan reiterates the wording of policy EQ01 in the Local Plan and the development is considered to comply with this.

7b.8 Policy RW06 – ‘Flooding’ states:

- “1. Development on the functional flood plain should be avoided. In areas where there is significant risk of flooding from any source (including flooding up to and including 0.5% (1 in 200 year) flood event) development proposals will be assessed against advice and the Flood Risk Framework in the SPP. There will be a presumption against new development which would:*
- be likely to be at risk of flooding;*
 - increase the level of risk of flooding for existing development; or*
 - result in a use more vulnerable to flooding or with a larger footprint than any previous development on site.*
- 2. Development proposals on land identified as being at risk from flooding, or where other available information suggests there may be a risk, will be required to provide a flood risk assessment that demonstrates that:*
- any flood risks can be adequately managed both within and outwith the site;*
 - an adequate allowance for climate change and freeboard has been built into the flood risk assessment;*
 - access and egress can be provided to the site which is free of flood risk; and*

• water resistant materials and forms of construction will be utilised where appropriate.

3. *Where suitably robust evidence suggests that land contributes or has the potential to contribute towards sustainable flood management measures development will only be permitted where the land's sustainable flood management function can be safeguarded.*

- 7b.9 In relation to policy RW06 on Flooding, SEPA have advised that they have no objection to the development and as such the proposal is considered to comply with this policy.
- 7b.10 Accordingly, the proposal accords with the emerging Local Development Plan.
- 7b.11 The proposed development is considered to comply with the guidance set out in the Flooding and Sustainable Urban Drainage Systems SPG.
- 7b.12 The application site falls within or is partially within the Development High Risk Area as defined by the Coal Authority. It is recognised that flexibility and discretion are necessary parts of the planning system and as such there may be exemptions to the requirement for a desk based Coal Mining Risk Assessment within the Development High Risk Area. The Coal Authority have advised that no risk assessment is required in this case, due to the particular circumstances of the site.

7c Conclusion

- 7c.1 The proposed development is considered to comply with the relevant policies in the Local Plan and emerging Local Development Plan. A condition is proposed to restrict permitted development rights and this would ensure that any further development on the site can be controlled and checked for its impact on flooding in the local area. There are no other material considerations which would warrant refusal of planning permission in this case.

8. RECOMMENDATION

- 8.1 It is therefore recommended that the Planning Committee grant planning permission subject to the following condition:-

- 1) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 as amended (or any order revoking, re-enacting or modifying that Order)(with or without modification) no development shall be carried out on the site beyond that hereby granted planning permission without the prior written approval of the Local Planning Authority;

Reason(s):-

- 1) To allow the Local Planning Authority to control any further development in relation to visual amenity and any potential increase in flood risk as a result of the development.

Informative(s):-

- 1) For the avoidance of doubt, the plan(s) to which this decision refer(s) bear our online reference number(s) 01A, 02A and 03.
- 2) Scottish Water have requested that the applicant contact them directly regarding existing infrastructure under the site. The applicants have been made aware of this, however a further copy of the information can be provided on request.

.....
pp Director of Development Services

Date: 15 June 2015

LIST OF BACKGROUND PAPERS

1. Falkirk Council Local Plan
2. Falkirk Council Local Development Plan – Proposed Plan
3. Falkirk Council Supplementary Guidance
4. Letter of objection received from Mr James Robertson, Craigavon, Mosscastle Road, Slamannan, Falkirk, FK1 3EL on 21 April 2015.
5. Letter of objection received from Mr Adam Mair, Burnside Cottage, Mosscastle Road, Slamannan, Falkirk, FK1 3EL on 14 April 2015.
6. Letter of objection received from Mr William Robertson, Arluchairt, Mosscastle Road, Slamannan, Falkirk, FK1 3EL on 22 April 2015.

Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504704 and ask for Katherine Chorley, Planning Enforcement Officer.

Planning Committee

Planning Application Location Plan

P/15/0101/FUL

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



Reproduced by permission of Ordnance Survey on behalf of HM SO.
© Crown copyright and database right 2015. All rights reserved.
Ordnance Survey Licence number 100023384