

**FALKIRK COUNCIL**

**Subject:** ERECTION OF DWELLINGHOUSE AND DOMESTIC GARAGE  
AT LAND TO THE WEST OF 10 AGRICULTURAL HOLDINGS,  
KILSYTH ROAD, LONGCROFT FOR MRS FIONA CARLIN –  
P/15/0583/FUL

**Meeting:** PLANNING COMMITTEE

**Date:** 27 April 2016

**Author:** DIRECTOR OF DEVELOPMENT SERVICES

**Local Members:** Ward - Denny and Banknock

Councillor Jim Blackwood  
Councillor Brian McCabe  
Councillor Paul Garner  
Councillor Martin David Oliver

**Community Council:** Banknock, Haggs and Longcroft

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

**UPDATE REPORT**

1. Members will recall that the above application was presented to the Planning Committee on 23 March 2016 (copy of previous report appended – appendix 1), when it was agreed to continue the application for a site visit. The site visit took place on Monday 4 April 2016.
2. At the site visit, the Head of Planning and Transportation summarised the proposal, confirming that the proposal accords with the provisions of the Development Plan in terms of the site location, design, access, and developer contributions payable in line with those relevant policies in the Falkirk Local Development Plan (FLDP) and related Supplementary Guidance.
3. The applicant had previously reluctantly agreed to the contributions, totalling £7,700 to assist with slip road improvements on the M80, education and open space. The Head of Planning and Transportation confirmed that the reason for seeking such contributions was due to the fact that the proposal falls within an area of land that is allocated for residential development in the FLDP with an indicative density of around 25 units. The contributions being sought are pro rata to the overall density of the larger allocated site. Potential contributions for affordable housing and for healthcare had not been requested.
4. It was considered reasonable to defer payment of the developer contributions linked to any future housing development within the allocated site within a reasonable timescale or removal of the requirement for payment if the site is removed from the second Local Development Plan which is now under preparation.
5. This approach of the FLDP in relation to developer contributions is well established. It requires development that contributes cumulatively to impacts upon community infrastructure to contribute financially (on a pro-rata basis) towards measures to mitigate these impacts. Legal advice has been sought in respect of this matter. The advice received endorses the approach taken by officers as being appropriate and proportionate. Submissions had been made on behalf of the applicant

suggesting that the contribution would be amongst the highest in the Council area. In fact, the development at Mydub, Denny, would contribute about £19,000 per house plus an as yet uncoded affordable housing contribution.

6. The Head of Service mentioned the concerns of the applicant in view of the owner's intention not to develop the site in the foreseeable future and, hence, the appropriateness of the recommended three contributions (all of which would be called on only in certain circumstances). However, for a whole range of reasons, an owner's intentions could change. In addition, the applicant or the owner had had several opportunities to address the issue:
  - a) when the owner was notified of the site's proposed inclusion in the current Local Development Plan, she could have asked for it to be removed. The proposal had been discussed with her at the time. No objection had been submitted.
  - b) she could now ask for it to be removed in the next Local Development Plan, which is in preparation, but had not yet done so;
  - c) the applicant could have submitted a viability assessment, which is an option contained in the Supplementary Guidance on Education and Open Space contributions;
  - d) she could have appealed the Council's non determination of her application. This would have ensured that it was considered by the DPEA.
  - e) she could have refused to agree to the contributions and then, if the Council had refused her application, appealed to the DPEA.

Instead, she had agreed to the proposals while simultaneously arguing that they were inappropriate.

7. The applicant, her agent and other family members at the site visit spoke in support of the proposal and in particular expressed their wish that no contributions should be sought for a single dwellinghouse as in their view they were not in accordance with the FLDP policies relating to contributions and related SG's which advocate contributions should only be sought for development proposals comprising four or more units. It was also cited that the costs being sought for a single dwellinghouse were considerably more than the nearby Barratt Homes Development which had equated to around £1,800 per unit. It was also highlighted that there is no policy included in the FLDP that relates to "salami slicing" policy being advocated by officers and that the applicant's mother intimated that she had advised planning officers over the past 4/5 years that there is no intention to develop this site apart from the one dwellinghouse that is now being proposed for her daughter.
8. Members of the Planning Committee in attendance sought clarification on a number of matters including the background to a possible request to remove the site from the FLDP for housing and the nature and extent of the specialist legal advice sought.
9. The local Member in attendance, Councillor Blackwood, spoke in support of the applicant citing that the FLDP policies in relation to financial contributions did not apply and the level of contribution was very high. He also advised of his concern with particular reference to the education contribution being sought, in relation to Bankier Primary School as no contribution was sought by Education officials in relation to the Link Homes development for contributions to Bankier Primary School.
10. It is considered that no new issues were raised at the site visit which would alter the previous recommendation to be minded to grant planning permission subject to conditions and a Planning Obligation. A new item (b) has been added to the recommendation and the previous item (b) is now item (c).

## 11. RECOMMENDATION

11.1 It is therefore recommended that Committee indicate that it is **Minded to Grant Planning Permission** subject to:

- (a) The completion within 6 months of a Planning Obligation within the terms of Section 75 of the Town and Country Planning (Scotland) Act 1997 in terms satisfactory to the Director of Development Services in respect of:
  - (i) The payment of a financial contribution towards increasing the capacity of Bankier Primary School, in the sum of £2,600;
  - (ii) The payment of a financial contribution towards increasing the capacity of Denny High School, in the sum of £2,100;
  - (iii) The payment of a financial contribution towards the provision/upgrade/maintenance of open space in the local area, in the sum of £1,911; and
  - (iv) The payment of a financial contribution towards the upgrade of the M80 east and west slip road junctions on the A803 (Kilsyth Road), in the sum of £1,120;
- (b) Noting that the Section 75 Planning Obligation will include suitable provisions to defer payment of the financial contributions linked to any future housing development within the associated site (H10) within a reasonable timescale or removal of the requirement of payment if the allocated site is removed from the second Local Development Plan which is now under preparation.
- (c) And thereafter, on the conclusion of the foregoing matters, remit to the Director of Development Services to grant planning permission subject to the following conditions.
  - 1. The development hereby approved shall be implemented in accordance with the plan(s) itemised in the informative below and forming part of this permission unless a variation is required by a condition of the permission or a non-material variation has been agreed in writing by Falkirk Council as Planning Authority.
  - 2. No development shall commence until the exact details of the colour and specification of the proposed external finishing materials have been submitted to and approved in writing by this Planning Authority. Thereafter the development shall be carried out in accordance with the approved details.
  - 3. No development shall commence until the exact details of the height, location, construction, colour and plant species etc. of all proposed means of boundary enclosure have been submitted to and approved in writing by this Planning Authority. Thereafter the development shall be carried out in accordance with the approved details and a timescale(s) to be agreed in writing by this Planning Authority.
  - 4. The dwellinghouse shall not be occupied until acoustic glazing with a specification of 10/12/6 or acoustic equivalent is installed and permanent ventilation is provided in order that windows can be kept closed without loss of ventilation. The acoustic

glazing shall ensure that internal levels with the windows closed do not exceed 35dB daytime and 30dB night-time, when measured as LAeq,T.

5. No development shall commence until the exact details of the finalised scheme for sewage and surface water drainage has been submitted to and approved in writing by this Planning Authority. If the approved scheme includes drainage via the existing stone culvert, a CCTV survey of the culvert shall be carried out before the development commences, to determine its condition and any blockages, and any necessary remedial works and the maintenance arrangements shall be subject to the written approval of this Planning Authority.
6. Vehicular access to the property shall be via a dropped kerb footway crossing, formed in accordance with details to be approved in writing by this Planning Authority.
7. The driveway shall be formed with a maximum gradient of 1 in 10 and in a manner to ensure that no surface water is discharged, or loose material is carried, onto the public road.
8. The dwellinghouse shall not be occupied until visibility splays measuring 2.4 metres x 59 metres are provided in both directions from the access onto the A803. There shall be no obstruction to visibility greater than 600mm above the height of the carriageway within these splays.

**Reason(s):-**

1. As these drawings and details constitute the approved development.
- 2,3. To safeguard the visual amenity of the area.
4. To ensure the occupiers of the property are safeguarded against excessive noise intrusion from transportation noise.
5. To ensure that adequate drainage is provided.
- 6-8. To safeguard the interests of the users of the highway.

**Informative(s):-**

1. In accordance with section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended), this permission lapses on the expiration of a period of 3 years beginning with the date on which this permission is granted unless the development to which this permission relates is begun before that expiration.
2. For the avoidance of doubt, the plan(s) to which this decision refer(s) bear our online reference number(s) 01, 02, 03, 04 and 05.
3. Formation of the dropped kerb will require Minor Roadworks Consent. The applicant should contact Roads Services on 01324 506070 to obtain the relevant application form.
4. The applicant is advised to ensure that noisy works that are audible at the application site boundary are only conducted during the following hours:-

Monday to Friday	0800 to 1800 hours
Saturday	0900 to 1700 hours
Sunday/ Bank Holidays	1000 to 1600 hours

Deviation from these hours will not be permitted unless in emergency circumstances and with the prior approval of the Environmental Health Unit.

5. The applicant is advised to ensure that all works on the affected of the application site cease in the event that any made ground, suspect substances or odours are encountered following the commencement of the development. In such circumstances, the applicant is required to notify the Planning Authority immediately, carry out a contaminated land assessment and undertaken any necessary remediation works, and only recommence the development with the prior written approval of the Planning Authority.

.....  
pp Director of Development Services

Date: 19<sup>th</sup> April 2016

### **LIST OF BACKGROUND PAPERS**

1. Falkirk Council Local Development Plan.
2. SG02 'Neighbourhood Designs'
3. SG10 'Education and New Housing Development'
4. SG11 'Healthcare and New Housing Development'
5. SG13 'Open Space and New Development'
6. Support received from Miss Jennifer Shanks, 10 Holding, Kilsyth Road, Longcroft, FK4 1HB on 3 November 2015.
7. Support received from Mrs Morag Shanks, 10 Holding, Kilsyth Road, Longcroft, FK4 1HB on 2 November 2015.

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

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**Date:** **23 March 2016**

**Author:** **DIRECTOR OF DEVELOPMENT SERVICES**

**Local Members:** **Ward - Denny and Banknock**

**Councillor Jim Blackwood**  
**Councillor Paul Garner**  
**Councillor Brian McCabe**  
**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 full planning permission for the erection of a four bedroom two-storey detached dwellinghouse and attached double garage. The proposed external finishes include grey concrete roof tiles, off-white/ cream render and imitation stonework features. The site of the proposed house sits within a depression which would necessitate an increase to existing levels. Sewage is proposed to be treated on-site and drained to an existing stone culvert which in turn drains to open burns/ ditches and eventually to Bonny Water.
- 1.2 The application site consists of open grazing land and lies to the west of an existing dwellinghouse and to the east of a dwellinghouse currently under construction. The site forms part of a green space along the north side of Kilsyth Road between Haggs to the west and Longcroft to the east. On the opposite side of Kilsyth Road is a new housing development.
- 1.3 Financial contributions have been sought from the applicant in respect of education, open space and upgrade of the M80/Kilsyth Road slip road junctions. The applicant has agreed to enter into a Section 75 planning obligation, albeit reluctantly, on the basis that the contributions will only become payable if the H10 site development is carried out with the erection of a further two units. The reasons for this are explained in this report.
- 1.4 The applicant's agent has made the following submissions in support of the application:-
  - The main driver for this proposal is for the applicant and her family to live next door to the applicant's mother so that she can help to care for her grandson who is autistic/ disabled;
  - Falkirk Council policy is very clear that financial contributions do not apply to developments of less than 4 houses;

- Whilst the proposal is within allocated housing site H10, in development terms and in reality, H10 is three separate sites comprising the applicant's self-build, another self-build to the west and the land owned by the applicant's mother which will not be developed. The total projected housing development of H10 is therefore two units;
- Falkirk Council Councillors did not knowingly agree to impose financial contributions criteria in respect of local people self-building their own homes;
- Following the passing of her husband, the applicant's mother explained her individual position to Falkirk Council and stated unequivocally that the H10 land within her ownership would not be developed in her lifetime;
- H10 is classified by Falkirk Council as a Constrained / Non-Effective Site. As there is no reasonable prospect for H10 to be developed in the medium term or even in the long term it is wholly unreasonable to seek developer contributions from the single unit developers;
- The proposed dwellinghouse will not create or exacerbate deficiencies or impose significantly increased burdens on infrastructure. Therefore, developer contributions do not apply;
- There is a high probability that the required financial contributions for this proposed single self-build house would not meet the policy tests laid out in Scottish Planning Circular 3/2012;
- It is incumbent on the planning authority to take account of all the information available in making its decision. The decision by the applicant's mother to scatter her late husband's ashes in H10 and to stop the land being developed is sincere and longstanding;
- There has been minimal progress with the Banknock residential led regeneration projects or with the large housing site at Dennyloanhead. Why therefore are developer contributions being demanded at all when there is no serious prospect of large scale development in the area?;
- It is wrong to charge a self-build house builder for upgrading of slip roads when one of the biggest quarry companies in Europe is charged nothing;
- What is the justification for charging one of the biggest housebuilders in the UK (Barratt) a fraction of what a self-builder on other side of Kilsyth Road is charged?
- It is understood that only one single house self builder (also within H10) has ever paid developer contributions and these were almost certainly the highest per house developer contributions ever paid by anyone to Falkirk Council;
- With developer contributions towards health care facilities in the 'pipeline', this will take developer contributions in Banknock to about £10,500 per house. This will not encourage developers to build in the area or help with regeneration;
- There is no Council approved policy (called a salami-slicing policy or anything else) that approves the use of an indicative figure for the number of houses that may be built on a housing supply site or the adding together of different residential developments within the same housing supply site to decide if the 'greater than 3 units' threshold has been breached. The determining factor is the number of units being built by each developer;
- Council officers are failing to properly interpret and apply Council policies in respect of developer contributions; and
- Notwithstanding the above submissions, the applicant has agreed (very reluctantly) to enter into a Section 75 planning obligation in respect of the financial contributions and to pay the Council's legal costs in preparing the obligation.

## 2. REASON FOR COMMITTEE CONSIDERATION

- 2.1 The application requires consideration by the Planning Committee as it has been called in by Councillors Blackwood and McCabe.



### **3. SITE HISTORY**

- 3.1 Planning application P/14/0161/FUL for the erection of a two-storey dwellinghouse and ancillary detached garage was granted in August 2014. This site is to the west of the current application site and also within allocated housing site H10. A Section 69 legal agreement was entered into to secure the payment of developer contributions in the sum of £7640 prior to issue of the permission. Falkirk Council Governance have recently dealt with an Environmental Information Request in respect of the payment of financial contributions in respect of this application.

### **4. CONSULTATIONS**

- 4.1 The Council's Roads Development Unit have requested conditions to attach to any grant of planning permission in respect of formation and construction of the vehicular access/ driveway, and visibility. They have reviewed the proposed drainage arrangements and queried the condition of the existing culvert proposed to carry the foul water and requested the undertaking of a CCTV survey to identify any defects/blockages in the structure and any need for remedial works. The applicant has agreed to carry out a CCTV survey.
- 4.2 The Council's Environmental Protection Unit have advised that acoustic glazing with a specification of 10/12/6 or acoustic equivalent will be required, along with permanent ventilation, to protect the occupiers of the proposed dwellinghouse from transportation noise. They have noted the completed agricultural questionnaire which does not indicate any potential sources of contaminated land.
- 4.3 The Council's Transport Planning Unit have requested a financial contribution in the sum of £1120 towards the need to upgrade the A803/ M80 slip road junctions as a result of the cumulative impact of new housing in the area. A contribution is payable as the proposed dwellinghouse is within allocated housing site H10 which is identified in the Banknock & Haggs SIRR Development Framework as a contributing site to fund these upgrade works.
- 4.4 The Council's Children's Services have requested a financial contribution in the sum of £4700 towards increasing local school capacity in accordance with SG10 'Education and New Housing Development' (£2100 in respect of Denny High School and £2600 in respect of Bankier Primary School). A contribution is payable as the proposed dwellinghouse is within allocated housing site H10 which has an indicative capacity of 25 units.

### **5. COMMUNITY COUNCIL**

- 5.1 The Banknock, Haggs and Longcroft Community Council have not made any representations in respect of the application.

### **6. PUBLIC REPRESENTATION**

- 6.1 Two representations in support of the application have been received. The matters raised in these representations can be summarised as follows: -
- The application is fully supported by the applicant's mother and sister;
  - The plot is located within a field owned by the applicant's mother and is next to her house;
  - The proximity of the new house would give the applicant and her husband the high level support, help and care they need to raise their severely autistic son who is registered disabled;

- The applicant's mother has on numerous occasions advised Falkirk Council that no development will take place within housing site H10 within her lifetime;
- There are family ashes scattered in H10;
- The landowner does not want to live in the middle of a housing estate;
- The applicant's mother is upset at Falkirk Council's assumptions that 10 housing units will be built by 2024 followed by a further 15 at another point;
- It is unfair to ask the applicant and her husband to pay financial contributions of over £8000 when their house will be the only one that is built in the H10 area;
- The applicant's mother is upset that the welfare of her family, to provide a safe and equipped space for her severely autistic grandson, has not been placed highly on the Council's priorities;
- The specialist paediatric consultant has specified that the applicant's son will need support for the rest of his life and will be unable to live on his own independently;
- The proposed house is only slightly larger than their current house (with one more bedroom and living room than they currently have) and will enable their disabled son to stay within the family as he grows older but with enough space to make him as independent as possible;
- The £8000 contribution fee is a large amount of money for two hard working parents to afford and could make the difference between the house build going ahead or not; and
- The applicant's mother urges the Council to reconsider the contribution charges as no further houses will be built in H10 meaning there will be no detriment to the local primary school or roads and no play park will ever be required.

## **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**

- 7a.1 The Falkirk Local Development Plan (LDP) was adopted on 16 July 2015. It replaces the previous Structure Plan and Local Plan and includes a number of supplementary guidance documents which now have statutory status.
- 7a.2 Under the LDP, the application site lies within the urban limits and within allocated housing site H10.
- 7a.3 The LDP Site Schedule indicates a Housing Capacity of 25 units for H10 and provides the following site comments:-
- Greenfield infill site between Haggs and Longcroft;
  - Development proposals must present house frontages along both Kilsyth Road and pay special attention to their relationship with housing along Anderson Terrace;
  - Proportionate contributions towards M80 (J7)/ A803 slip road junctions and Bankier Primary School expansion required; and
  - 15% affordable housing requirement.

7a.4 Policy HSG01 – ‘Housing Growth’ states:

- “1. The Council will aim to achieve an average housing growth of 675 dwellings per year across the Council area over the Plan period, and will ensure that a five year effective land supply is maintained;*
- 2. The Council will monitor and update the effective housing land supply figures annually to make sure that a minimum five year supply is maintained at all times. If this Housing Land Audit process identifies a shortfall in the effective land supply, the Council will consider supporting sustainable development proposals that are effective, in the following order of preference:*
- Urban Capacity sites*
  - Additional brownfield sites*
  - Sustainable greenfield sites*
- In doing so, account will be taken of other local development plan policies and of any adverse impacts that would significantly and demonstrably outweigh the benefits of the proposal.*
- 3. The overall scale of housing allocations in each settlement area to meet the target level of growth, including flexibility, will be as shown in Figure 3.1.*
- 4. The specific sites where new housing will be promoted are listed in the Settlement Statements, and detailed in the Site Schedule in Appendix 1.*
- 5. The locations for most significant growth are identified as Strategic Growth Areas (SGAs). Within these areas, the preparation of development frameworks, masterplans and briefs, as appropriate, and the co-ordination of social and physical infrastructure provision, will be a particular priority. Site requirements are set out in Appendix 2.”*

7a.5 This policy promotes new housing within the sites listed in the Settlement Statements. The Bonnybridge and Banknock Settlement Statement lists H10 as an allocated housing site and the Site Schedule provides detailed site comments (see paragraph 7a.3 above). The application site lies within H10. The proposal, for a dwellinghouse, is therefore supported by the H10 housing allocation and accords with this policy.

7a.6 Policy INF01 – ‘Strategic Infrastructure’ states:

*“The Council will promote or support the provision of strategic infrastructure as identified on Map 3.2, listed in the Settlement Statements, and detailed in the Site Schedule in Appendix 1. The delivery of these projects will be through a range of agencies, in partnership with Falkirk Council. The Council and other partner organisations will explore traditional and innovative funding mechanisms to deliver infrastructure improvements, notwithstanding the continuing role of developer contributions as set out in supporting policies and supplementary guidance.”*

7a.7 This policy states that the Council will promote or support the provision of strategic infrastructure as identified on Map 3.2. Additional school capacity at Bankier Primary School is identified on Map 3.2 as a strategic infrastructure project (INF28). The Site Schedule for INF28 indicates:-

- Significant capacity enhancement to Bankier Primary is required to support community growth in catchment settlements; and
- To be funded by developer contributions from impacting sites.

7a.8 The LDP identifies H10 as an impacting site on Bankier Primary School. The applicant has agreed, albeit reluctantly, to enter into a Section 75 planning obligation in respect of an education contribution in respect of Bankier Primary School. The application is therefore considered to accord with this policy.

7a.9 Policy HSG04 – ‘Housing Design’ states:

*“The layout, design and density of the new housing development should conform with any relevant site-specific design guidance, Supplementary Guidance SG02 'Neighbourhood Design' and the Scottish Government's policy on 'Designing Streets'. Indicative site capacities in the site schedules may be exceeded where a detailed layout demonstrates that a high quality design solution, which delivers the requisite level of residential amenity, has been achieved.”*

7a.10 This policy indicates that the layout, design and density for new housing development should conform with any relevant site-specific design and with SG02 'Neighbourhood Design'. The proposed dwellinghouse is the second dwellinghouse within H10 and fronts onto Kilsyth Road. Any development of the balance of H10 would determine the precise number of units having regard to the Housing Capacity (25 units). The design, layout and density of the proposed dwellinghouse is considered to be acceptable having regard to the character of the area and the guidance contained within SG02. The application is therefore considered to accord with this policy.

7a.11 Policy HSG02 – ‘Affordable Housing’ states:

*“New housing developments of 20 units and over will be required to provide a proportion of the units as affordable or special needs housing as set out in Figure 5.1. The approach to provision should comply with Supplementary Guidance SG12 "Affordable Housing".*

*Figure 5.1 Affordable Housing Requirements in Settlement Areas*

*Proportion of total site units required to be affordable*

*Larbert/Stenhousemuir, Polmont Area, Rural North and Rural South - 25%*

*Bo'ness, Bonnybridge/Banknock, Denny, Falkirk and Grangemouth - 15%”.*

7a.12 This policy requires 15% of units to be provided as affordable housing units in new housing developments of 20 units or over. H10 has a Housing Capacity of 25 units and therefore this policy potentially applies. However, it is considered reasonable in the circumstances to consider affordable housing provision as part of any future development of the larger balance of H10. This is particularly so given that the required affordable housing (20 units) is close to the housing capacity of 25 units and it is not known at this stage whether this density would actually be achieved.

7a.13 Policy INF02 – ‘Developer Contributions to Community Infrastructure’ states:

*“Developers will be required to contribute towards the provision, upgrading and maintenance of community infrastructure where development will create or exacerbate deficiencies in, or impose significantly increased burdens on, existing infrastructure. The nature and scale of developer contributions will be determined by the following factors:*

- 1. Specific requirements identified against proposals in the LDP or in development briefs;*
- 2. In respect of open space, recreational, education and healthcare provision, the general requirements set out in Policies INF04, INF05 and INF06;*
- 3. In respect of physical infrastructure any requirements to ensure that the development meets sustainability criteria;*
- 4. In respect of other community facilities, any relevant standards operated by the Council or other public agency; and*

5. *Where a planning obligation is the intended mechanism for securing contributions, the principles contained in Circular 3/2012.*

*In applying the policy, consideration of the overall viability of the development will be taken into account in setting the timing and phasing of payments.*

- 7a.14 This policy states that developers will be required to contribute towards the provision, upgrading and maintenance of community infrastructure where development will create or exacerbate deficiencies in, or impose significantly increased burdens on, existing infrastructure. The nature and scale of developer contributions will be determined by a number of factors including the specific requirements identified against proposals in the LPD or in development briefs. The specific requirements for H10 include proportionate contributions towards upgrade of the M80 (J7)/ A803 sliproad junctions and Bankier Primary School expansion. The general requirements in respect of open space, education and healthcare are set out in Policies INF04, INF05 and INF06 respectively.

- 7a.15 Policy INF04 – ‘Open Space and New Residential Development’ states:

*“Proposals for residential development of greater than 3 units will be required to contribute to open space and play provision. Provision should be informed by the Council's open space audit, and accord with the Open Space Strategy and the Supplementary Guidance SG13 on 'Open Space and New Development', based on the following principles:*

- 1. New open space should be well designed; appropriately located; functionally sized and suitably diverse to meet different recreational needs in accordance with criteria set out in Supplementary Guidance SG13 'Open Space and New Development'.*
- 2. Where appropriate, financial contributions to off-site provision, upgrading, and maintenance may be sought as a full or partial alternative to direct on-site provision. The circumstances under which financial contributions will be sought and the mechanism for determining the required financial contribution is set out in Supplementary Guidance SG13 'Open Space and New Development'.*
- 3. Arrangements must be made for the appropriate management and maintenance of new open space.”*

- 7a.16 This policy requires proposals for residential development of greater than three units to contribute to open space and play provision. In this instance, the ‘development’ is considered to comprise the H10 site, which has a Housing Capacity of 25 units. The proposal is therefore one unit of potentially 25 units and not a unit in isolation. In this instance it is considered appropriate to take a proportionate financial contribution which could be used towards open space provision within H10 (if the balance of H10 is developed) or towards off-site open space improvement in the local area as part of a larger commuted sum.

- 7a.17 Policy INF05 – ‘Education and New Housing Development’ states:

*“Where there is insufficient capacity within the catchment school(s) to accommodate children from new housing development, developer contributions will be sought in cases where improvements to the school are capable of being carried out and do not prejudice the Council's education policies. The contribution will be a proportionate one, the basis of which is set out in Supplementary Guidance SG10 'Education and New Housing Development'. Where proposed development impacts adversely on Council nursery provision, the resourcing of improvements is also addressed through the Supplementary Guidance.*

*In circumstances where a school cannot be improved physically and in a manner consistent with the Council's education policies, the development will not be permitted.”*

7a.18 This policy requires proportionate contributions for housing developments that would contribute, cumulatively, to capacity issues at catchment schools. The proposed development lies within H10 which has a Housing Capacity of 25 units. H10 is anticipated to impact on the capacity of local schools and Children's Services have identified future capacity issues at Bankier Primary School and Denny High School. Accordingly, proportional contributions at the rates set out in SG10 'Education and New Housing Development' are required.

7a.19 Policy INF06 – 'Healthcare and New Housing Development' states:

*"In locations where there is a deficiency in the provision of health care facilities identified by NHS Forth Valley, developer contributions will be sought to improve the quantity and quality of such provision commensurate with the impact of the new development. The approach to the improvement of primary healthcare provision will be set out in Supplementary Guidance SG11 'Healthcare and New Housing Development'."*

7a.20 This policy requires financial contributions towards improving health care facilities in locations where there is a deficiency in local provision. The Bonnybridge and Banknock healthcare facilities experience high demand and deficiencies in capacity have been identified by NHS Forth Valley which will be exacerbated by new housing provision. SG11 'Healthcare and New Housing Developments' sets out the Council's approach to improving primary healthcare provision, which includes the taking of financial contributions in respect of new development that would have a direct or cumulative impact on existing facilities. In this instance it is not considered reasonable to require a health care contribution. The reasons for this are explained in paragraph 7a.26.

7a.21 Policy INF12 – 'Water and Drainage Infrastructure' states:

*"1. New development will only be permitted if necessary sewerage infrastructure is adopted by Scottish Water or alternative maintenance arrangements are acceptable to SEPA.*

*2. Surface water management for new development should comply with current best practice on sustainable urban drainage systems, including opportunities for promoting biodiversity through habitat creation.*

*3. A drainage strategy, as set out in PAN61, should be submitted with planning applications and must include flood attenuation measures, details for the long term maintenance of any necessary features and a risk assessment."*

7a.22 This policy states that new development will only be permitted if the necessary sewerage infrastructure is adopted by Scottish Water or alternative maintenance arrangements are acceptable to SEPA. A drainage strategy accompanies the application which proposes an on-site sewage treatment plant and discharge of the sewage and stormwater to an existing culverted watercourse in the absence of any other viable alternatives. The documentation includes correspondence from SEPA advising that SEPA are satisfied with the proposed secondary treatment to incorporate at least 25m<sup>2</sup> of partial soakaway into the outfall arrangements. The Council's consultants queried the condition of the existing culvert and requested the undertaking of a CCTV survey to identify any defects/ blockages in the structure and the need for any remedial works (e.g. lining of the culvert). A survey would also possibly provide the opportunity to consider alternative design solutions. The applicant has agreed to carry out a CCTV survey. It is considered that the finalised proposals in relation to drainage, including any necessary remedial works and maintenance arrangements, could be the subject of a planning condition. On this basis the application is considered to accord with this policy.

## ***Supplementary Guidance forming part of Local Development Plan***

- 7a.23 SG02 'Neighbourhood Design' provides guidance to promote high standards of design and successful place making. The SG provides detailed guidance in relation to such matters as street character and the form and detail of individual buildings. As indicated in paragraph 7a.10, the proposal is considered to be acceptable having regard to SG02. In particular, the proposed dwellinghouse is considered to respect its context in terms of such matters as height, building lines and materials.
- 7a.24 SG10 'Education and New Housing Development' states that there are three situations when developer contributions are likely to apply. One of these situations is in respect of sites allocated for housing development in the Falkirk Local Development Plan where capacity problems may already be indicated in the Plan. The application site lies within allocated housing site H10. The LDP identifies that contributions towards increasing capacity at Bankier Primary School will be taken in respect of H10. In addition, Children's Services have identified a longer term capacity issue at Denny High School. The contribution rates are set out in the SG and are proportional according to the number of units. For Bankier Primary School the rate is £2600 per house and for Denny High School the rate is £2100. SG10 also indicates that the provisions of this SG will not apply to sites of under 4 houses or 10 flats. It is considered that the provisions of SG10 will apply as 'site' in this instance is the whole of the H10 site which has a Housing Capacity of 25 units and so exceeds the threshold.
- 7a.25 SG13 'Open Space and New Development' states that residential developments of more than 3 units will be required to provide new open space or contribute towards the improvement of existing open space. It is considered that the provisions of SG13 will apply as the 'development' in this instance is the whole of the H10 site which has a Housing Capacity of 25 units and so exceeds the threshold. The residential open space requirement is 70m<sup>2</sup> per dwellinghouse (comprising 21m<sup>2</sup> active open space and 49m<sup>2</sup> passive open space). Where an off-site contribution in lieu of on-site provision is considered to be acceptable, the rate per dwellinghouse is £1911 (made up of £882 for active open space and £1029 for passive open space). In this instance, it is appropriate to take an off-site contribution which could potentially be used towards the provision of open space within H10.
- 7a.26 SG11 'Healthcare and New Housing Development' states that SG11 will apply to any planning application for housing on sites of 4 units and above in the pressured areas identified in the SG (the Bonnybridge/Banknock area is identified as a pressured area). It is considered that the provisions of SG11 will apply as 'site' in this instance is the whole of the H10 site which has a Housing Capacity of 25 units and so exceeds the threshold. However, this application was submitted prior to Scottish Ministers giving final approval to SG11. On this basis it was considered premature to seek a healthcare contribution. Scottish Ministers subsequently advised the Council on 30 November 2015 that they did not intend to intervene in adoption of SG11. The SG is therefore now adopted. The adoption of SG11 occurred after the Development Management Unit prepared a recommendation on this application and it is considered unreasonable to require a healthcare contribution at such a late stage in consideration of the application.
- 7a.27 Subject to the satisfactory conclusion of a Section 75 planning obligation in respect of the required financial contributions, the application is considered to accord with the Development Plan.

## **7b Material Considerations**

- 7b.1 The material considerations to be assessed in respect of this application are the Banknock and Hags SIRR Development Framework 1<sup>st</sup> Alteration, the consultation responses, the information submitted in support of the proposal, the public representations and Scottish Planning Circular 3/2012.

### ***The Banknock and Haggs SIRR Development Framework 1st Alteration***

- 7b.2 The Banknock and Haggs SIRR Development Framework 1st Alteration identifies H10 as a site impacting on the M80 slip road junctions with the A803. The costs of upgrading these junctions, to accommodate the cumulative impact of new housing in the area, should be met by all parties based on an equitable cost sharing relative to each development's contribution to traffic generation at both junctions. Based on current cost projections for the work and the relative impact of H10 on the junctions, the Transport Planning Unit have calculated a proportional contribution for the proposed dwellinghouse at £1120.

### ***Consultation Responses***

- 7b.3 The consultation responses are summarised in Section 4 of this report. No matters have been identified that could not be addressed by suitably worded planning conditions or by means of a Section 75 planning obligation.

### ***Information Submitted in Support of the Proposal***

- 7b.4 The submissions by the agent in support of the application are summarised in section 1.4 of this report. The following comments are in the response to those submissions:-
- The circumstances that are the main driver for the application are noted;
  - The position in respect of financial contributions in respect of small-scale incremental development within this allocated housing site (H10) is explained in this report;
  - The planning system rarely considers the end user in respect of such matters as their age, relationship status or whether they are local or not;
  - The advice that the H10 land owned by the applicant's mother will not be developed within her lifetime is noted. It is on the basis of this advice that the site has been classified in the Housing Land Audit as a Constrained / Non Effective Site. The Housing Land Audit is carried out annually and is a subjective view on the likelihood of individual sites coming forward. The status of a site in the Housing Land Audit is rarely part of the consideration in respect of a planning application;
  - It can be noted that the landowner did not object to the inclusion of the site in the LDP as H10. Whilst the advice of the landowner that the site will not be further developed within her lifetime is noted, circumstances may change. There are no known site issues to constrain the site being developed out;
  - It would be acceptable and reasonable in this case to defer payment of the developer contributions linked to any future housing development within H10 within a reasonable timescale or removal of the requirement for payment if H10 is removed from the second Local Development Plan;
  - The large scale housing applications in the local area are progressing, albeit that this is taking some time;
  - The approach of the Local Development Plan is well established and requires development that contributes cumulatively to impacts on community infrastructure to contribute financially (on a pro-rata basis) towards measures to mitigate these impacts;



- No contribution towards the slip road junctions upgrades were requested in respect of the Tomfyne Quarry application. This is because the Cowdenhill Quarry was operational until 2010 and its traffic would have been taken into account in the base traffic modelling for the Banknock SIRR development. With the quarry ceasing to operate, the Tomfyne Quarry traffic would simply replace that of the previous quarry, therefore there would be no additional impact that would have justified a contribution;
- The contributions payable by Barratt in respect of the housing development on the other side of Kilsyth Road reflected those payable at the time. The contribution rates have increased since then;
- The contributions sought in this case relate to local infrastructure with identified capacity issues and reflect the contribution rates as set out in the Council's current supplementary guidance;
- It is noted that the new Local Development Plan requires developer contributions towards addressing capacity issues in respect of healthcare facilities. This is consistent with the above-stated approach;
- The Council does not have a policy by the name of 'salami-slicing'. The relevant policies in respect of financial contributions are contained in the Local Development Plan and Supplementary Guidance. The 'salami-slicing' of a housing site is a potential consequence of the applicant's agent's interpretation of how the contribution policies should work, i.e. the agent's interpretation could encourage the submission of multiple applications for up to 3 dwellinghouses within a site to circumvent the requirement for contributions. The agent's submission that the number of units being built by each developer is the determining factor does not address this issue and ignores cumulative impact arising from multiple applications / developers within the same housing site;
- If developer contributions raise viability issues then an applicant can submit a viability statement for review in consultation with the District Valuer. The applicant was advised of this. A viability statement providing the necessary substantiation has not been submitted; and
- It is noted that the applicant reluctantly agrees to a Section 75 planning obligation and to pay the Council's legal costs in preparing the obligation.

### ***Assessment of Public Representations***

- 7b.5 The points raised in the representations (in support) are summarised in section 6 of this report. These points are noted and are largely responded to in the responses to the agent's submissions.
- 7b.6 Concerns are raised in the representations that the Council has assumed 10 units within H10 by 2024 followed later by a further 15. The overall 25 units is indicative and based on the site hectareage and generally larger self-build plots. The site phasing has been put back over the years in the Council's housing land audit and is currently identified at 2021 to 2024, on the basis of the landowner's advice that there will be no significant development of the site in the next 10 years plus. The housing land audit does not break down the phasing up until 2024 in any greater detail.
- 7b.7 The call for sites has now been made for the next Local Development Plan and all existing sites will be reviewed and may not be carried forward into LDP2 if they are not considered to be effective i.e. likely to be developed in the first 5 years of the housing land audit. However, longer term development sites may also be identified.

### *Scottish Planning Circular 3/2012: Planning Obligations and Good Neighbour Agreements*

7b.8 This circular advises 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 all of the following test: -

- 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 the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area;
- Fairly and reasonably relates in scale and kind to the proposed development; and
- Be reasonable in all other respects.

7b.9 The planning obligation sought in this instance is considered to meet all of these tests, In particular, the contributions serve a planning purpose, are justified by the provisions of the Falkirk Local Development Plan and are necessary in order to address the cumulative impact of housing development within H10 on local infrastructure. The contributions sought are proportional and based on the rates set out in the Council's current supplementary planning guidance. They are considered to be reasonable in scale and kind. In addition, the Council's willingness to defer the payments linked to future development of H10 underscore the reasonableness of the approach.

#### **7c Conclusion**

7c.1 The application is considered to accord with the Development Plan, for the reasons detailed in this report. It is recommended as a minded to grant decision with planning permission being granted upon the satisfactory conclusion of a Section 75 planning obligation in respect of education, open space and transport contributions.

7c.2 The applicant's agent has advised that the main driver for the application is so that the applicant's family can live next door to the applicant's mother so that she can help care for her autistic grandson. In addition, the agent has made extensive submissions against the need for financial contributions on the basis that the application is for a single dwellinghouse only and the balance of allocated housing site H10 will not be developed within the lifetime of the landowner. The requirement for financial contributions is explained in the report and relates to the proposed dwellinghouse being within an allocated housing site (H10) which has a Housing Capacity of 25 units, which exceeds the thresholds for taking contributions. Incremental small-scale housing within H10 is expected to contribute on a proportional basis and financial contributions were secured in respect of another single house development within H10 (reference P/14/0161/FUL). If the contributions are waived in this instance, there is a risk that the site may be 'salami-sliced' (to avoid contributions) such that the Council is left with a shortfall in the infrastructure funding from this development site or else the financial burden on the development of the remainder of the site would have to increase.

7c.3 However, in recognition of the possibility that the balance of the H10 site will not be developed within the short to medium term, it is reasonable to suggest that the payments could be deferred until such time as H10 is further developed within a reasonable timescale or the need for the payments even removed if H10 is de-allocated as a housing site in the next Local Development Plan. The effect of this is that payment of the contribution may never actually be required.

- 7c.4 Falkirk Council Governance have instructed and received external legal advice in respect of the taking of financial contributions in this instance. As a consequence of this advice, the Council's Legal Services consider that the proposed approach as detailed above is reasonable, fair and equitable and based on sound planning grounds.

## **8. RECOMMENDATION**

- 8.1 It is therefore recommended that Committee indicate that it is **Minded to Grant Planning Permission** subject to:
- (a) The completion within 6 months of a **Planning Obligation** within the terms of Section 75 of the **Town and Country Planning (Scotland) Act 1997** in terms satisfactory to the **Director of Development Services** in respect of:
    - (i) The payment of a financial contribution towards increasing the capacity of **Bankier Primary School**, in the sum of **£2,600**;
    - (ii) The payment of a financial contribution towards increasing the capacity of **Denny High School**, in the sum of **£2,100**;
    - (iii) The payment of a financial contribution towards the provision/upgrade/maintenance of open space in the local area, in the sum of **£1,911**; and
    - (iv) The payment of a financial contribution towards the upgrade of the **M80 east and west slip road junctions on the A803 (Kilsyth Road)**, in the sum of **£1,120**;
  - (b) And thereafter, on the conclusion of the foregoing matters, remit to the **Director of Development Services** to grant planning permission subject to the following conditions.
    - 1. The development hereby approved shall be implemented in accordance with the plan(s) itemised in the informative below and forming part of this permission unless a variation is required by a condition of the permission or a non-material variation has been agreed in writing by Falkirk Council as Planning Authority.
    - 2. No development shall commence until the exact details of the colour and specification of the proposed external finishing materials have been submitted to and approved in writing by this Planning Authority. Thereafter the development shall be carried out in accordance with the approved details.
    - 3. No development shall commence until the exact details of the height, location, construction, colour and plant species etc. of all proposed means of boundary enclosure have been submitted to and approved in writing by this Planning Authority. Thereafter the development shall be carried out in accordance with the approved details and a timescale(s) to be agreed in writing by this Planning Authority.
    - 4. The dwellinghouse shall not be occupied until acoustic glazing with a specification of 10/12/6 or acoustic equivalent is installed and permanent ventilation is provided in order that windows can be kept closed without loss of ventilation. The acoustic glazing shall ensure that internal levels with the windows closed do not exceed 35dB daytime and 30dB night-time, when measured as LAeq,T.

5. No development shall not commence until the exact details of the finalised scheme for sewage and surface water drainage has been submitted to and approved in writing by this Planning Authority. If the approved scheme includes drainage via the existing stone culvert, a CCTV survey of the culvert shall be carried out before the development commences, to determine its condition and any blockages, and any necessary remedial works and the maintenance arrangements shall be subject to the written approval of this Planning Authority.
6. Vehicular access to the property shall be via a dropped kerb footway crossing, formed in accordance with details to be approved in writing by this Planning Authority.
7. The driveway shall be formed with a maximum gradient of 1 in 10 and in a manner to ensure that no surface water is discharged, or loose material is carried, onto the public road.
8. The dwellinghouse shall not be occupied until visibility splays measuring 2.4 metres x 59 metres are provided in both directions from the access onto the A803. There shall be no obstruction to visibility greater than 600mm above the height of the carriageway within these splays.

**Reason(s):-**

1. As these drawings and details constitute the approved development.
- 2,3. To safeguard the visual amenity of the area.
4. To ensure the occupiers of the property are safeguarded against excessive noise intrusion from transportation noise.
5. To ensure that adequate drainage is provided.
- 6-8. To safeguard the interests of the users of the highway.

**Informative(s):-**

1. In accordance with section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended), this permission lapses on the expiration of a period of 3 years beginning with the date on which this permission is granted unless the development to which this permission relates is begun before that expiration.
2. For the avoidance of doubt, the plan(s) to which this decision refer(s) bear our online reference number(s) 01, 02, 03, 04 and 05.
3. Formation of the dropped kerb will require Minor Roadworks Consent. The applicant should contact Roads Services on 01324 506070 to obtain the relevant application form.

4. The applicant is advised to ensure that noisy works that are audible at the application site boundary are only conducted during the following hours:-

Monday to Friday	0800 to 1800 hours
Saturday	0900 to 1700 hours
Sunday/ Bank Holidays	1000 to 1600 hours

Deviation from these hours will not be permitted unless in emergency circumstances and with the prior approval of the Environmental Health Unit.

5. The applicant is advised to ensure that all works on the affected of the application site cease in the event that any made ground, suspect substances or odours are encountered following the commencement of the development. In such circumstances, the applicant is required to notify the Planning Authority immediately, carry out a contaminated land assessment and undertaken any necessary remediation works, and only recommence the development with the prior written approval of the Planning Authority.

.....  
pp Director of Development Services  
Date: 14 March 2016

### **LIST OF BACKGROUND PAPERS**

1. Falkirk Council Local Development Plan.
2. SG02 'Neighbourhood Designs'
3. SG10 'Education and New Housing Development'
4. SG11 'Healthcare and New Housing Development'
5. SG13 'Open Space and New Development'
6. Support received from Miss Jennifer Shanks, 10 Holding, Kilsyth Road, Longcroft, FK4 1HB on 3 November 2015.
7. Support received from Mrs Morag Shanks, 10 Holding, Kilsyth Road, Longcroft, FK4 1HB on 2 November 2015.

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

**P/15/0583/FUL**



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