



AGENDA ITEM

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Modification of Planning Obligation under Section 75 of the Town and Country Planning (Scotland) Act 1997 registered over land registered in the Land Register of Scotland under title number STG58305 attached to Planning Permission P/08/0296/ FUL to accommodate development under Planning Application Reference P/16/0429/ FUL at Land to the West Of 21 Old Mill Way, Kirkland Drive, Stoneywood for MacTaggart & Mickel Homes Ltd - P/16/0653/75M

FALKIRK COUNCIL

Subject: MODIFICATION OF PLANNING OBLIGATION UNDER SECTION 75 OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 REGISTERED OVER LAND REGISTERED IN THE LAND REGISTER OF SCOTLAND UNDER TITLE NUMBER STG58305 ATTACHED TO PLANNING PERMISSION P/08/0296/FUL TO ACCOMMODATE DEVELOPMENT UNDER PLANNING APPLICATION REFERENCE P/16/0429/FUL AT LAND TO THE WEST OF 21 OLD MILL WAY, KIRKLAND DRIVE, STONEYWOOD FOR MACTAGGART & MICKEL HOMES LTD - P/16/0653/75M

Meeting: PLANNING COMMITTEE

Date: 25 January 2017

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: Denny and District

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

1. DESCRIPTION OF PROPOSAL / SITE LOCATION

- 1.1 The application seeks to modify the Section 75 planning obligation attached to planning permission P/08/0296/FUL so as to accommodate development applied for under planning application P/16/0429/FUL (see paragraph 3.9 below).
- 1.2 Planning application P/16/0429/FUL seeks to amend the house type mix within a portion of the site, so there is a reduction of 7 units within this area but an increase in the proportion of dwellinghouses to flats. Dwellinghouses attract a larger education contribution per unit than flats and so the proposed modification seeks to amend the planning obligation accordingly. The education contribution would increase by £14,400 (from £501,750 to £516,150) if any planning permission granted for P/16/0429/FUL was implemented.
- 1.3 The site to which the planning obligation relates is located at the former Carrongrove Paper Mill along the B818 at Stoneywood, west of Denny. Phase 1 of the redevelopment, consisting of 27 affordable housing units, has been completed.

2. REASON FOR COMMITTEE CONSIDERATION

- 2.1 The application requires consideration by the Planning Committee as the application to which the Section 75 Planning Obligation relates (reference P/08/0296/FUL) was determined by the Planning Committee.

3. SITE HISTORY

- 3.1 Planning application P/08/0296/FUL for redevelopment of former paper mill to provide 129 dwellinghouses and 53 flats, 750 square feet of commercial floorspace, roads infrastructure including new roundabout, open space, landscaping, woodland management and public pathway provision, construction of a fish ladder and alterations to listed building to retain business use was granted on 24 May 2012. The entrance roundabout, phase 1 consisting of 27 affordable housing units, and a hydro-electric scheme with fish ladder have been completed.
- 3.2 Listed building consent application P/08/0488/LBC for internal and external alterations to former office building was approved on 22 April 2009. This consent lapsed on 22 April 2014.
- 3.3 Planning application P/13/0262/FUL for alterations to Fankerton Weir for hydro-electric generation and fish passage, installation of 600 metre pipeline and construction of turbine house was granted on 6 September 2013. The hydro development and fish ladder are now completed.
- 3.4 Planning application P/13/0364/VRC to vary condition 33 of planning permission P/08/0296/FUL to allow occupation of affordable housing units prior to construction of a roundabout at the junction of Stirling Street and Nethermain Road was refused on 6 March 2013.
- 3.5 Planning application P/13/0074/75M for a modification of planning agreement attached to planning permission P/08/0296/FUL to remove the requirement to make a transport contribution of £550,000 was agreed on 24 April 2014 on appeal to the Scottish Government. The appeal was in response to the Council's decision to refuse the modification.
- 3.6 Listed building consent P/16/0302/LBC for removal of display plaques from Carrongrove House was approved on 24 June 2016.
- 3.7 Planning application P/16/0426/FUL for the conversion of former office building to create 7 flats, car parking and all other associated works is pending consideration.
- 3.8 Listed building consent application P/16/0424/LBC for the conversion of former office building to form 7 flatbed dwellings is pending consideration.
- 3.9 Planning application P/16/0429/FUL for residential development consisting of 10 flats, 38 dwellinghouses and associated parking areas and infrastructure is being considered by the Planning Committee in tandem with planning application P/16/0653/75M. The application seeks to amend the scheme approved under P/08/0296/FUL by substituting 37 flats and 18 dwellinghouses with 10 flats and 38 dwellinghouses. This represents a change to the unit type/ mix and a reduction of seven units within this part of the site. The proposed house type substitutions would result in removal of previously approved commercial floorspace (250m² retail and 500m² office).

4. CONSULTATIONS

- 4.1 Children's Services have advised that the proposed changes in house type / mix result in an increased education contribution of £14,400 (from £501,750 to £516,150), based on the school capacity issues identified at the time of the original application and the rates that applied at that time (as set out in Supplementary Planning Guidance: 'Education and New Housing Development,' February 2007).

5. COMMUNITY COUNCIL

- 5.1 The Denny and District Community Council have not made any representations.

6. PUBLIC REPRESENTATION

- 6.1 No public representations have been received in respect of the application.

7. DETAILED APPRAISAL

- 7.1 Under Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning etc. (Scotland) Act 2006), planning obligations are secured through an appropriate legal document to bind the owners and future owners of particular subjects. They may secure payment of a financial contribution towards infrastructure to support a development proposal subject to a planning application.
- 7.2 Section 75A of the 2006 amendment establishes a formal process by which a party to the planning obligation may apply to discharge or modify the obligation.
- 7.3 Scottish Government Circular 3/2012 (Planning Obligations and Good Neighbour Agreements) sets out the circumstances in which planning obligations and good neighbour agreements can be used. The circular states that planning obligations should only be sought where they meet all of the following tests:-
- Necessary to make the proposed development acceptable in planning terms (the necessity test).
 - Serve a planning purpose and, where it is possible to identify infrastructure provision requirements in advance, should relate to Development Plans (the planning purpose test).
 - Relate to the proposed development either as a consequence of the development or arising from the cumulative impact of development in the area (the relationship to proposed development test).
 - Fairly and reasonably relate in scale and kind to the proposed development (the scale and kind test).
 - Be reasonable in all other respects (the reasonable test).

- 7.4 The planning application to which the Section 75 planning obligation attaches (P/08/0296/FUL) was determined prior to Circular 3/2012, when Circular 1/2010 (Planning Agreements) was in force. The policy tests under both these circulars are the same and it follows that, if the education contribution had been considered under Circular 3/2012, the contribution would still have been sought.
- 7.5 The request to modify the planning obligation (such that the education contribution is increased by £14,400) is considered to meet all of the tests of the circular. In particular:-
- Capacity issues at Denny High School and Denny Primary School were identified at the time of the original application (P/08/0296/FUL) and there remain capacity issues at these two schools. The need for the education contribution therefore remains (the necessity and relationship to proposed development tests are therefore met).
 - The current policy basis for increasing the contribution is derived from Policy INF05 (Education and New Housing Development) of the Falkirk Local Development Plan and Supplementary Guidance SG10 'Education and New Housing Development'. At the time of the original application the policy basis for the education contribution was derived from the Falkirk Council Local Plan as supported by Supplementary Planning Guidance 'Education and New Housing Development', dated February 2007 (the planning purpose test is therefore met).
 - The change sought to the education contribution is based on a proportional approach whereby the education contribution is calculated according to the number of units and whether each unit is a flat or dwellinghouse (the scale and kind test is therefore met).
 - The change to the contribution has been calculated according to the rates that applied at the time of the original planning obligation (under Supplementary Planning Guidance 'Education and New Housing Development') and in respect of those education establishments identified at that time as having capacity issues. This is because the Section 75A application is in response to proposed changes to the house type/mix (P/16/0429/FUL) in respect of the original (extant) planning permission and there is no increase in unit numbers. The existing provisions of the planning obligation relating to indexation would remain unchanged. This approach is considered to be appropriate and reasonable (the reasonableness test is therefore met).
- 7.6 The other financial contributions secured by the current planning obligation are not affected by this application. They are a recreation facilities contribution of £30,000 and a cyclepath contribution of £20,000.

8. CONCLUSION

- 8.1 The application seeks to modify the Section 75 planning obligation attached to planning permission P/08/0296/FUL, so that the requirement for an education contribution is increased by £14,400. This report has assessed that the proposed modification meets the policy tests of Scottish Government Planning Circular 3/2012 (Planning Obligations and Good Neighbour Agreements). The proposed modification is therefore considered to be appropriate. It is therefore recommended that the Committee agree to modify the planning obligation attached to planning permission P/08/0296/FUL in accordance with the details as set out within the application.

9. RECOMMENDATION

- 9.1 **It is therefore recommended that the Planning Committee agree to modify the Section 75 Planning Obligation attached to planning permission P/08/0296/FUL in accordance with the details as set out in the draft decision notice accompanying the application and subject to the Committee indicating that it is minded to grant planning application P/16/0429/FUL. The reason being that the proposed modification is considered to satisfy all of the policy tests of Scottish Government Planning Circular 3/2012 "Planning Obligations and Good Neighbour Agreements".**

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pp Director of Development Services

Date: 16 January 2017

LIST OF BACKGROUND PAPERS

1. Falkirk Local Development Plan.
2. Falkirk Council Supplementary Guidance SG10 "Education and New Housing Development".
3. Falkirk Council Supplementary Planning Guidance "Education and New Housing Development" dated February 2007.
4. Scottish Government Planning Circular 3/2012 (Planning Obligations and Good Neighbour Agreements)

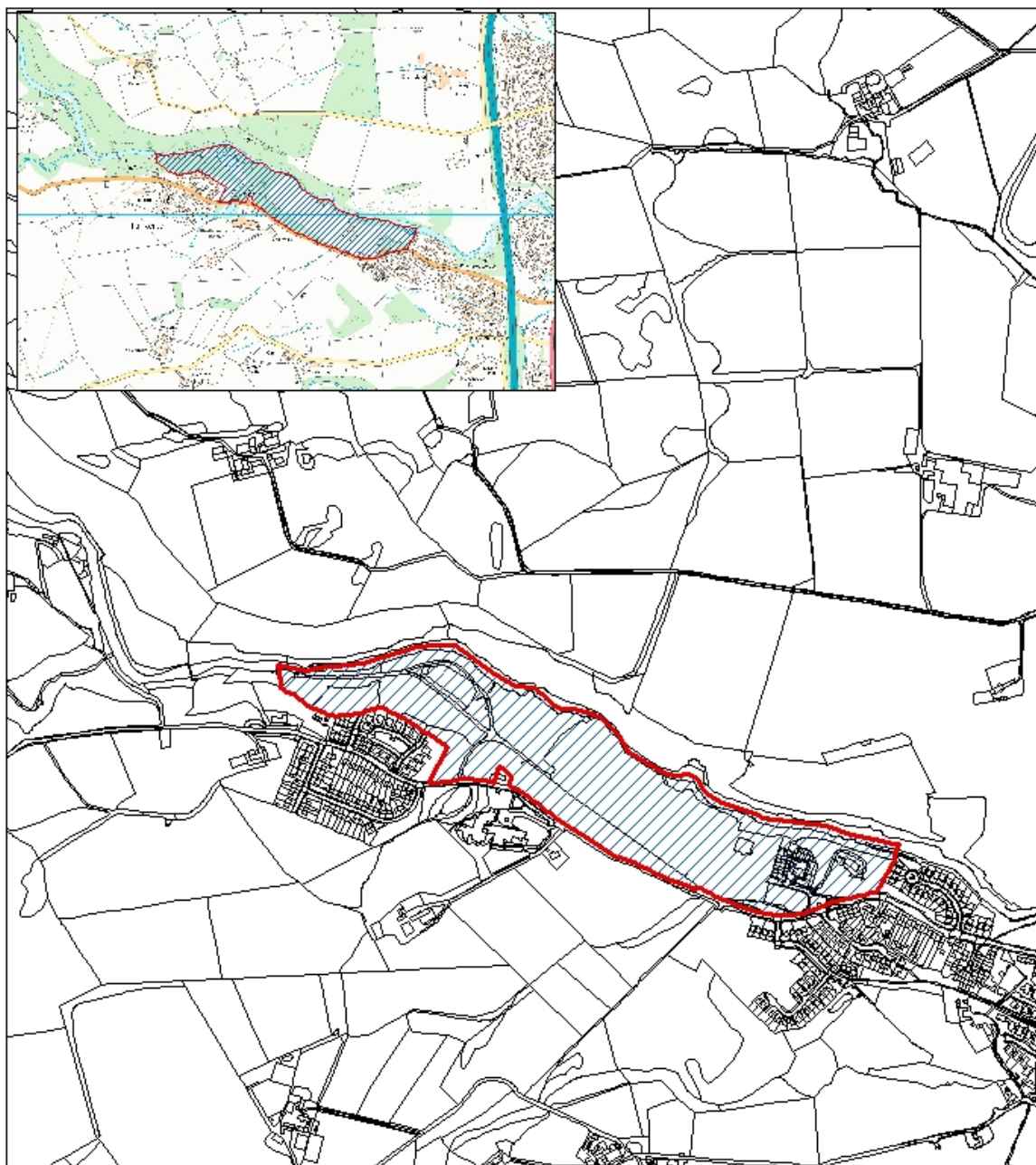
Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504935 and ask for Brent Vivian, Senior Planning Officer.

Planning Committee

Planning Application Location Plan

P/16/0653/75M

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



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