

Agenda Item

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**Erection of Restaurant (Class 3) Unit
and Hot Food Takeaway Unit at Land
to the South of 58 Grahams Road,
Grahams Road, Falkirk for Eskgate
Ltd – P/17/0017/FUL - (Continuation)**

FALKIRK COUNCIL

Subject: ERECTION OF RESTAURANT (CLASS 3) UNIT AND HOT FOOD TAKEAWAY UNIT AT LAND TO THE SOUTH OF 58 GRAHAMS ROAD, GRAHAMS ROAD, FALKIRK, FOR ESKGATE LTD - P/17/0017/FUL

Meeting: PLANNING COMMITTEE

Date: 16 August 2017

Author: DIRECTOR OF DEVELOPMENT SERVICES

Local Members: Ward - Falkirk North

Councillor David Alexander

Councillor Robert Bissett

Councillor Dennis Goldie

Councillor Cecil Meiklejohn

Community Council: Grahamston, Middlefield and Westfield

Case Officer: Stephen McClure (Planning Officer), Ext. 4702

UPDATE REPORT

1. Members will recall that this application was originally considered by the Planning Committee on 27 June 2017 (copy of previous report appended - Appendix 1), when it was agreed to continue the application for a site visit. This visit took place on Monday 7 August 2017.
2. The case officer summarised the report, the applicant's agent spoke and members of the Planning Committee, Councillor Meiklejohn as local Member, the local Community Council and neighbouring property owners (supporter/objectors) were heard.
3. The applicant's agent initially spoke, and noted that they did not wish to add anything further, as it was felt that all the matters had adequately been covered within the Committee Report.
4. The owner of several neighbouring flatted dwellings then spoke in support of the development. The property owner stated that the site had been vacant for too long, and that Falkirk requires developments such as that being proposed. It was also noted that due to the site being vacant, there is currently issues with fly-posting and anti-social behaviour, which it was hoped would cease if the site was developed.

5. The owner of 50A Grahams Road then spoke in objection to the proposed development. It was noted that overall he would like to see the site developed, but was concerned that the removal of the tree adjacent to his property would cause the property to subside and affect the ground water. It was also noted that there are concerns with noise, overlooking, odours and pollution. In relation to noise and odour concerns, the Environmental Protection Officer stated that they would assess the details of the extraction systems once known, and that they would have to meet the current standards for such equipment. This should ensure that noise and odour were not an issue at the site. It was however noted that if any issues did arise, the Environmental Protection Unit could investigate and taken action where necessary.
6. The owner of 1 George Street then spoke in objection to the proposed development. It was stated that she had met with the applicant and agent, and that she wished to see an 8 foot fence erected along her boundary with the site, and for certain trees within the site to be retained. However, there had been no commitment in writing from the applicant to her to confirm this would be the case. It was also considered by the resident that the proposal may cause issues with noise, and that there were already too many restaurants in the area. It was also noted that there had been many issues with the site prior to the erection of the current fencing, but there continued to be issues with anti-social behaviour, and the site was not currently well maintained.
7. The Grahamston, Middlefield and Westfield Community Council had two members in attendance who both spoke in objection to the proposed development. It was highlighted that they did not wish to see any trees removed from the site, and it was thought that another restaurant on Grahams Road was not required. The Planning Officer in attendance advised that there was currently no Tree Preservation Order (TPO) on the site, and that the one tree that was to be removed could not be saved due to the location of foundations for the building. It was also advised that Development Management could not at this location restrict the proposed uses on the site.
8. Members of the Planning Committee in attendance then sought clarification on proposed access to the site, and whether the addition of fencing around the site would raise issues. It was noted to Members that there is only access into the site from Grahams Road, which would not be affected by any boundary fencing proposed. Members of the Planning Committee then enquired as to the acceptability of an 8 foot fence around the site boundaries where it bounds onto neighbouring residential properties. It was noted that this would likely be seen as acceptable, and that it could be placed on any approval as a condition if so required. It was also questioned by Members whether or not there would be any overlooking in relation to the proposed roof windows. It was intimated that at this stage there was no plans for an upper floor, and that roof windows were for allowing additional light into the building. Normally, roof windows are not considered in respect of overlooking due to their position and angle on a building. Finally, Members sought to view the site from other locations to get an idea of the scale of the development proposed. It was noted by one of the neighbouring property owners that a section of the site was accessible from their property, and Members were welcome to use this access to view this section of the site. The Convenor noted that this could be carried out at the end of the meeting for any Members wishing to do so, but would not be part of the formal site meeting.

9. Councillor Meiklejohn as Local Member spoke to raise the concerns of the residents in relation to the site, noting that it had in its current state attracted anti-social behaviour and was not well maintained. Councillor Meiklejohn noted that the site could not be restricted for certain development types, and that residents would like to see it redeveloped, but the developers should work with the residents to ensure that any development works for all. It was also considered that the developers should feed back to the residents in relation to the proposed boundary treatments, and that the site overall should be well landscaped, using current features on the site where possible.
10. No new issues were raised which would alter the officer recommendation to grant planning permission. The previous recommendation is reiterated as follows:-

11. RECOMMENDATION

11.1 It is therefore recommended that Committee 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.
 - i. **No development shall commence on site unless otherwise agreed with the planning authority until a contaminated land assessment has been submitted and approved. The assessment must determine the nature and extent of any contamination on the site, including contamination that may have originated from elsewhere. Any potential risks to human health, property, the water environment and designated ecological sites should be determined. The contaminated land assessment must be approved in writing by the Planning Authority.**
 - ii. **Where contamination (as defined by Part IIA of the Environmental Protection Act 1990) is encountered, a detailed remediation strategy should be submitted to the Planning Authority demonstrating that the site will be made suitable for its intended use by removing any unacceptable risks, caused by the contamination. The scheme must be approved in writing by the Planning Authority.**
 - iii. **Prior to the commencement of development of the site, the remediation works must be carried out in accordance with the terms and conditions of the remediation scheme, and as agreed by the Planning Authority. No part of the development shall be occupied until a remediation completion report/validation certificate endorsed by the relevant parties have been submitted to and agreed in writing by the Planning Authority.**

Reason(s):-

1. As these drawings and details constitute the approved development.
2. To ensure the ground is suitable for the proposed development.
- 3, 5. To safeguard the environmental amenity of the area.
4. To safeguard the visual amenity of the area.
6. To ensure the development achieves the required CO₂ emission reduction as a result of development.
7. To ensure adequate parking and access is available at the site.
8. To ensure that the existing trees are retained and protected during construction work.

Informative(s):-

1. For the avoidance of doubt, the plan(s) to which this decision refer(s) bear our online reference number(s) 01, 02A, 03A, 04B, 05B and 06A.
2. 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.
3. The proposed development lies within an area that has been defined by The Coal Authority as containing potential hazards arising from former coal mining activity. These hazards can include: mine entries (shafts and adits); shallow coal workings; geological features (fissures and break lines); mine gas and previous surface mining sites. Although such hazards are seldom readily visible, they can often be present and problems can occur in the future, particularly as a result of development taking place.

If any of the coal mining features are unexpectedly encountered during development, this should be reported immediately to The Coal Authority on 0345 762 6848. Further information is available on The Coal Authority website at www.gov.uk/government/organisations/the-coal-authority

4. Noise associated with the completed development shall not give rise to a noise level, assessed with the windows open, within any dwelling or noise sensitive buildings in excess of the equivalent to Noise Rating Curve (N.R.C.) 35 between 07.00 hours and 22.00 hours and N.R.C. 25 at all other times.

5. **Separate formal Advertisement Consent may be required for any signs associated with the proposed development. It is the applicant's responsibility to obtain this before any signs are displayed on site. For advice please contact Falkirk Council Development Management, Abbotsford House, David's Loan, Falkirk, FK2 7YZ (tel: 01324 504748)**
6. **The applicant shall ensure that noisy work which is audible at the site boundary shall ONLY be conducted between the following hours:**

Monday to Friday	08:00 - 19:00 Hours
Saturday	08:00 - 13:00 Hours
Sunday / Bank Holidays	No noise audible at site boundary

Deviation from these hours of work is not permitted unless in emergency circumstances and with the prior approval of the Environmental Protection Unit.

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Pp Director of Development Services

Date: 10 August 2017

LIST OF BACKGROUND PAPERS

1. Objection received from Mr Graham Stewart, 50A Grahams Road, Falkirk, FK1 1HN received on 19 January 2017.
2. Objection received from Martin & Frances Keating, Calluna, 1 George Street, Falkirk, FK2 7EY received on 30 January 2017.
3. Objection received from Mr William Paterson, 19 Russel Street, Falkirk, FK2 7HU received on 21 January 2017.
4. Objection received from Mrs Shirley Stewart, 50a Grahams Road, Falkirk, FK1 1HN received on 20 January 2017.

Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504702 and ask for Stephen McClure, Planning Officer.

FALKIRK COUNCIL

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Meeting: PLANNING COMMITTEE
Date: 27 June 2017
Author: DIRECTOR OF DEVELOPMENT SERVICES

Local Members: Ward - Falkirk North

Councillor David Alexander
Councillor Robert Bissett
Councillor Dennis Goldie
Councillor Cecil Meiklejohn

Community Council: Grahamston, Middlefield and Westfield

Case Officer: Stephen McClure (Planning Officer), Ext. 4702

1. DESCRIPTION OF PROPOSAL / SITE LOCATION

- 1.1 The site consists of an area of vacant land which lies adjacent to and to the south of 58 Grahams Road in Falkirk. The site was formally used for the display and sale of vehicles, and has been vacant for over 10 years. The site is level and enclosed by a security fence. A site access is shared with adjacent flatted dwellings to the north. A temporary parking area for their use has been formed within the site. The remainder of the site is heavily overgrown.
- 1.2 There are a number of mature trees around the site boundary. The site fronts onto Grahams Road and is surrounded by mainly residential properties, although the immediate area contains a mix of residential, retail and other business uses. It is proposed to erect a restaurant (Class 3 use) and a hot food takeaway (Sui-Generis use) on the site, with ancillary parking, landscaping, (including fencing/walling), access and road junction infrastructure.

2. REASON FOR COMMITTEE CONSIDERATION

- 2.1 The application has been referred to the Planning Committee by Councillor Alexander for the following reasons:

Objections have not been addressed. Outstanding issues of the trees that are subject to a TPO not addressed.

3. SITE HISTORY

- 3.1 P/16/0481/FUL - Application Withdrawn - 06.12.2016 - Erection of Restaurant (Class 3) and Hot Food Takeaway.
- 3.2 P/07/0608/FUL - Detail - Granted - 08.11.2007 - Erection of 3 Retail Units and Associated Parking.
- 3.3 F/96/0896 - Application Refused - 14.08.1997 - Demolition of Listed Building (Listed Building Consent).
- 3.4 F/98/0794 - Withdrawn - 22.03.2001 - Use of Land to Form Extension to Sales Area; Use of Land to Form Vehicle Storage and Parking and Siting of Temporary Sales Office Cabins (Detailed).
- 3.5 F/95/0545 - Detail - Granted - 17.10.1995 - Change of Use of Office to Restaurant (Detailed).

4. CONSULTATIONS

- 4.1 The Transport Planning Unit have no objections to the proposal.
- 4.2 The Coal Authority have no objection to the proposal.
- 4.3 The Environmental Protection Unit have no objection to the proposal in principle. However, given the history of the site, a contaminated land assessment would require to be submitted and approved by the Planning Authority, prior to any works commencing on-site. There would also require to be agreement on the proposed extraction equipment to be used. They request that these matters be covered by planning conditions.
- 4.4 The Roads Development Unit have no objections to the proposal.
- 4.5 Scottish Water have not responded to the consultation request.

5. COMMUNITY COUNCIL

- 5.1 No comments have been received from Grahamston, Middlefield and Westfield Community Council.

6. PUBLIC REPRESENTATION

- 6.1 In the course of the application, 4 contributor(s) submitted letter(s) of objection. The salient issues are summarised below.
 - There was an error in the submitted tree report regarding the tree to the south-west corner of the site. This tree did not cause the boundary wall to the rear of 50a Grahams Road to collapse, this was due to other factors;
 - Surrounding residential streets would be used as a short-cut for vehicles wishing to return from the restaurant car-park to the town centre area. This is due to only being able to turn left coming out of the restaurant;

- Removal of tree to south-east of the site would damage 50/50a Grahams Road through subsidence;
- Planting of new native species of tree as replacements for a tree removed will cause damage to 50/50a Grahams Road, and would block access for maintenance, as well as affecting the drainage on the building;
- Proposed external seating area and footpath to the side of the proposed restaurant would cause noise nuisance from customers. It could also create a security risk by allowing access to the boundary fencing at 50a Grahams Road, as well as create an area for anti-social behaviour when the restaurant is closed;
- The rear garden of 50a Grahams Road would be overlooked by restaurant windows on the south facing elevation, as well as the proposed roof windows;
- The proposal would create general noise issues to residents from sources such as cars and extraction fans
- Pollution and smells would blow directly over the garden ground of 50a Grahams Road;
- No new boundary fencing is being proposed. Existing fencing which is in various states is to remain;
- Insufficient car-parking for the proposed restaurant, which would result in overspill parking to nearby residential streets;
- The removal of the tree to the south-west of the site would cause subsidence to gardens of adjacent residential properties;
- No requirement for an additional restaurant or hot food takeaway, there are plenty nearby;
- The proposed access to the restaurant car-park would cause chaos to traffic flow on Grahams Road, which already cannot cope;
- The proposed landscaping would affect access for 50a Grahams Road to maintain fencing and hedging;
- A new fence of adequate design and height would require to be erected around the site boundary;
- There is no issue in relation to the telephone poles/lines on the site in regard to the existing trees, with BT accessing and maintaining the lines when required. BT have no power to request the removal or trimming of trees, but where required this has always been agreed at the site;
- The proposed restaurant and hot food takeaway would have a greater impact on the amenity of the area compared with past uses and proposals.

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

The Falkirk Local Development Plan was adopted on 16 July 2015. It includes a number of supplementary guidance documents which also have statutory status as part of the Development Plan. The proposed development was assessed against the following policy or policies:

7a.1 Policy TC01 - Network of Centres states:

- 1. The focus for retail, leisure, cultural and major community uses in the area will be on the network of centres identified in Figure 3.3 and Map 3.3. Significant new retail and commercial leisure development will be directed to these centres. The boundaries of centres are identified on the Proposals Map. Residential and business uses will also be promoted in these centres as appropriate.*
- 2. New food shopping will be a priority in Denny, Bonnybridge and Bo'ness Town Centres, and in the new Local Centres of Banknock, Kinnaird Village and Whitecross.*
- 3. Opportunities for development, regeneration and enhancement in the centres will be promoted as listed in the Settlement Statements, and detailed in the Site Schedule in Appendix 1.*
- 4. Development which would significantly undermine the role of any centre in the network, as defined in Figure 3.3, will not be permitted.*

7a.2 The proposal would see an area of vacant land regenerated within Falkirk town centre boundary. The proposed use for the site for a restaurant and hot food takeaway would complement the role of town centre and neighbouring existing uses. The proposal accords with Policy TC01.

7a.3 Policy D01 - Placemaking states:

The following locations are regarded as key opportunities for placemaking within the area, within which there will be a particular emphasis on high quality design and environmental enhancement:

- 1. Strategic Housing Growth Areas & Business Locations;*
- 2. Town and Village Centres;*
- 3. Town Gateways and Major Urban Road Corridors;*
- 4. Canal Corridor;*
- 5. Central Scotland Green Network.*

7a.4 The site is located within the town centre of Falkirk, and the principal elevation fronts onto Grahams Road, which is a town gateway and major urban road corridor. Particular emphasis has therefore been given to the design quality and the environmental enhancements to the immediate area. The proposal accords with Policy D01.

7a.5 Policy INF11 - Parking states:

The Council will manage parking provision as an integral part of wider transport planning policy to ensure that road traffic reduction, public transport, walking, cycling and safety objectives are met.

1. *The scale of public parking provision in Falkirk Town Centre will be maintained broadly at its current level and any proposed change to parking provision will be assessed against its effect on the vitality and viability of the centre.*
2. *The feasibility of promoting Park and Ride facilities on the road corridors into Falkirk Town Centre will continue to be investigated.*
3. *Parking in District and Local Centres will be managed to promote sustainable travel and the role of the centres.*
4. *New parking will be provided to support the strategic role of railway stations, with priority given to new provision at Falkirk High. Where possible, the provision of new off street parking facilities will be associated with traffic management and other measures to reduce uncontrolled on-street parking.*
5. *The maximum parking standards set out in the SPP will be applied to new development, where relevant, in tandem with the Council's minimum standards. Where the minimum standards cannot be met, developer contributions to enhance travel plan resources may be required in compensation.*

7a.6 The proposal includes 32 parking spaces on the site. The Roads Development Unit has raised no objection. There is also on-street parking provision available, as well as parking provision at the nearby Central Retail Park. The proposal accords with Policy INF11.

7a.7 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.8 As the site is a brownfield location, it has been noted by the applicant that there are existing opportunities available for surface water drainage. Given the town centre location, it has also been noted that there would be all necessary connections available for the proposed development. The Roads Development Unit required no further information. The proposal accords with Policy INF12.

7a.9 Policy TC02 - Development and Changes of Use in Centres states:

Within the defined boundaries of centres, a mix of retail, business, leisure, community and residential uses will be promoted consistent with maintaining the vitality and viability of these centres and their role in the network of centres. Proposals for development or changes of use for these uses will be supported subject to the following:

- 1. Within the core area of Falkirk Town Centre, ground floor premises should be retained in retail use, or non-retail use which actively supports the shopping or tourism function of the Town Centre;*
- 2. Within established shopping streets elsewhere in Falkirk Town Centre and in the District and Local Centres, ground floor premises should, where possible, retain an active frontage;*
- 3. The re-use of upper storeys in shopping streets for residential use will be supported; and*
- 4. Within Central Retail Park and the retail element of the Falkirk Gateway, development proposals and changes of use should comply with any relevant Section 75 Obligations covering these shopping areas.*

Outwith centres, proposals involving the loss of neighbourhood and rural shops (Class 1) and services (Class 2) which serve an important community function will only be permitted where the Council is satisfied the premises are no longer viable for such uses.

7a.10 The proposal would contribute to the mix of uses within this part of the town centre and help maintain its vitality and viability. The proposal accords with Policy TC02.

7a.11 Policy TC04 - Food and Drink states:

- 1. Proposals for Class 3 uses, hot food takeaways and public houses will be encouraged to locate within centres, in association with other neighbourhood shops or services, or in locations where they are capable of fulfilling a tourism function.*
- 2. Proposals must demonstrate that there will be no adverse impact on the amenity of adjacent residential properties, or the surrounding area generally, by virtue of noise, disturbance, litter or odours, and that parking and access requirements are satisfied.*
- 3. Temporary consent for mobile snack bar vans may be granted where a specific need is demonstrated, and there is no adverse impact on local amenity or the visual quality of the locality*

7a.12 It is considered that the proposal would not generate unacceptable impacts on the amenity of adjacent residential properties, or the surrounding area, by virtue of noise, disturbance, litter or odours. The Environmental Protection Unit have not objected to the proposals, and if granted, appropriate conditions could be applied. The proposed parking and access are satisfactory. The proposals where relevant accord with Policy TC04.

7a.13 Policy GN04 - Trees, Woodland and Hedgerows states:

The Council recognises the ecological, landscape, economic and recreational importance of trees, woodland and hedgerows. Accordingly:

1. *Felling detrimental to landscape, amenity, nature conservation or recreational interests will be discouraged. In particular ancient, long-established and semi-natural woodlands will be protected as a habitat resource of irreplaceable value;*
2. *In an area covered by a Tree Preservation Order (TPO) or a Conservation Area, development will not be permitted unless it can be proven that the proposal will not adversely affect the longevity, stability or appearance of the trees. Where necessary, endangered trees and woodlands will be protected through the designation of further TPOs;*
3. *Development which is likely to affect trees should comply with Supplementary Guidance SG06 'Trees and Development', including the preparation where appropriate of a Tree Survey, Constraints Plan, and Tree Protection Plan. Where development is permitted which will involve the loss of trees or hedgerows of amenity value, the Council will normally require replacement planting appropriate in terms of number, size, species and position;*
4. *The enhancement and management of existing woodland and hedgerows will be encouraged. Where the retention of a woodland area is integral to a development proposal, developers will normally be required to prepare and implement an appropriate Management Plan; and*
5. *There will be a preference for the use of appropriate local native species in new and replacement planting schemes, or non-native species which are integral to the historic landscape character.*

7a.14 The site is overgrown and features several large mature trees near the site boundary. The initial tree survey and site plan proposed the removal of two mature trees. The proposals have been amended, with one of the mature trees now being proposed to be removed due to its location in relation to the proposed new building. The loss of this tree would require replacement planting as part of a landscape plan for the site. A tree protection plan would also be required. The proposal accords with Policy GN04.

7a.15 Policy D03 - Urban Design states:

New development should create attractive and safe places for people to live, work and visit. Accordingly:

1. *Development proposals should conform with any relevant development framework, brief or masterplan covering the site. Residential proposals should conform with Supplementary Guidance SG02 'Neighbourhood Design';*
2. *The siting, density and design of new development should create a coherent structure of streets, public spaces and buildings which respects and complements the site's context, and creates a sense of identity within the development;*
3. *Street layout and design should generally conform with the Scottish Government's policy document 'Designing Streets';*
4. *Streets and public spaces should have buildings fronting them or, where this is not possible, a high quality architectural or landscape treatment;*

5. *Development proposals should include landscaping and green infrastructure which enhances, structures and unifies the development, assists integration with its surroundings, and contributes, where appropriate, to the wider green network;*
6. *Development proposals should create a safe and secure environment for all users through the provision of high levels of natural surveillance for access routes and public spaces; and*
7. *Major development proposals should make provision for public art in the design of buildings and the public realm.*

7a.16 Following some design amendments, the siting, layout and design of the new development would create a coherent street frontage, public space and a building which respects, complements the locality and creates a sense of identity. The proposed landscape treatment is considered to be acceptable. The proposal accords with Policy D03.

7a.17 Policy D04 - Low and Zero Carbon Development states:

1. *All new buildings should incorporate on-site low and zero carbon-generating technologies (LZCGT) to meet a proportion of the overall energy requirements. Applicants must demonstrate that 10% of the overall reduction in CO₂ emissions as required by Building Standards has been achieved via on-site LZCGT. This proportion will be increased as part of subsequent reviews of the LDP. All proposals must be accompanied by an Energy Statement which demonstrates compliance with this policy. Should proposals not include LZCGT, the Energy Statement must set out the technical or practical constraints which limit the application of LZCGT. Further guidance will be contained in Supplementary Guidance SG15 'Low and Zero Carbon Development'. Exclusions from the requirements of this policy are:*
 - *Proposals for change of use or conversion of buildings;*
 - *Alterations and extensions to buildings;*
 - *Stand-alone buildings that are ancillary and have an area less than 50 square metres;*
 - *Buildings which will not be heated or cooled other than by heating provided solely for the purpose of frost protection;*
 - *Temporary buildings with consent for 2 years or less; and*
 - *Where implementation of the requirement would have an adverse impact on the historic environment as detailed in the Energy Statement or accompanying Design Statement.*
2. *The design and layout of development should, as far as possible, seek to minimise energy requirements through harnessing solar gain and shelter;*
3. *Decentralised energy generation with heat recycling schemes (combined heat and power and district heating) will be encouraged in major new developments, subject to the satisfactory location and design of associated plant. Energy Statements for major developments should include an assessment of the potential for such schemes.*

7a.18 The proposal would be constructed and incorporate on-site low and zero carbon-generating technologies (LZCGT). The required information demonstrating the incorporation of LZCGT could be conditioned as part of any approval. The proposal accords with Policy D04.

7a.19 Policy D09 - Listed Buildings states:

The Council supports the sustainable re-use and management of the historic built environment and on that basis there is a presumption against demolition or any other works that would adversely affect the special interest or setting of a listed building. The Council recognises, however, that listed buildings will require alteration, extension and adaptation from time to time to remain in beneficial use and encourages creative and sensitive development where there are no such adverse effects. Accordingly:

1. *The layout, design, materials, scale, siting and use of any development affecting a listed building, or its setting, including extensions, replacement windows, doors, roofs, rainwater goods, boundary treatments and other features, shall be appropriate to the character and appearance of the building and its setting, and should conform to Supplementary Guidance SG16 'Design Guidance for Listed Buildings and Non-Listed Buildings in Conservation Areas'.*
2. *Proposals for the total or substantial demolition of a listed building will only be supported where it is demonstrated beyond reasonable doubt that every effort has been made by all concerned to find practical ways of keeping it. In particular it should be demonstrated that:*
 - *the existing building is no longer of special interest;*
 - *the existing building is incapable of physical repair and re-use, as shown by the submission and verification of a thorough structural condition report;*
 - *the costs of repair and re-use are such that it is not economically viable. Supporting evidence should include a full economic appraisal, evidence that grant aid is not able to meet any funding deficit, and evidence that the building has been actively marketed at a reasonable price and for a period reflecting its location, condition and possible viable uses without finding a restoring purchaser; or*
 - *the demolition of the building is essential for the delivery of significant economic benefits for the local or wider community.*
3. *RCAHMS will be formally notified of all proposals to demolish listed buildings to enable features to be recorded.*

7a.20 A category B Listed Building sits to the north of the site and shares an access. It is considered that the Listed Building and its setting have been taken into account with amendments to the access to ensure no adverse impact on the listed property, and a parking area formed for the residents of the Listed Building. The proposal accords with Policy D09.

7a.21 Policy D11 - Areas of Townscape Value states:

The Council recognises the architectural and historic merit and potential of the additional areas of townscape value identified on the Proposals Map, which do not currently have Conservation Area status. Within these areas:

1. *The Council will undertake Character Appraisals to determine whether the areas merit designation as Conservation Areas, either as new Conservation Areas, or as extensions to existing ones; and*
2. *Development proposals will be required to fit with the distinctive character of the area with particular reference to the historic pattern and density of development; its setting; the architectural style, massing and materials of buildings; landscape treatments; and boundary features.*

7a.22 Following amendments to the original submitted design, the proposal fits within the distinctive character of area, in relation to the density, setting, architectural style, massing and materials. The landscape and boundary treatments are also appropriate. The proposal accords with Policy D11.

Supplementary Guidance forming part of Local Development Plan

7a.23 Falkirk Council Supplementary Planning Guidance SG06 Trees and Development, SG15 Low and zero Carbon Development & SG16 Listed Buildings and Non-Listed Buildings in Conservation Areas – It is considered that for the reasons noted in the above policy assessment, the proposal accords with the appropriate supplementary guidance.

7a.24 Accordingly, the proposal is in accordance with the provisions of the Development Plan.

7b Material Considerations

7b.1 The material considerations to be assessed are public representations and considerations in relation to coal mining legacy.

Assessment of Public Representations

7b.2 The error in the tree report highlighted by neighbouring property owners has been addressed.

7b.3 The entrance has been amended to allow vehicles to turn in either direction on the existing site. It is not considered that vehicles would have to use surrounding residential streets to make their way to the town centre. No objections have been raised by the Roads Development Unit.

7b.4 The removal of a tree to the south-west of the site is required due to the damage it would sustain by the proposed building. It would be the developers responsibility to ensure that the removal of the tree did not cause damage to any adjacent properties. This is not material planning consideration.

7b.5 In relation to any new planting within the site adjacent to the neighbouring property of 50/50a Grahams Road, it would be the developer's responsibility to ensure that this was carried out without impacting upon adjacent properties.

7b.6 The external seating area to the front and partially to the south of the proposed building is not considered likely to create an unacceptable level of noise through customer use. The proposed access along this side of the building would be gated outwith business opening hours. It is not intended for it to be used as a through access for customers.

- 7b.7 It is not considered that the ground floor windows of the restaurant to the south would overlook the garden of 50A Grahams Road. The roof windows in the property are for daylight purposes, with no upper floor and would not raise any issues in relation to overlooking.
- 7b.8 The proposed development is not considered likely to create a level of noise disturbance that would be unacceptable to neighbouring properties. If any specific issues arose, the Environmental Protection Unit could investigate and take any appropriate action if necessary.
- 7b.9 A landscape plan would be required detailing boundary treatments.
- 7b.10 A total of 32 parking spaces are proposed on site with a large amount of additional parking available within the nearby Central Retail Park. The proposal would not lead to an unacceptable level of parking on adjacent residential streets.
- 7b.11 It is not now proposed to remove the tree to the south-west of the application site. Any subsidence caused by the removal of the tree to the neighbouring properties gardens would not be a material planning consideration.
- 7b.12 There are no planning restrictions within this area in relation to the number of Class 3 restaurant use or hot food takeaways.
- 7b.13 The Roads Development Unit have considered the proposal and considered it to be acceptable. It is also not considered that it would add an unacceptable additional level of traffic movement onto Grahams Road.
- 7b.14 Access for maintenance between the site and neighbouring properties is a private matter between property owners, and not a material planning consideration.
- 7b.15 Appropriate boundary treatments would be required between the proposed development and neighbouring properties, including boundary fencing where appropriate. A landscaping plan for the site would be required to be submitted to and approved by the Planning Authority.
- 7b.16 The British Telecom phone lines and posts, and any issues arising from such on the site, would be a private matter between the relevant landowners and British Telecom. This would relate to any issues relating to existing trees and the phone lines and poles. This is not a material planning consideration.

7c Conclusion

- 7c.1 The proposal represents an acceptable form of development for the locality and is in accordance with the relevant policies and supplementary guidance contained in the Falkirk Local Development Plan. There are no material planning considerations which would justify a refusal of planning permission.

8. RECOMMENDATION

8.1 It is therefore recommended that Committee 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.**
 - i. No development shall commence on site unless otherwise agreed with the planning authority until a contaminated land assessment has been submitted and approved. The assessment must determine the nature and extent of any contamination on the site, including contamination that may have originated from elsewhere. Any potential risks to human health, property, the water environment and designated ecological sites should be determined. The contaminated land assessment must be approved in writing by the Planning Authority.**
 - ii. Where contamination (as defined by Part IIA of the Environmental Protection Act 1990) is encountered, a detailed remediation strategy should be submitted to the Planning Authority demonstrating that the site will be made suitable for its intended use by removing any unacceptable risks, caused by the contamination. The scheme must be approved in writing by the Planning Authority.**
 - iii. Prior to the commencement of development of the site, the remediation works must be carried out in accordance with the terms and conditions of the remediation scheme, and as agreed by the Planning Authority. No part of the development shall be occupied until a remediation completion report/validation certificate endorsed by the relevant parties have been submitted to and agreed in writing by the Planning Authority.**
 - iv. If unexpected contamination is found after development has begun, development of the affected part of the site must stop. The developer must notify the Planning Authority immediately and carry out a contaminated land assessment, and undertake any necessary remediation works, before development of the affected part of the site may continue.**
- 3. Prior to works commencing on-site, full details of the the proposed extraction and ventilation equipment shall be submitted to and agreed in writing by the Planning Authority.**
- 4. Prior to works commencing on-site, details of the materials to be used on the external surfaces of the buildings, and in the construction of any hard standings/walls/fences, shall be submitted to and approved in writing by the Planning Authority. The development shall thereafter be carried out using the approved materials or such alternatives as may be agreed in writing with the Planning Authority.**

5. Development shall not begin until details of the scheme of hard and soft landscaping works have been submitted to and approved in writing by the Planning Authority. Details of the scheme shall include (as appropriate):
 - i. existing and finished ground levels in relation to a fixed datum, preferably ordnance
 - ii. existing landscaping features and vegetation to be retained and, in the case of damage, restored
 - iii. location and design, including materials, of walls, fences and gates
 - iv. soft and hard landscaping works

6. The development hereby approved will not be occupied or brought into use until the following documents have been submitted to and approved in writing by the Planning Authority:
 - i) a copy of the appropriate sustainability label (i.e. at least Bronze Active); and
 - ii) a Statement of Conformity which confirms that 10%, of the required CO₂ emissions reduction is achieved through the installation of low and zero carbon generating technologies.

Details and a timetable of how this is to be achieved, including details of physical works on site, shall be submitted to and approved in writing by Falkirk Council. The approved details shall be implemented in accordance with the approved timetable and retained as operational thereafter, unless otherwise agreed in writing by the Local Planning Authority.

7. Before the building is occupied, the car parking and access shown on the Approved Plan shall be completed in full to the satisfaction of the Planning Authority.

8. Prior to any works commencing on-site, a Tree Protection Plan relating to all relevant trees on the site, which is in accordance with Supplementary Guidance SG06 Trees and Development, shall be submitted to and approved in writing by the Planning Authority.

Reason(s):-

1. As these drawings and details constitute the approved development.
2. To ensure the ground is suitable for the proposed development.
- 3, 5. To safeguard the environmental amenity of the area.
4. To safeguard the visual amenity of the area.
6. To ensure the development achieves the required CO₂ emission reduction as a result of development.

7. To ensure adequate parking and access is available at the site.
8. To ensure that the existing trees are retained and protected during construction work.

Informative(s):-

1. For the avoidance of doubt, the plan(s) to which this decision refer(s) bear our online reference number(s) 01, 02A, 03A, 04B, 05B and 06A.
2. 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.
3. The proposed development lies within an area that has been defined by The Coal Authority as containing potential hazards arising from former coal mining activity. These hazards can include: mine entries (shafts and adits); shallow coal workings; geological features (fissures and break lines); mine gas and previous surface mining sites. Although such hazards are seldom readily visible, they can often be present and problems can occur in the future, particularly as a result of development taking place.

If any of the coal mining features are unexpectedly encountered during development, this should be reported immediately to The Coal Authority on 0345 762 6848. Further information is available on The Coal Authority website at www.gov.uk/government/organisations/the-coal-authority

4. Noise associated with the completed development shall not give rise to a noise level, assessed with the windows open, within any dwelling or noise sensitive buildings in excess of the equivalent to Noise Rating Curve (N.R.C.) 35 between 07.00 hours and 22.00 hours and N.R.C. 25 at all other times.
5. Separate formal Advertisement Consent may be required for any signs associated with the proposed development. It is the applicant's responsibility to obtain this before any signs are displayed on site. For advice please contact Falkirk Council Development Management, Abbotsford House, David's Loan, Falkirk, FK2 7YZ (tel: 01324 504748)

6. The applicant shall ensure that noisy work which is audible at the site boundary shall **ONLY** be conducted between the following hours:

Monday to Friday	08:00 - 19:00 Hours
Saturday	08:00 - 13:00 Hours
Sunday / Bank Holidays	No noise audible at site boundary

Deviation from these hours of work is not permitted unless in emergency circumstances and with the prior approval of the Environmental Protection Unit.

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Pp Director of Development Services

Date: 16 June 2017

LIST OF BACKGROUND PAPERS

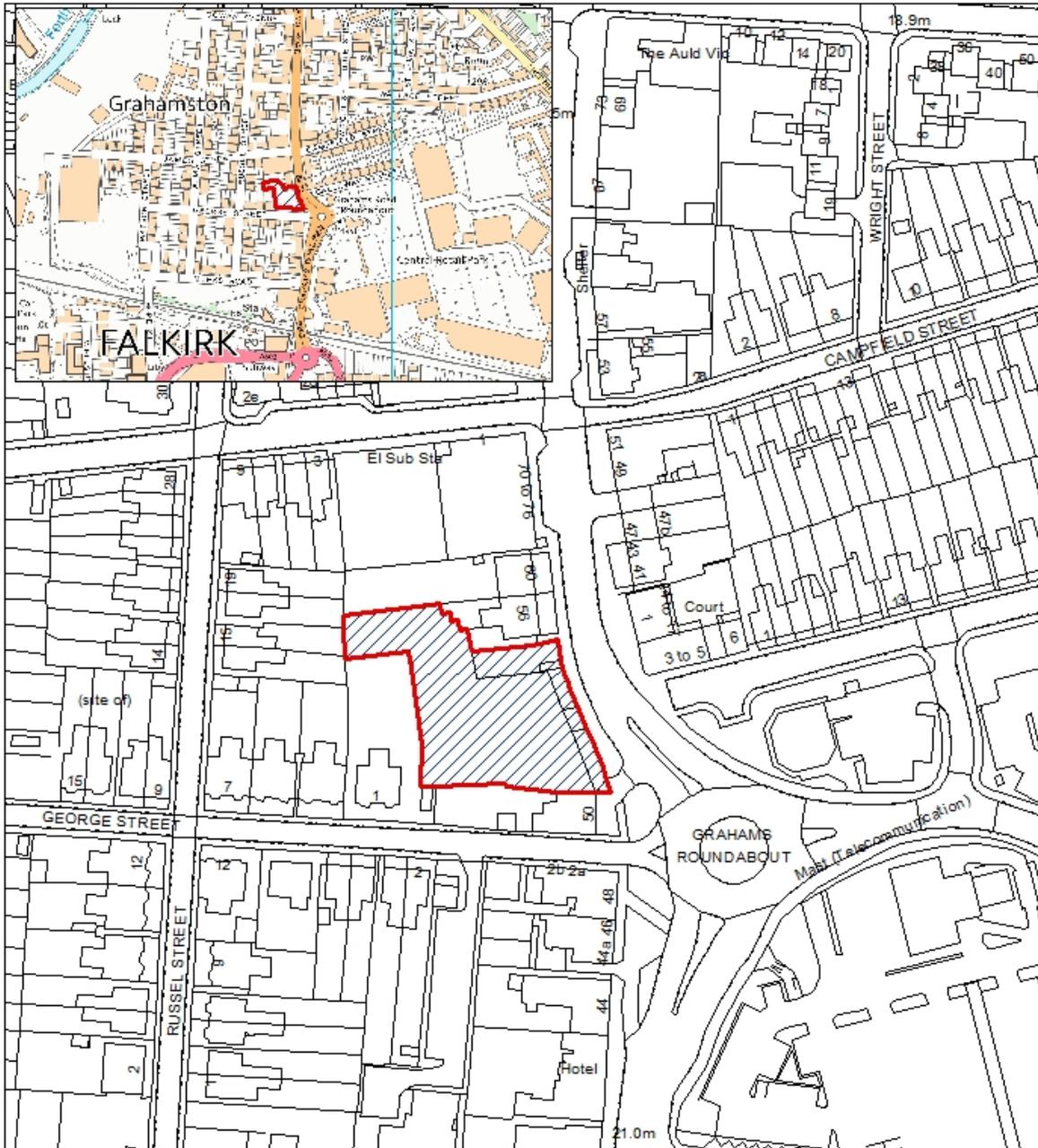
1. Objection received from Mr Graham Stewart, 50A Grahams Road, Falkirk, FK1 1HN received on 19 January 2017.
2. Objection received from Martin & Frances Keating, Calluna, 1 George Street, Falkirk, FK2 7EY received on 30 January 2017.
3. Objection received from Mr William Paterson, 19 Russel Street, Falkirk, FK2 7HU received on 21 January 2017.
4. Objection received from Mrs Shirley Stewart, 50a Grahams Road, Falkirk, FK1 1HN received on 20 January 2017.

Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504702 and ask for Stephen McClure, Planning Officer.

Planning Committee

Planning Application Location Plan **P/17/0017/FUL**

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



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