

**STATEMENT IN RESPONSE TO APPEAL AGAINST NON DETERMINATION BY FALKIRK COUNCIL OF  
PLANNING APPLICATION REFERENCE P/19/0125/PPP**

**APPEAL REFERENCE NUMBER PPA-240-2061**

**PROPOSAL SUBJECT TO APPEAL**

The appeal relates to a planning application seeking planning permission in principle for the development of land for residential use with associated open space, site development works and landscaping.

The application is a major development under the Scottish Government 'Hierarchy of Developments'.

The character of the site and location were described in detail in the Report of Handling (TW Document 5).

The application was considered by the Council's Development Management Unit to be significantly contrary to the Falkirk Local Development Plan (LDP) (TW Document 7). A Pre-Determination Hearing was therefore held and the application was considered by full Council.

The Report of Handling (TW Document 5) recommended refusal of the application on four grounds.

The Report of Handling (TW Document 5) was considered by full Council on 10<sup>th</sup> June 2019. The application was continued by the Council following a request by the applicant. This was to allow the applicant to make further submissions in relation to transportation matters. The submission and review of the additional transportation information concluded on 3<sup>rd</sup> July, after the next scheduled meeting of full Council on 26<sup>th</sup> June. Given the summer recess period, the earliest opportunity for the Council to further consider the application is in September.

The Report of Handling (TW Document 5) noted that there were outstanding flooding, drainage, roads and transportation matters at the time of writing the report. The Council were updated at the meeting on 10<sup>th</sup> June that SEPA had withdrawn their objection to the application on flood grounds (subject to conditions) and that the Council's flood and drainage consultants were satisfied with the updated Flood Risk Assessment and updated Drainage Strategy for the purposes of planning in principle.

The review referred to above, which concluded on 3<sup>rd</sup> July, closed all outstanding roads and transportation matters.

Closure of the flooding, drainage, roads and transportation matters did not alter the four recommended reasons for refusal of the application.

**MATTERS RELEVANT TO THE APPEAL**

The matters to be taken into account in determining the appeal are whether the application accords with the LDP (TW Document 7) and any relevant material planning considerations.

The relevant material planning considerations are set out in the Report of Handling (TW Document 5). They are Scottish Planning Policy (2014), Falkirk Council Housing Land Audit, Falkirk Local Development Plan 2 (Proposed Plan), the planning history for the site, consultation responses to the application, and public representations to the application.

## **DOCUMENTS**

The following of the Appellant's documents were before the Director of Development Services when the application was considered by Council on 10<sup>th</sup> June 2019:-

- TW Document 2
- TW Documents 3 (a) to (o)
- TW Document 4 and 5
- TW Documents 6 (a) to (w)
- TW Documents 7 to 27
- TW Document 32

In addition, the following documents were before the Director of Development Services when the application was considered by Council on 10<sup>th</sup> June:-

- Document FC1 - Falkirk Council Supplementary Guidance SG01 'Development in the Countryside'
- Document FC2 - Falkirk Council Supplementary Guidance SG02 'Neighbourhood Design'
- Document FC3 - Falkirk Council Supplementary Guidance SG05 'Biodiversity and Development'
- Document FC4 - Falkirk Council Supplementary Guidance SG06 'Trees and Development'
- Document FC5 - Falkirk Council Supplementary Guidance SG09 'Landscape Character Assessment and Landscape Designations'
- Document FC6 - Falkirk Council Supplementary Guidance SG10 'Education and New Housing Development'
- Document FC7 - Falkirk Council Supplementary Guidance SG12 'Affordable Housing'
- Document FC8 - Falkirk Council Supplementary Guidance SG13 'Open Space and New Development'
- Document FC9 - Falkirk Council Supplementary Guidance SG15 'Low and Zero Carbon Development'
- Document FC10 - Scottish Government Policy Statement: 'Creating Places'
- Document FC11 - Scottish Government Policy Statement: 'Designing Streets'
- Document FC12 - Scottish Government Planning Advice 2/2010 'Affordable Housing and Housing Land Audits'
- Document FC13 - Falkirk Council Revised Core Paths Plan (Draft)
- Document FC14 - Falkirk Council Housing Land Audit 2018/19
- Document FC15 – Report for approval for public consultation on Draft Revised Falkirk Council Supplementary Guidance SG10 'Education and New Housing Development'

TW Document 3(p) was submitted in order to address the outstanding transportation matters following continuation of the application of 10<sup>th</sup> June. TW Document 6(x) outlines the comments of the Council's Transport Planning Unit in response to the further transportation submissions (Transport Assessment Addendum).

## **ADDITIONAL INFORMATION**

The Council relies primarily upon the Report of Handling (TW Document 5) prepared for the Council meeting of 10<sup>th</sup> June in responding to this appeal against non-determination.

In addition, at the time of writing this statement a report was being prepared for a Special Meeting of the Council which is likely to take place in September. The purpose of the report is to provide an update to the report previously considered by the Council (TW Document 5). The report will advise the Council that an appeal against non-determination of the application has been received and seek a decision as to whether or not the Council would have been minded to refuse the application in accordance with the recommendation set out in the previous report. The update report will be forwarded to DPEA and the appellant in due course.

The Report of Handling (TW Document 5) noted at paragraph 4.7 the advice of the Council's Children's Services that a revision to Falkirk Council Supplementary Guidance SG10 'Education and New Housing Development' had recently been published and was out for consultation (Document FC15). There have been representations to the consultative draft. The revised SG10 is due to be considered by the Falkirk Council Executive in October and its adoption is expected in December. The Council's intended transitional arrangements are to not apply the revised SG10, once adopted, to existing planning permissions or to current planning applications which have minded to grant status.

The following comments are in response to the appellant's comments on the recommended reasons for refusal set out in the Report of Handling (TW Document 5). These comments are provided on the basis that the Council would have been minded to refuse the application in accordance with the recommendation. The position of the Council will be confirmed to DPEA and the appellant in due course following the Special Meeting of the Council that it likely to take place in September.

### Reason 1

***'The application is contrary to Policies CG01 'Countryside' and CG03 'Housing in the Countryside' of the Falkirk Local Development Plan, and to Falkirk Council Supplementary Guidance SG01 'Development in the Countryside' as none of the circumstances as detailed in Policy CG03, to support new housing in the countryside, are satisfied.'***

It is acknowledged that Policy HSG01 'Housing Growth' of the LDP includes a mechanism to support additional sites for development (if they are sustainable and effective) in circumstances where there is a shortfall in the effective housing land supply. In providing this support, the general presumption against new housing in the countryside can be set aside. In this case the Director of Development Services concluded that Policy HSG01 was not, on balance, complied with. Therefore it is entirely appropriate for non-compliance with Policies CG01 'Countryside' and CG03 'Housing in the Countryside' to be cited as a recommended reason for refusal of the application.

## Reason 2

***'The application is contrary to the Settlement Statement for the Redding/ Reddingmuirhead/ Wallacestone and Brightons are as set out in the Falkirk Local Development Plan. This statement says that no further settlement expansion is planned for this area, at least for the period 2014 to 2024. One of the reasons for this is because of the scale of growth experienced in these communities over recent years. This theme is continued in Proposed LDP2.'***

The Settlement Statement for the Redding/ Reddingmuirhead/ Wallacestone and Brightons area clearly indicates that no further settlement expansion is planned for this area, at least for the period 2014 to 2024. The Settlement Statement in Proposed LDP2 states that Wallacestone, Redding and Reddingmuirhead have seen substantial growth over the last 30 years, resulting in the full or partial coalescence of settlements.

Within the overall Braes area, the focus of major new housing development has shifted to Maddiston where there is provision for further development opportunities within the Maddiston East Strategic Growth Area. This will allow the effects of the planned development within the Wallacestone/ Redding/ Reddingmuirhead area on the local communities to be assessed, once it is completed, before considering further options for development in this area.

The existing and proposed Settlement Statements provide a clear signal to local communities as to the Council's future plans for the area. To support major new housing contrary to the Settlement Statements would serve to undermine the integrity of the Plan and public confidence in it. The wealth of public objection to this application citing the Settlement Statement is evidence of these concerns.

The appeal statement refers to planning application P/17/0504/FUL for the erection of 91 dwellinghouses and associated infrastructure on a nearby allocated housing site (H69 Hillcrest). This application has been approved subject to the satisfactory conclusion of a Section 75 planning obligation. Conclusion of the planning obligation is pending. In combination the two sites would accommodate close on 300 dwellinghouses, both with access from Shieldhill Road.

## Reason 3

***'The application is considered, on balance, to be contrary to Policy HSG01 'Housing Growth' of the Falkirk Local Development Plan. The Council currently has a shortfall in the 5 year effective housing land supply and so will considered further releases of land for sustainable and effective development proposal in the following order of preference: urban capacity sites; additional brownfield sites; and sustainable greenfield sites. The site is an extensive greenfield site and the proposal represents a large scale housing development at odds with the settlement strategy of the area and would increase coalescence between Reddingmuirhead and Wallacestone. A more sustainable approach would be for the impacts of and opportunities for urban expansion in this area to be considered in a co-ordinated way through the local plan review process. In this way the broader considerations of settlement growth, landscape impacts, urban form and infrastructure including school provision, the road network and pedestrian/ cycle facilities, could be assessed in the round, and the most optimal solution devised.'***

Since the Council meeting on 10<sup>th</sup> June, the Council's Housing Land Audit 2018/19 (Document FC14) has been finalised and agreed with Homes for Scotland. This latest audit indicates that there has

been an increase in the effective housing land supply shortfall from 482 units (equating to 4.1 years) indicated in last year's audit to 599 units (equating to 4.3 years).

In terms of the sequential approach under Policy HSG01, the Report of Handling (TW Document 5) indicated that:-

*'At the early stages of LDP2, the Council carried out an urban capacity study which identified about 700 units in total which were not included in the Housing Land Audit and could contribute to housing land supply in the future. However, it is recognised that only a proportion of this figure would be likely to come forward in the 5 year period. Therefore, in this context it is appropriate to consider sustainable greenfield site, although the measure of support for the proposed development under the sequential approach is limited to a degree by its greenfield status.'*

The assessment that the application is contrary to Policy HSG01 has involved a balancing exercise of the costs and benefits of the proposed development with regard to the principles of sustainable development set out in SPP (TW Document 22). It is recognised that this is an exercise in planning judgement.

Reference is made in refusal reason 3 to coalescence. The proposed development would lead to an increase in coalescence between the settlements of Wallacestone and Reddingmuirhead.

The appellant contends that concerns about the potential for further increases in coalescence if other land becomes available should not have been referred to in support of any reason for refusal. However, a failure to consider wider issues is at odds with a recent appeal decision relating to a nearby site on Standrigg Road, Wallacestone/ Brightons (TW Document 10). In that decision, the appointed Reporter considered other sites, including land not currently proposed for development, and stated:-

*'While there may be an opportunity for a southerly expansion of Wallacestone/ Brightons at some point, it would be preferable for the impacts of and opportunities for urban expansion in this area to be considered in a co-ordinated way. This could assess the potential of the land at the appeal site but also other land with which it has a clear relationship on the ground, particularly the land to the west. Such consideration could take place either through the development plan process or some other mechanism. In this way the landscape, access and other infrastructure pressures arising from development in this area could be assessed in the round, and the most optimal long term solutions devised.'*

Significant weight was given to the broader considerations of settlement growth, coalescence, landscape, urban form and infrastructure in exercising the above-mentioned planning judgement and the overall recommendation.

#### Reason 4

***'Granting the application (for a major housing development) could make it difficult to resist other applications which in combination may result in growth in the area of a strategic nature. The settlement strategy for this area should be properly considered through the local plan review process and not, de facto, by decisions on individual planning applications.'***

The issue of precedence is a material planning consideration. Consistency in decision making is clearly desirable and it is competent to consider whether granting this application might set a precedent making it difficult for similar applications to be resisted in the future. It is not within the

gift of the planning authority to know the intentions of landowners but it cannot be discounted that granting this application might encourage other housing applications in the immediate area in advance of adoption of LDP2.

The Council is focusing its efforts on establishing an effective housing land supply through the local plan review process.

#### Pedestrian safety

The Report of Handling (TW Document 5) indicated that the most direct and convenient point within the western portion of the site for residents walking to Shieldhill would be at the north-west corner. However, there are concerns that this is dangerous point at which to cross Shieldhill Road to access the existing footpath.

In response to this concern, the applicant advised that they would have no difficulty in removing/deleting the pedestrian link at the north-west corner. However, to do so would mean that residents, including school children, would have to resort to a circuitous route via Fairhaven Terrace to travel west. This would not promote sustainable transport by means of walking.

As stated above, the opportunities for settlement growth in the area should be considered in a co-ordinated way. In this way, such matters as accessibility could be assessed in the round, and the most optimal long term solutions devised.

### **CONDITIONS**

It is respectfully requested that the appeal be dismissed. However, in the event that the Reporter is minded to grant planning in principle, the planning authority requests that this be subject to the satisfactory conclusion of a Section 75 planning obligation within 6 months in respect of:-

- (a) An education contribution at the rate of £2800 per dwellinghouse towards addressing future capacity issues at Braes High School (£2100 per dwellinghouse) and in respect of nursery provision (£700 per dwellinghouse). In the event of revised SG10 'Education and New Housing Development' being adopted prior to a Minded to Grant decision, the rates in the revised SG shall apply;
- (b) The provision of a mini-roundabout at the junction of Wallacestone Brae and Epworth Gardens, taking in Braeside Place, and provision of a replacement/ upgraded equipped play area within the site;
- (c) A transportation contribution towards improving the existing F25 bus services or the provision of a new shuttle bus service;
- (d) The provision of 25% of the units at the site as affordable housing;
- (e) An open space contribution at the rate of £1911 per dwellinghouse (£882 for active open space and £1026 for passive open space), which will be determined by the amount and type of on-site provision; and
- (f) A healthcare contribution towards addressing local healthcare impacts.

[the contributions should be indexed linked from the date of any minded to grant decision]

Thereafter, upon the satisfactory conclusion of a Section 75 planning obligation, the planning authority requests the following conditions attach to any grant of planning permission in principle:-

(1) Plans and particulars of the matters specified below shall be submitted for consideration by the Planning Authority. No work shall begin within each respective development area until the written approval of this authority has been given in respect of the specified matters as they may apply to each respective development area. The specified matters are:-

- (a) The proposed finished ground levels, relative to existing levels;
- (b) Proposed finished floor levels;
- (c) The siting of the buildings;
- (d) The design of the buildings;
- (e) The external appearance of the buildings;
- (f) Details of the access arrangements;
- (g) Details of landscaping and open space provision, including structure planting;
- (h) Details of proposed boundary treatments;
- (i) A tree protection plan, including the precise location and details of the protective fencing;
- (j) A construction environmental management plan, including a construction traffic management plan;
- (k) An updated ecological assessment/ protected species survey and proposals for biodiversity enhancement;
- (l) A detailed surface water drainage strategy, including design and calculations;
- (m) A contaminated land assessment;
- (n) A scheme of intrusive site investigations for the mine entries and shallow coal workings;
- (o) A report of findings arising from the carrying out of the approved scheme of intrusive site investigations;
- (p) The provision of new bus stance(s)/ shelter(s);
- (q) The provision of pedestrian and cycle facilities, including suitable linkages to the wider network;
- (r) The precise details of the provision of on-site low and zero carbon generating technologies;
- (s) A residential travel pack;
- (t) The phasing/ timing of the development, including the timing of provision of green infrastructure and open space facilities within the site;
- (u) The completion of a National Vegetation Classification for any wetland (e.g. marshy grassland) on the site;
- (v) The provision of public art;
- (w) The carrying out of a standard building survey in respect of the existing farm structures;
- (x) Proposals to minimise the production of construction waste;
- (y) Provision for the collection and storage of waste and recyclable materials;
- (z) A detailed survey, including both pre and post development levels, and proposed finished floor levels; and
- (aa) A site investigation to gain further information on the historic lade to the south of Middlerig Farm.

(2) Application for the approval of Matters Specified in Conditions shall be made in accordance with Section 59(2)(a) of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006, except that the period of 3 years referred to in sub-section 2(a)(i) is substituted with a shorter period of 1 year.

(3) The planning permission shall lapse on the expiration of 1 year from the requisite approval being obtained (or, in the case of approval of different matters on different dates, from the

requisite approval for the last such matter being obtained) unless the development to which the permission relates is begun before that expiration.

- (4) Further to condition 1(f), the details of the access arrangements shall include proposals for the alterations to the existing footways and carriageway of Fairhaven Terrace, in accordance with details and a timescale for implementation to be approved by the Planning Authority.
- (5) Further to condition 1(g), the scheme of landscaping shall include the following details (as appropriate):
  - (a) An indication of all existing trees, shrubs and hedges proposed to be removed, those to be retained and, in the case of damage, proposals for their restoration;
  - (b) The location of all proposed new trees, shrubs, hedges and grassed areas;
  - (c) A schedule of plants to comprise species, plant sizes and proposed numbers/ densities and nursery stock sizes;
  - (d) Methods of protection (tree shelters/ guards/ staking/ fencing) and including initial maintenance to aid rapid establishment; and
  - (e) A programme for completion and subsequent maintenance.
- (6) Further to condition 1(o), the report of findings referred to in the condition shall include (a) a layout plan which identifies appropriate zones of influence for the mine entries and the definition of suitable 'no-build' zones, (b) a scheme of treatment for the mine entries on site and (c) a scheme of remedial works for the shallow coal workings. The approved remedial works shall be implemented prior to the commencement of the development.
- (7) Further to condition 1(u), the results of the findings should include a map with the proposed infrastructure overlain on the vegetation maps to clearly show which areas would be impacted and avoided. The routing of roads, tracks or trenches within 100 metres of any ground water dependant terrestrial ecosystems should be reconsidered/ further assessed.
- (8) The roads layout shall be designed and constructed in accordance with the National Roads Development Guide (NRDG).
- (9) The parking provision on the site shall accord with the National Roads Development Guide (NRDG).
- (10) No trees shall be removed until such time as (a) the tree protection fencing is in place in accordance with the details approved under condition 1(i) above and (b) the fencing as erected has been inspected by the Planning Authority and is to its satisfaction.
- (11) The temporary protective fencing shall remain in place until all works with the respective development area have been completed. No further tree removal excavation, level changes, trenching, material storage or machinery access shall take place within the fenced off areas.
- (12) There shall be no tree, scrub or grassland clearance within the bird nesting season (March to August inclusive), unless a nesting bird check is carried out by a suitably qualified ecologist prior to commencement of the clearance works. The findings of the nesting bird check shall be submitted to and approved in writing by the Planning Authority prior to the works commencing.



- (13) Asserted right of way CF88 shall remain open and free from obstruction during and after any proposed works.
- (14) The upstanding elements of the existing mill building shall be retained and thereafter maintained in accordance with a management plan to be approved by the Planning Authority.
- (15) No development should take place over or immediately adjacent to any culvert that remains active.
- (16) A major area of open space/ parkland shall be provided within the site in general accordance with the Framework Drawing accompanying the application.

#### Reasons

- (1) To ensure that the matters specified are given full consideration and to accord with section 59 of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006.
- (2) To accord with section 59 of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006; to encourage implementation of the planning permission at a time when there is an effective housing land supply shortfall.
- (3) To accord with section 59 of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006; to encourage implementation of the planning permission at a time when there is an effective housing land supply shortfall.
- (4) To safeguard the interests of the users of the public highway.
- (5) To safeguard the visual amenity of the area.
- (6) To ensure the ground is suitable for the proposed development.
- (7) To safeguard a priority habitat type.
- (8) To safeguard the interests of the users of the public highway.
- (9) To ensure that adequate parking is provided.
- (10) To safeguard the visual amenity of the area.
- (11) To safeguard the visual amenity of the area.
- (12) To safeguard the interest of bird species.
- (13) To safeguard an outdoor access route.
- (14) To safeguard a heritage interest at the site.
- (15) To safeguard drainage infrastructure/ mitigate flood risk.

- (16) To protect and reinforce the burn corridor and provide for new recreational, open space, planting and biodiversity opportunities in the local area.