



Agenda Item 14

**MODIFICATION OF PLANNING
OBLIGATION ATTACHED TO PLANNING
PERMISSION P/18/0541/FUL, REMOVING
THE REQUIREMENT TO MAKE AN
INDEXED CORE PATH CONTRIBUTION OF
£2,500 PER RESIDENTIAL UNIT AT LAND
TO THE NORTH EAST OF STANDBURN
VILLA, FALKIRK FOR DOLORES
PATERSON - P/19/0701/75M**

FALKIRK COUNCIL

Subject: MODIFICATION OF PLANNING OBLIGATION ATTACHED TO PLANNING PERMISSION P/18/0541/FUL, REMOVING THE REQUIREMENT TO MAKE AN INDEXED CORE PATH CONTRIBUTION OF £2,500 PER RESIDENTIAL UNIT AT LAND TO THE NORTH EAST OF STANDBURN VILLA, FALKIRK FOR DOLORES PATERSON - P/19/0701/75M

Meeting: PLANNING COMMITTEE

Date: 23 January 2020

Author: DIRECTOR OF DEVELOPMENT SERVICES

Local Members: Ward - Upper Braes

Councillor Gordon Hughes
Councillor James Kerr
Councillor John McLuckie

Community Council: Avonbridge and Standburn

Case Officer: Kevin Brown (Planning Officer), Ext. 4701

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1. This application is now subject to an appeal to the Scottish Government Planning and Environmental Appeals Division (DPEA) on grounds that the application has not been determined within statutory timescales and is therefore considered as a deemed refusal of application to modify a section 75 planning obligation. The purpose of reporting the application to the Planning Committee is to seek agreement of the Committee on the planning authority's response to the DPEA in respect of the appeal in accordance with the requirements of Regulation 4 of the Town and Country Planning (Appeals) (Scotland) Regulations 2013.
2. The statutory time period for determination of an application for modification of a section 75 planning obligation is 2 months. The application was validated on 07 November 2019 meaning that the determination date was due prior to 07 January 2020. The applicant appealed against non-determination of the application on 8 January 2020. The deadline for the Council's response to the DPEA in respect of the appeal is 29 January 2020.
3. The attached report (appendix 1) sets out officer's assessment of the application and recommendations to Members. It was intended that the report would be considered by Members at the meeting on 23 January, this being the earliest opportunity at which the application could be reported to Members. Members are asked to consider the attached report (appendix 1).
4. It is recommended that the Planning Committee indicate to DEPA that it would have refused permission to modify the section 75 planning obligation for the reasons outlined in this report and the attached Appendix 1.

5. RECOMMENDATION

5.1 It is therefore recommended that the Planning Committee:

- a. instruct the Director of Development Services to advise DPEA that this report, its appendix and minutes of the Planning Committee constitute the Council's note of matters which the planning authority considers should be taken into account in determination of the application;**
- b. indicate to DPEA that it would have refused to modify the section 75 planning obligation for the reasons detailed in the report attached as Appendix 1.**

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pp Director of Development Services

Date: 15 January 2020

LIST OF BACKGROUND PAPERS

1. Falkirk Council Local Plan.
2. Falkirk Council Supplementary Planning Guidance 'Standburn Housing Allocation - H.STA1.
3. Planning Appeal decision PPA-240-2058.
4. Objection received from Mrs Doreen Goldie, Muiravonside Cottage, Standburn Road, Maddiston, Falkirk, FK2 0BX on 17 December 2019.
5. Objection received from Mr David Cameron, Linmill Cottage, Avonbridge, Falkirk, FK1 2NL on 28 November 2019.
6. Objection received from Ms Jo Hirst, Ballenbriech Farm, Avonbridge, Falkirk, FK1 2LB on 12 December 2019.
7. Objection received from Avonbridge & Standburn Community Council, FAO Gordon Addison, Sunnybrae, Blackston Road, Avonbridge, Falkirk, FK1 2ND on 16 December 2019.

Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504701 and ask for Kevin Brown, Planning Officer.

FALKIRK COUNCIL

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1. DESCRIPTION OF PROPOSAL / SITE LOCATION

- 1.1 This application seeks modification of a Planning Obligation attached to Planning Permission P/18/0541/FUL and made under the terms of Section 75 of the Town and Country Planning (Scotland) Act 1997 to remove a requirement to make an Indexed Core Path Contribution of £2,500 per Residential Unit.

2. REASON FOR COMMITTEE CONSIDERATION

- 2.1 The application to which the Section 75 Planning Obligation relates was originally determined by Planning Committee.

3. SITE HISTORY

- 3.1 06/0822/OUT - Development of Land for Housing Purposes - Application Refused 23 October 2006.
- 3.2 P/07/0614/OUT - Development of Land for Housing Purposes - Application Refused 4 October 2007.

- 3.3 P/07/1118/OUT - Development of Land for Housing Purposes - Application Granted 8 July 2008.
- 3.4 P/09/0228/FUL - Erection of 3 Dwellinghouses - Application Granted 25 August 2011.
- 3.5 P/17/0309/FUL - Erection of Two Dwellinghouses - Application Withdrawn 14 July 2017.
- 3.6 P/17/0517/FUL - Erection of 2 Dwellinghouses - Review Refused 6 October 2017.
- 3.7 P/18/0541/FUL - Erection of 2 Dwellinghouses - Application Refused 28 January 2019 - allowed on appeal - PPA-240-2058 9 October 2019.

4. CONSULTATIONS

- 4.1 No consultations were carried out on this proposal.

5. COMMUNITY COUNCIL

- 5.1 Avonbridge and Standburn Community Council have objected to this application on the following grounds:
- The contribution meets the policy tests set out within Scottish Government guidance.
 - The contribution is justified and would contribute positively to upgrade works which have been worked on in detail by the local community and Falkirk Council.

6. PUBLIC REPRESENTATION

- 6.1 Including the comments from Avonbridge and Standburn Community Council, four letters of representation have been received during the course of this application. The salient issues are summarised below:
- The site is in close proximity to core path 022/944;
 - The residents of the site would directly benefit from core path improvements.
 - The contribution meets the policy tests set out within Scottish Government guidance.
 - The contribution is justified and would contribute positively to upgrade works which have been worked on in detail by the local community and Falkirk Council.

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 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. Consideration of the proposed modification requires to be assessed against the policies below.

7a.2 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.3 The development of dwellinghouses in this location would place additional burden on the existing core path network in this location. The site schedule for allocated housing site H73 makes specific reference to the need for development in this location to contribute towards core path improvement works. This requirement is considered to meet the policy tests set out within Scottish Government Circular 3/2012, 'Planning Obligations and Good Neighbour Agreements'. The applicant has offered no argument to suggest that the financial contribution being sought would affect the financial viability of the development proposed. The proposed modification, if allowed, would lead to a deficiency in infrastructure provision, namely adjacent to the core path network, which would adversely impact upon the sustainability of the housing site in this instance. The proposed modification fails to accord with the terms of policy INF02.

7a.4 Accordingly, the proposal fails to accord with the provisions of the Development Plan.

7b Material Considerations

7b.1 The material considerations to be assessed are the planning history of the site, National Policy and Guidance, Falkirk Local Development Plan 2 (LDP2) and representations received.

Planning History

7b.2 The core path contribution which is the subject of this application was secured through the assessment of planning application P/18/0541/FUL and subsequent appeal decision by Scottish Ministers, reference PPA-240-2058.

7b.3 In determining the appeal, the Reporter stated in her decision notice (para 29):
"The contribution towards the upgrading of the adjacent core path appears to be acceptable to both parties. I note that it is referenced in both the Site Schedule at Appendix 1 of the LDP and in the SPG for the overall site."
Also at (para 31) she stated:
"The appellant has confirmed that they have no objection to meeting any required developer contributions to cover affordable housing, open space, education requirements and an upgrade to the core path system adjacent to the site, notwithstanding the detailed comments made in the appeal statement by the appellant. I agree that these items are necessary in order to make the application acceptable in planning terms and would comply with the tests set out in Circular 3/2012: Planning Obligations and Good Neighbour Agreements."

National Policy and Guidance

7b.4 The justification put forward by the applicant for modification of this planning obligation is that *"the imposition of the Obligation was never justified and, therefore, does not meet the 6 Tests, set out in Circular 6/2012"*. National guidance on the correct use of planning obligations is in fact set out within Scottish Government Circular 3/2012 – Planning Agreements and Good Neighbour Agreements, the content of which is considered below:

7b.5 This guidance sets out the circumstances within which it is deemed appropriate for a planning obligation to be applied. The guidance sets out a series of tests against which proposals for planning obligations should be assessed. For a planning obligation to be deemed acceptable, it must meet all of the relevant tests. The relevant tests and considerations in relation to the current discharge application are summarised below.

Necessity Test

7b.6 A clear deficiency has been identified within the core path network in this location. It is reasonable to expect occupants of the dwellinghouses granted under planning appeal PPA-240-2058 to make use of the core path network within this area. It is therefore necessary to require the proposed development to make a contribution towards the upgrading of the core path network in this location. A contribution of this nature cannot be secured by planning condition and therefore requires to be secured by means of a Section 75 planning obligation.

Planning Purpose Test

- 7b.7 Justification and requirement for a developer contribution towards core path improvements is clearly set out within adopted Falkirk Local Development Plan policy INF02 'Developer Contributions to Community Infrastructure' and the site schedule for allocated housing site H73 'Standburn West' as well as within Falkirk Council Supplementary Planning Guidance 'Standburn Housing Allocation - H.STA1'.

Relationship to Proposed Development Test

- 7b.8 A clear deficiency has been identified within the core path network in this location. It is reasonable to expect occupants of the dwellinghouses granted under planning appeal PPA-240-2058 to make use of the core path network within this area which in turn would place additional pressure on this infrastructure. It is not considered that this additional pressure can be adequately resolved through the use of planning conditions.

Scale and Kind Test

- 7b.9 Indicative costs for improvement works to this section of the core path network are in excess of £100k. Taking into account the indicative capacity of allocated housing site H73 (30 units), it is clear that a contribution of £2.5k per dwellinghouse is fair and proportionate in this instance. The applicant has made no case to suggest that the level of contribution requested brings into doubt the viability of the development.

Reasonableness Test

- 7b.10 Planning permission has already been granted for this development, it is not therefore possible to secure proportionate improvements to the core path network through the use of planning conditions. Failure to meet the contribution request would contribute to deficiencies in the core path network by virtue of increased usage by occupants of the new dwellinghouses. Securing this developer contribution was a key element in the reporter's decision to grant planning permission and it can be argued that planning permission may not have been granted without this. The contribution will have a beneficial impact on the core path network in this location. The contribution is therefore considered to be entirely reasonable in this instance.

Falkirk Local Development Plan 2 (LDP2)

- 7b.11 The current Falkirk Local Development Plan is in the process of being replaced by a new plan. The Proposed Falkirk Local Development Plan 2 (LDP2) has been approved by the Council for consultation. The consultation period ran from 27 September 2018 to 23 November 2018. Following consideration by Scottish Ministers of representations received it is expected that LDP2 will be adopted in 2020, at which point it will replace the current Falkirk Local Development Plan. LDP2 provides the most up to date indication of Falkirk Council's views in relation to Development Plan policy and constitutes a material consideration in the determination of planning applications. In the case of this particular application, the proposed plan carries forward the allocation of the Standburn West housing site (now referenced as H28) and retains the requirement for developer contributions to be made towards core path improvements. LDP2 in its current form does not introduce any new policy considerations or land use allocations which justify approval of the proposed modification of the section 75 planning obligation to remove the required contribution to core path improvement works.

Assessment of Representations

- 7b.12
- The proximity of the site to core path 022/944 is noted and it is agreed that the residents of the site would directly benefit from improvements made to this core path.
 - It is accepted that the proposed contribution meets the policy tests set out within Scottish Government Circular 3/2012.
 - It is accepted that this developer contribution would go towards meeting the funding requirements for core path upgrade works currently being worked on by the local community and Falkirk Council.

7c Conclusion

- 7c.1
- The requested developer contribution towards core path upgrades meets the policy tests set out within Scottish Government Circular 3/2012, 'Planning Obligations and Good Neighbour Agreements' and was previously agreed to by the applicants. The Scottish Government reporter who recently granted planning permission following appeal PPA-240-2058 agrees that the contribution meets these policy tests and is fair and reasonable. A decision to allow the proposed modification would reduce the scope for upgrading the core footpath, leading to an unacceptable deficiency in core path network provision at this location.

8. RECOMMENDATION

- 8.1
- It is recommended the Committee Refuse to Modify the Planning Obligation for the following reason:-**
1. **The planning obligation and requested developer contribution towards the upgrading of core path 022/944 meet the policy tests set out within Scottish Government Circular 3/2012, 'Planning Obligations and Good Neighbour Agreements' and are considered fair and reasonable. There is no case to suggest that the financial contribution would render the development financially unviable. The modification of the planning obligation would result in a deficiency in infrastructure provision which would adversely impact upon the sustainability of the housing site in this instance. The proposed modification therefore fails to accord with the terms of policy INF02 Developer Contributions to Community Infrastructure of the Falkirk Local Development Plan.**

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pp Director of Development Services

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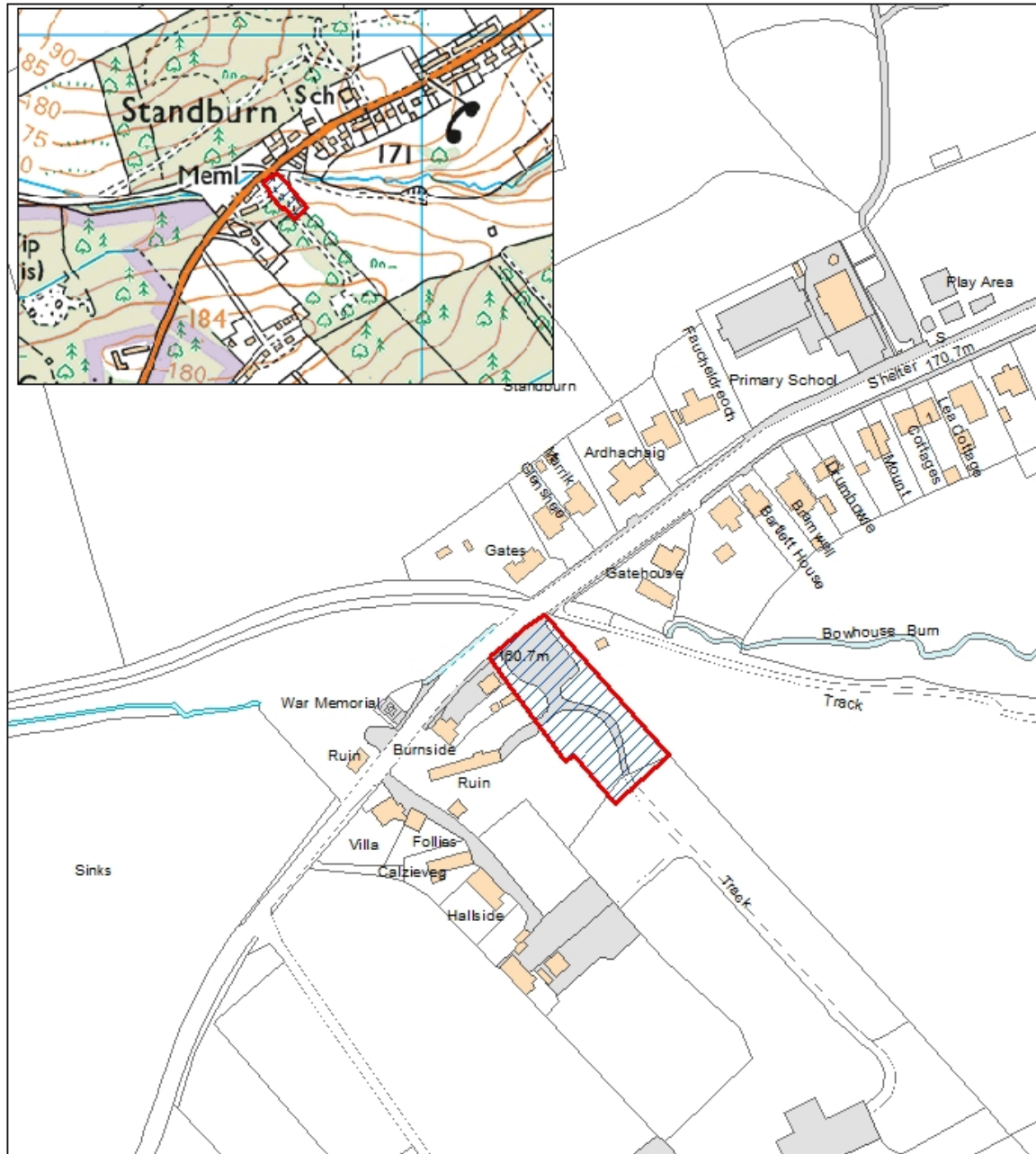
Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504701 and ask for Kevin Brown, Planning Officer.

Planning Committee

Planning Application Location Plan

P/19/0701/75M

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



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