

PLANNING APPLICATION DETERMINED BY DIRECTOR OF DEVELOPMENT SERVICES UNDER DELEGATED POWERS – REPORT ON HANDLING

PROPOSAL : Erection of Dwellinghouse
LOCATION : Land To The East Of 39 Braefoot Road, Braefoot Road, Bo'ness, ,
APPLICANT : SJSJ Property Investments
APPN. NO. : P/18/0384/PPP
REGISTRATION DATE : 5 July 2018

1. SITE LOCATION / DESCRIPTION OF PROPOSAL

The application site comprises an area of open space at the eastern end of Braefoot Road, Bo'ness measuring 0.207 hectares in area. The western boundary of the site is partially fenced by means of a timber post fence. The eastern boundary of the site bounds with planted open space of a recently developed residential development. The southern boundary of the site bounds open countryside and the north boundary of the site bounds the curtilage of a dwellinghouse.

There is open access to the site from the eastern end of Braefoot Road. The site is currently overgrown.

2. SITE HISTORY

F/76/0158 – Development of land for housing purposes at Borrowstoun Road, Bo'ness – Granted 26.04.1978.

F/79/0462 – Development of land for housing purposes (outline) at Borrowstoun Road South, Bo'ness – Granted 05.11.1979.

F/81/0291 – Erection of 52 dwellinghouses and 23 garages at Borrowstoun Road South, Bo'ness – Granted 14.05.1981.

F/84/0012 – Erection of 36 houses at Borrowstoun Road South (phase 3) – Granted 31.08.1984.

05/0507/OUT – Development of land for housing purposes – Refused 23.09.2005 (subsequent appeal dismissed).

Also relevant to the proposed development is the residential development to the east of the application site approved under the terms of planning permission P/15/0364/FUL as amended.

3. CONSULTATIONS

The following responses to consultation were received:

Roads Development Unit

No objection in principle. Conditions advised in respect of access and parking provision, maintaining unobstructed public footpath access during development and ensuring the submission of a drainage strategy. A street lighting column

	would need to be repositioned together with post box.
Scottish Water	There is capacity in the water network at this time to accommodate the proposed development.
Environmental Protection Unit	Contamination can be subject to condition. Noise need not be considered a determining factor. No air quality issues.
The Coal Authority	No objection subject to condition that an application for matters specified in conditions includes details of an intrusive survey, evidence that findings of the intrusive survey informs the layout of the site and demonstrates that the site is suitable for development.

Where the local Community Council requested consultation, their comments appear above.

4. PUBLIC REPRESENTATION

In the course of the application, 11 contributor(s) submitted letter(s) to the Council. The salient issues are summarised below.

Unacceptable overlooking of neighbouring properties.

Loss of sunlight to adjacent properties.

The proposal would not respect the character and street scene of the application sites setting.

Unacceptable impact on wildlife.

There would be a significant impact on the amenity of residents due to construction traffic.

The site is poorly maintained.

Access to the site would not be suitable, including access for emergency vehicles.

The proposal is likely to cause flooding at the surrounding area.

The application site is unstable due to historic mineral workings.

The proposal would require retaining structure to safeguard adjacent property.

There would be an unacceptable level of traffic generated as a result of the proposed development.

The loss of the open space would not accord with Scottish Planning Policy or Planning Advice Note PAN 65 "Planning and Open Space".

Justification for the loss of the open space has not been satisfactorily demonstrated.

The proposed development is intended solely for profit.

There is a right of access across the property which would be compromised. Furthermore, there is connection to the new residential development to the east of the application site and failure to retain this connection would not accord with the Land Reform Scotland Act.

5. THE DEVELOPMENT PLAN

The Falkirk Local Development Plan was adopted on 16 July 2015. The proposed development was assessed against the following policy or policies:

HSG03 - Windfall Housing

INF03 - Protection of Open Space

D02 - Sustainable Design Principles

INF12 - Water and Drainage Infrastructure

D04 - Low and Zero Carbon Development

5A. MATERIAL CONSIDERATIONS

The following matters were considered to be material in the consideration of the application:

Responses to Consultation

Assessment of Public Representations

Additional Planning Considerations

Falkirk Local Development Plan 2 (Proposed Plan)

Consideration of the site in relation to coal mining legacy

6. PLANNING ASSESSMENT

The Development Plan

The Falkirk Local Development Plan (LDP) was adopted on 16 July 2015. It replaces the previous Structure Plan and Local Plan and includes a number of Supplementary Guidance documents which now have statutory status.

Local Plan Policies

The application site is formally identified in the Falkirk Local Development Plan as an area of open space forming part of the open space network of the area.

The application site forms part of the open space network planned as an integral part of the surrounding residential area. The site has value as amenity open space. The proposed development would result in an unacceptable loss of amenity open space in the area. Furthermore, the application site is a significant element in the character and appearance of the residential area in which it is located. There would be a significant detrimental impact on the character of the area as result of the proposed development. The proposed development does not accord with Policy INF03, HSG03 and D02.

It is considered that the site can be satisfactorily drained and that there would not be a significant impact in terms of flooding. It is noted that the Roads Development Unit has advised that the submission of a detailed drainage strategy can be addressed by condition. The proposal accords with Policy INF12.

It is proposed to install roof mounted photovoltaic solar panels to ensure that 10% of carbon reduction is achieved by means of on-site energy generating technologies. Details can be secured by condition. The proposed development accords with Policy D04, and consequently Supplementary Guidance SG15 "Low and Zero Carbon Development".

Accordingly, the proposed development does not accord with the Falkirk Local Development Plan.

Responses to Consultation

It is noted that no objections have been received from consultees. Any comments offered, as detailed in Section 3 of this report, can be addressed by means of conditions and informatives.

Assessment of Public Representations

It is considered that solely in design terms the site could accommodate a dwellinghouse which would not compromise the privacy, or the level of daylight, afforded to adjacent residents.

It is considered that comments raised in terms of the detrimental impact on the character and appearance of the application site and its setting are well grounded.

The application site comprises an area of grassed open space in a residential area situated between two housing developments. It is noted that whilst the Council's Open Space Audit highlights the importance of the area of open space for its amenity value, the audit expresses that there is no significant value in terms of habitat. It is not agreed that there would be a significant impact on wildlife as a result of the proposed development.

The impact of construction traffic can be addressed by means of an informative.

It is noted that the application site has become overgrown. However, this does not compromise the sites importance in terms of amenity value.

It is considered that solely in design terms the site could accommodate a satisfactory standard of access which would also provide satisfactory access for emergency vehicles. It is noted that the Roads Development Unit has raised no objection in this regard.

The Roads Development Unit has advised that there would be no significant risk of flooding and that the approval of a drainage strategy can be addressed by condition.

It is noted that the site is affected by historic mine workings. However, the Coal Authority has not objected to the proposed development. It is advised that further investigation to ensure there would be no adverse impact on development at the site can be addressed by condition.

The structural integrity of the land comprising the application site can be secured by design.

It is not considered that the proposed development would generate a significant level of traffic.

The impact of the proposed development in terms of Scottish Planning Policy and Planning Advice Note 65 "Planning and OpenSpace" is detailed in the additional planning considerations section of this report.

It is agreed that the loss of the area of amenity open space has not been satisfactorily justified.

Profit is not a material planning consideration.

It is noted that the Land Reform (Scotland) 2003 Act secures right of responsible access over land. In 2006 the owner of the application site completely closed off access to the area of open space which comprises the application by means of the erection of fencing. The Council at that time took steps to ensure that access to the open space was maintained. The site at the present time is open for public access. The right to access the land exists as the application site is currently open space. Should the authorised use of the site formally change by means of planning permission, the right of access to the site would no longer apply. It is noted that there is no connection to the residential development to the east approved by planning permission. This being the case, there would be no right of access across the site between Braefoot Road and the residential development to the east compromised by development of the application site.

Additional Planning Considerations

Planning History

The planning history of the application site as detailed in section 2 of this report is noted. The open space comprising the application site was formed under the terms of planning permission F/84/0012. The open space is planned under the terms of permission F/84/0012 as an integral part of the residential development. Planning application 05/0507/OUT is also noted. This application also proposed the development of the application site in principle for residential development. It was considered that there would be unacceptable loss of an area of open space designed as an integral part of the residential development and as such did not accord with the Development Plan. A subsequent appeal was dismissed as Scottish Ministers recognised the value of the area of open space as an integral part of the area and

that the loss of the open space would be significantly detrimental to the amenity of residents.

Falkirk Council Open Space Audit and Open Space Strategy

The Council's Open Space Audit provides the evidence base for the Council's Open Space Strategy which subsequently informs Development Plan policy in respect of open space provision and protection of existing areas of open space. The Open Space Strategy sets out standards for open space provision in terms of appropriate walking distance. It is noted that should the application site be developed the residents in the area would still have access to open space within appropriate walking distance as set out in the Council's Open Space Strategy. However, it is noted that the Open Space Audit recognises the application site for its amenity value.

Scottish Planning Policy

Principles of SPP include that planning should protect, enhance and promote green infrastructure, including areas of open space and green infrastructure as an integral component of successful placemaking. In terms of development management, SPP expresses that development of green infrastructure sites for an unrelated purpose should have a strong justification. This should be based on evidence from related audits and strategies which conclude that the loss of any such sites would not result in a deficit of provision of such sites. It is noted that the Council's Open Space Audit recognises the value of the application site as amenity open space. There is no justification for the proposed loss of the open space. The proposal does not accord with Scottish Planning Policy.

Planning Advice Note PAN 65 "Planning and Open Space"

PAN 65 promotes the value of open space in terms of the creation of a sense of place, an opportunity for people to interact, benefits in terms of wellbeing and softening the impact of development. PAN 65 expresses that the credibility of the planning system can be significantly undermined when policies protecting open space are set aside without sound and clear justification. It is noted that the proposed development does not accord with Policy INF03 of the Falkirk Local Development Plan "Protection of Open Space" and that there is no justification in this instance for the loss of the application site to development. The proposed development does not accord with PAN 65.

Supporting Statement

The applicant has submitted a supporting statement whereby it is mooted that the use, and as a consequence the value, of the application site as an area of amenity open space has been lost as a result of the overgrown nature of the land over time and that access to the site has been closed as a result of the erection of fencing.

The action of the Council in 2006, recognising the sites amenity value to the area, ensuring public access to the site is noted. Public access to the site remains in place. It is not considered that the site no longer functions as amenity open space.

Falkirk Local Development Plan 2 (Proposed Plan)

The Proposed Falkirk Local Development Plan 2 also identifies the application site as open space forming part of the open space network of the area.

The Falkirk Local Development Plan 2 has been approved by the Council for consultation. The consultation period runs from 27 September 2018 to 23 November 2018. Following consideration by Scottish Ministers of representations received, it is expected that FLDP2 will be adopted in 2020, at which point it will replace the current Falkirk Local Development Plan. FLDP2 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.

The application site is also identified in the Proposed Falkirk Local development Plan 2. FLDP2 reflects policies and proposals of the Falkirk Local Development Plan in terms of the consideration of this application.

Consideration of the Site in relation to Coal Mining Legacy

The application site falls within or is partially within the Development High Risk Area as defined by the Coal Authority. Any development proposal not exempt on grounds of type or nature, which would intersect with the ground requires the submission of a desk based Coal Mining Risk Assessment and Consultation with the Coal Authority.

The process recognises the need for flexibility and in cases where a further application (Matters Specified in Conditions) is necessary, the Coal Mining Risk Assessment may be deferred until that stage. If an assessment has been received and the views of the Coal Authority sought, these are summarised within the consultation responses above and appropriate conditions and/or informatives have been applied.

7. CONCLUSION

The proposed development does not accord with the Falkirk Local Development Plan, the Proposed Falkirk Local Development Plan 2, Scottish Planning Policy and Planning Advice Note PAN 65 "Planning and Open Space".

The application site comprises an area of amenity open space planned as an integral part of the area. The loss of the open space to development would constitute a significant loss of amenity open space detrimental to the amenity of residents. The proposed development would not respect the character and appearance of the application site and the wider residential area.

There is no justification in this case for the proposed loss of the area of open space to development.

8. RECOMMENDATION

Refuse Planning Permission in Principle

Refusal is recommended for the following reason(s):

1. The proposed development would result in the loss of an area of amenity open space without sound and clear justification. The loss of the open space would be detrimental

to the amenity and wellbeing of residents and the visual amenity and sense of place of the application site and its setting. The proposed development does not accord with Policies HSG03 "Windfall Housing", INF03 "Protection of Open Space" and D02 "Sustainable Design Principles" of the Falkirk Local Development Plan, Scottish Planning Policy and Planning Advice Note PAN 65 "Planning and Open Space".

Informatives:

1. For the avoidance of doubt, the plan(s) to which this decision refer(s) bear our online reference number(s) 01 ****


Director of Development Services

29.3.19
Date

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