



Agenda Item 7

**ERECTION OF 3 DWELLINGHOUSES AND
ROAD AT LAND TO THE EAST OF MAPLE
LODGE, BRAEFACE ROAD, BANKNOCK,
BONNYBRIDGE FOR MR JOHN PENMAN -
P/19/0649/PPP**

FALKIRK COUNCIL

Subject: ERECTION OF 3 DWELLINGHOUSES AND ROAD AT
LAND TO THE EAST OF MAPLE LODGE, BRAEFACE
ROAD, BANKNOCK, BONNYBRIDGE FOR MR JOHN
PENMAN - P/19/0649/PPP

Meeting: PLANNING COMMITTEE
Date: 17 March 2021
Author: DIRECTOR OF DEVELOPMENT SERVICES

Local Members: Ward - Denny and Banknock

Councillor Jim Blackwood
Councillor Fiona Collie
Councillor Paul Garner
Councillor Nigel Harris

Community Council: Banknock, Haggs and Longcroft

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

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UPDATE REPORT

1. Members will recall that the Planning Committee considered this application on 21 October 2020 (copy of report appended), when it was agreed to continue consideration of the application to the January 2021 meeting of the committee or sooner if possible in order for officers to discuss matters further with the applicant and to report back with further information on the following:-
 - The business case for the proposed development including deliverables and financial information;
 - Progress in relation to the requirements of the previous section 75 planning obligation and the position in relation to relevant works at the Cloybank Estate facility;
 - Access and transportation considerations;
 - Proposals for use of the income that would be anticipated to be generated should the application be granted for the benefit of the Cloybank Estate facility;
 - Such other information as may be properly assessed by the Acting Director of Development Services as being required from the applicant.

2. Members will also recall that the Planning Committee considered the application further on 21 January 2021 (copy of report appended), when it was agreed to continue the application to the March 2021 meeting of the committee or sooner if possible in order to allow officers to review information received from the applicant in December 2020, to have further discussions with the applicant and to report back with further information.
3. Since the application was considered last October, the applicant has submitted further information in relation to:-
 - Expenditure of the income from the proceeds of the previous plot disposals;
 - The development works and other items to be funded by the proposed additional house plots;
 - Costing of the works and other items; and
 - Pedestrian access to the estate.
4. The applicant has also confirmed that he wishes to rely upon the original business plan submitted in October 2019 as amended by an updated section on finance submitted on 17 December 2020.

Further Consultation with Business Gateway Falkirk

5. Business Gateway Falkirk were requested to further review the planning application in light of the applicant's further information and submissions. Their comments are summarised as follows:-
 - The business plan has previously been reviewed following a visit to the site in late 2019. It still seems fairly fit for purpose and creating a new one would not add much value. The details in the business plan would still be fairly similar, all that is likely to have changed is the finances which have been updated. The changes in the economic climate mean that no-one really knows what things will be like moving forward. Their background and services will remain the same, so it is considered that the business plan is still fairly applicable;
 - The impacts of issues such as Covid, Brexit and general economic change are unknown in all sectors so it is difficult to say how any business will be impacted moving forward;
 - The finance section of the business plan shows a substantial increase in income from hospitality and events. This is understandable once the new hospitality suite is complete. It is difficult to say if the business will be able to create a viable sustainable income from the various aspects of the business, but it would seem to be the case from the forecasts. It does seem that the applicant is trying to raise the capital to complete the build of the training centre and hospitality suite, following which the focus will be on making the business sustainable through its other income routes. A lot will depend on markets, promotion, awareness raising, customer numbers and council contracts etc;
 - The new finances indicate that sale of the three additional plots will provide sufficient income to complete the hospitality suite and training centre, after costs are taken off. It is viable that the building costs have gone up as the costs for all materials seem to have increased with Covid and Brexit;

- The accounts for the business registered with Companies House are up to May 2019 and are micro accounts. Even with more recent accounts, it is unlikely that they would provide much information to evidence the expenditure of the income from the existing six house plots as they are not full accounts; and
- The applicant's commitment to create a space which can train and support young people in developing various skills for the future is evident, as is his drive to make Cloybank a positive place for the community with multiple activities on offer.

Business Case

6. The report to the 21 October 2020 Committee indicated that the business case was deficient in a number of respects and raised the following unanswered questions and concerns:-
 - The projected income from the three plot sales is far in excess of what is required to address the change in lending policy issue;
 - The application would appear to be intended not only to address a shortfall in funding to complete the development works cross-funded by the previous six plots, but also additional works;
 - There is concern that as future opportunities and development works are identified, or if there was a further funding shortfall for the intended works, the funding route would follow a similar path with further applications for housing development;
 - No costings for the additional works, or an explanation of an increase in funding required for the previous cross-funded works, have been submitted;
 - The accounts have not been submitted therefore expenditure of the income generated by the six plot disposals in accordance with the terms of the Section 75 planning obligation has not been demonstrated;
 - If the principle of further enabling development is accepted, then a fundamental premise is whether the enabling development is the minimum necessary to secure the development works. It has not been demonstrated that the proposed three additional plots is the minimum necessary in this respect; and
 - It is not considered that the Council could simply rely on assurances from the applicant in respect of the disposal of the income of the plot sales, or proceed on the basis of no Section 75 planning obligation in the event of a grant of planning permission on the basis of enabling development. This is because the Council would have no means to ensure that the proceeds of the enabling development were put to the intended purpose. This would undermine the integrity and confidence in the planning system.
7. The further information and submissions received since the 21 October Committee meeting have to a large extent addressed these concerns. In particular it can be noted that:-

- The applicant has advised that the shortfall in funding to complete the approved development works was attributable to an unforeseeable increase in the required payments to the heritable creditor, increased building costs, and deficiencies in the original costings which were prepared on the basis of the work being done in-house and excluded site servicing costs. The applicant has advised that increasing ill health has necessitated the works being outsourced to a commercial building contractor;
- The applicant has advised that the option of securing the shortfall in funding by additional lending is not possible. This is because his existing provider does not do commercial lending anymore and no provider is prepared to lend on anything as long as such a loan cannot be secured as first charge on the property;
- The applicant has clarified that the additional plot sales are intended solely to complete the approved hospitality suite and training centre (after deduction of site servicing costs, professional fees and payment to the heritable creditor), and not additional new development works as well;
- While it is difficult to say if the business will be able to create a viable sustainable income, Business Gateway Falkirk are reasonably assured that the focus of the applicant after completion of the hospitality suite and training centre will be on making the business sustainable through its various income routes. The applicant has submitted that income from profits generated by the business should provide sufficient capital to invest in construction of the approved golf station and hydroponicum within three years;
- Detailed up to date costings for the works to complete the hospitality suite and training centre, prepared by an independent cost consultant, have been submitted;
- Based on the further information it is accepted that the proposal for three additional dwellinghouses is the minimum necessary to cross-fund completion of the hospitality suite and training centre (after deduction of reasonable costs); and
- The applicant has confirmed that he would agree to enter into a new Section 75 planning obligation in the event of planning permission being granted.

8. There remains an outstanding matter in that full accounts have not been submitted to evidence the expenditure of the income generated by the existing six plot disposals. As Business Gateway Falkirk have advised, the accounts lodged with Companies House are micro accounts only. The Section 75 planning obligation requires the developer to keep up to date and accurate accounts of the income from the plot disposals and expenditure of that income and make those accounts available to the Council on demand.

Section 75 planning obligation

9. It is further confirmed that the Section 75 planning obligation attached to the planning permission for the six house plots (P/12/0124/PPP) has not, as matters stand, been fully complied with. The outstanding matters are:-

- The submitted financial information indicates that the specified minimum amount from each plot sale has not been invested in the approved development works;

- The covered golf driving bays/ golf tuition station and training facility were not completed prior to occupation of the third dwellinghouse;
 - The hospitality suite was not completed prior to occupation of the fifth dwellinghouse; and
 - Open space and education contributions have not been paid upon occupation of each dwellinghouse (five of the six dwellinghouses are now understood to be occupied).
10. The reasons for the shortfall in funding (and therefore the non-compliance detailed in the first three bullet points above) are explained in paragraph 7. The applicant has advised that the covered golf driving bays/ golf tuition station has been deferred as it is not crucial to the survival of the business and the intention is now to fund this facility (and the hydroponicum) from profit generated by the business. The applicant's current focus is on completion of the hospitality suite and the training facility.
 11. The October 2020 report to Committee indicated that some of the new plot owners had advised that they had a private arrangement whereby the applicant had agreed to pay the open space and education contributions. More recently some of the plot owners have advised that they are in discussions with their respective solicitors regarding this matter. At the time of writing this report, no further correspondence had been received from the plot owners.
 12. The applicant, Mr Penman, has recently been in contact with the Council's Development Management Unit requesting that the Council accept existing facilities on the estate in lieu of payment of the open space contributions required by the Section 75 planning obligation. These facilities are a children's play area for up to 5/6 year olds, an animal petting area, outdoor seating areas, and a path network.
 13. It has been confirmed to the applicant that the Section 75 planning obligation is enforceable against the previous landowner under Section 75C and on that basis the previous landowner can apply to modify the planning obligation. Anyone against whom the planning obligation is enforceable can apply to modify or discharge the obligation. The applicant has confirmed that he would like to apply to modify the existing Section 75 but is unable to confirm a timescale for doing so at this stage. Any such planning application would be considered on its merits and potentially by the Planning Committee.
 14. The Council's Development Management Unit will continue to monitor the situation and consider its options as necessary in terms of enforcement. This matter does not preclude the Planning Committee from supporting the current planning application but, as previously suggested, it does not necessarily instil confidence in the Council entering into a new Section 75 planning obligation in relation to the payment of contributions.

Access and Transportation

15. The proposed development would be accessed by the existing Cloybank private access. This access serves the six new house plots and Cloybank Estate. The Council's Roads Development Unit have requested that an additional section of the access be widened to 5.5 metres to serve the additional three house plots.
16. The National Roads Development Guide indicates that generally five or fewer dwellings (more if a 'brownfield site', for example, redeveloped farm steadings) will be served by a 'private access', which will not require Construction Consent and will not be available for adoption. The guidance therefore suggests that the local authority has discretion to apply a higher threshold in the case of brownfield sites. The Cloybank site historically accommodated a farmhouse and the Cloybank Estate buildings have grown up in proximity to the original buildings.
17. The Council's Roads Development Unit have confirmed their view that in this case the private access would be best widened and left un-adopted. The site is in a rural setting and there is no footway along this part of Braeface Road. An adoptable standard road would require a footway but there is no pedestrian facility to connect to. It would not be safe to encourage pedestrian traffic along Braeface Road by provision of a footway along the Cloybank private access.
18. The applicant has confirmed that there is a surfaced path within the estate connecting to Braeface Road at the bottom south-east corner of the site. This provides a pedestrian link in proximity to the existing narrow footway on Braeface Road, albeit that the path is not to an adoptable standard. The existing bus stops on Kilsyth Road are slightly more than 400 metres from the application site, which is a walkable distance.
19. It is considered that there are no access or transportation issues that would give grounds for refusal of the application.

Conclusion

20. As detailed in the October Committee report, the application does not accord with LDP2. The application site lies outwith the urban limits, within the countryside, and does not satisfy any of the circumstances set out in LDP2 to support new housing development in the countryside.
21. However, the principle of housing at Cloybank, to cross-fund business development works, was established in the grant of planning permission P/12/0124/PPP for six house plots. The current application seeks planning permission for an additional three plots to fund completion of the approved hospitality suite and training facility. The reasons for the shortfall in funding (and therefore the proposal for an additional three plots) has been explained in this report, and the applicant's further submissions have addressed the majority of concerns with the business case identified in the October report, as informed by further comments by Business Gateway Falkirk.

22. The main outstanding matter relates to full accounts not having been submitted to provide evidence of the expenditure of the income from the six house plots. In addition, the Section 75 planning obligation attached to P/12/0124/PPP is not fully complied with, partly because education and open space contributions were not made by the payment date (occupation of each dwellinghouse). This does not preclude a decision to support the current application, but it does not necessarily instil confidence in the Council entering into a new Section 75 planning obligation in relation to these matters. However, the applicant has suggested that the new Section 75 could make the new education contribution payable prior to any works starting on the new plots, which would provide some reassurance.
23. On balance, and recognising the potential benefits of completion of the works to the community and local economy, the following recommendation is now made:-

RECOMMENDATION

24. **It is recommended that the Committee agree that it is minded to grant planning permission in principle subject to:-**
- (1) The submission by the applicant of up to date and accurate accounts of the proceeds from disposal of the plots granted planning permission P/12/0124/PPP and expenditure of these proceeds to the satisfaction of the Director of Development Services;**
 - (2) The conclusion, to the satisfaction of the Director of Development Services, of an obligation within the terms of Section 75 of the Town and Country Planning (Scotland) Act 1997 within 6 months to secure:-**
 - (i) The investment into the business at Cloybank of the whole proceeds of all and any disposals (sale, lease or other disposal) from the application site after deduction of any required payment to the heritable creditor and reasonable costs incurred in the disposals and in site servicing. All such deductions will require to be to the satisfaction of the Director of Development Services, acting reasonably. A phased scheme of such investment shall be determined to the satisfaction of the Director of Development Services linked to the occupation of the individual dwellinghouses on the application site;**
 - (ii) Payment of an education contribution at the rate of £4398 per dwellinghouse towards increasing the capacity of Bankier Primary School with payment for each individual dwellinghouse being required in advance of the commencement of construction of the dwellinghouse; and**
 - (iii) Payment of an open space contribution at the rate of £1911 per dwellinghouse towards improving open space facilities in the local area with payment for each individual dwellinghouse being required in advance of the commencement of construction of the dwellinghouse, or alternatively the provision of suitable on-site open space facilities as may be agreed by the Director of Development Services;**

- (a) And thereafter, on satisfactory conclusion of the foregoing matters, remit to the Director of Development Services to grant planning permission in principle, subject to the following conditions:-
- (1) Plans and particulars of the matters specified below shall be submitted for consideration by the planning authority, in accordance with the timescales and other limitations in section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended). No works shall begin until the written approval of the authority has been given, and the development shall be carried out in accordance with that approval. The specified matters are:-
 - (a) The siting of the building(s);
 - (b) The design of the building(s);
 - (c) The external appearance of the building(s);
 - (d) Details of the access arrangements;
 - (e) Details of landscaping of the site; and
 - (f) Details of proposed boundary treatments.
 - (2) The number of dwellinghouses shall be restricted to a maximum of three.
 - (3) The first application for the approval of matters specified in conditions shall be accompanied by the following information for consideration for approval by this Planning Authority:-
 - (a) A design statement;
 - (b) Opportunities for the provision of a footpath connection(s) from the site to the wider path network on the estate;
 - (c) A drainage strategy and associated design details;
 - (d) An energy statement demonstrating compliance with Policy IR13 of the Falkirk Local Development Plan 2; and
 - (e) Details of the widening of the existing private access to 5.5 metres.
 - (4) The development shall not commence until a contaminated land assessment has been submitted to and approved in writing by this Planning Authority. The development shall not be brought into use until any necessary remedial works have been implemented in accordance with an approved remediation strategy, and any necessary remediation completion report/ validation certificate has been submitted to and approved in writing by this Planning Authority.
 - (5) Parking for the proposed development shall be provided in accordance with the National Roads Development Guide.

Informative(s):-

- (1) For the avoidance of doubt, the plan(s) to which this decision refer(s) bear our online reference number(s) 01 and 02.

(2) Plans and particulars of the matters listed above shall be submitted for consideration by the planning authority, in accordance with the timescales and other limitations in section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended). No work shall begin until the written approval of Falkirk Council as planning authority has been given, and the development shall be carried out in accordance with that approval.

(3) 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.

(4) In the event of unexpected contaminated land being encountered following the commencement of the development, the applicant is advised to ensure that all work on the affected part of the site ceases, the Planning Authority is notified immediately, a contaminated land assessment and any necessary remediation works are carried out, and development only recommences with the prior written approval of the Planning Authority.

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pp Director of Development Services

Date: 9 March 2021

LIST OF BACKGROUND PAPERS

1. The Falkirk Local Development Plan 2 (LDP2)
2. Supplementary Guidance SG01 'Development in the Countryside'
3. Supplementary Guidance SG10 'Education and New Development'
4. Supplementary Guidance SG13 'Open space and New Development'
5. Supplementary Guidance SG15 'Low and Zero Carbon Development'

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

FALKIRK COUNCIL

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Author: DIRECTOR OF DEVELOPMENT SERVICES

Local Members: Ward - Denny and Bannockburn

Councillor Jim Blackwood
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Councillor Paul Garner
Councillor Nigel Harris

Community Council: Banknock, Haggs and Longcroft

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1. DESCRIPTION OF PROPOSAL / SITE LOCATION

- 1.1 The application seeks planning permission in principle for three dwellinghouses. The justification for the dwellinghouses is to cross-fund completion of estate development works. The application follows a previous grant of planning permission for six dwellinghouses for cross-funding purposes (see paragraph 3.3 below).
- 1.2 The application site consists of part of Cloybank Estate, Braeface Road, Banknock. Cloybank Estate offers a range of outdoor recreational and educational facilities. The application site is currently occupied by enclosures and buildings housing farm animals. Six house plots lie to the east and the estate facilities extend further to the west.
- 1.3 The application is supported by a business plan, a supporting statement and a coal mining risk assessment. The business plan highlighted that a change in lending policy of the mortgage provider resulted in a larger proportion of the plot proceeds being utilised to meet mortgage repayment commitments.
- 1.4 Further information and clarification was sought from the applicant in relation to the submitted business plan. This included queries in relation to the financial summary, a request for submission of the accounts of the income from the previous plot disposals and expenditure of that income, and clarification regarding the intended further development works and costings of those works.

1.5 Following the start of the Covid-19 pandemic it was suggested that the applicant submit an updated business plan to reflect current circumstances. In response a supporting statement was submitted on 16 July 2020, which included the following submissions:-

- Cloybank has reached the stage where it will not survive the current pandemic;
- While the pandemic continues, the submission of an updated business plan is almost impossible - in the current circumstances it would be almost entirely speculative;
- The existing Section 75 planning obligation is becoming exceptionally restrictive;
- The additional plots would be sold on a non-profit basis. The income generated would be used to complete/upgrade the existing facilities;
- Specifically, the funding would complete/create: completion of hospitality suite; children's play area; new training centre for children and adults with learning difficulties; car parking; new hydroponicum; access upgrade; new mains water supply; and upgrade of electricity supply;
- Cloybank is a unique, multi award winning, purpose built facility. There are no other similar providers/facility that could take over and deliver the training offered;
- Completion of the works would allow the staff levels in hospitality and tourism to increase;
- A neighbouring property was granted planning permission for three plots without a Section 75 planning obligation; and
- The applicant is looking for help to allow the only option for survival - planning permission without the onerous restrictions of a new Section 75 agreement.

2. REASON FOR COMMITTEE CONSIDERATION

2.1 The application was called in by Councillor Fiona Collie to allow the Committee to consider the application in relation to Development Plan policy and supplementary guidance on housing in the countryside. Also, to consider whether previous permissions for housing at Cloybank and on land nearby set a precedent in support of the proposal.

3. SITE HISTORY

3.1 Planning application P/07/0451/FUL for a mixed use development was granted on 29 January 2009. The approved development consists of: a dwellinghouse, estate office, staff facilities, produce handling area, golf academy (indoor), artist studio/workshop, a hydroponicum; the use of land for fruit production, woodland, archery, clay pigeon shooting, soft fruit production (polytunnels), a bee/honey farm; and the formation of a fishery pond and a golf academy. A Section 75 Planning Obligation attaches to this permission.

3.2 Planning application P/10/0524/FUL for the erection of a timber cabin for residential purposes and use of a temporary building as a coffee shop (retrospective) was granted on 17 August 2012. Permission for the temporary building lapsed on 17 August 2015.

- 3.3 Planning application P/12/0124/PPP for the development of land for residential purposes was granted on 3 April 2014. The permission in principle provides for six dwellinghouses and is 'enabling development' to cross-fund the development of estate facilities approved by P/07/0451/FUL. A Section 75 Planning Obligation attaches to the permission and secures the phased payment of financial contributions in respect of education and open space, as well as tying occupancy of the third, fourth, fifth and sixth dwellinghouses to completion of certain estate facilities. Subsequent planning applications from 2016 onwards secured approval of house types for each plot. The Section 75 Planning Obligation related to P/07/0451/FUL also attaches to these permissions.
- 3.4 Advertisement consent P/13/0673/ADV for the display of a freestanding non-illuminated advertisement was approved on 18 November 2013. Planning application P/13/0674/FUL for an extension to dwellinghouse (retrospective) was granted on 13 December 2013.
- 3.5 Planning application P/18/0012/FUL for erection of golf driving range building to accommodate six driving bays with associated administrative and welfare facilities was granted on 25 May 2018.
- 3.6 Planning application P/19/0648/FUL for change of use of vacant land to form a six pitch caravan site and erection of workshop/store was granted on 31 January 2020.
- 3.7 Planning application P/19/0651/FUL for continuation of use of temporary building as coffee shop was granted on 29 November 2019.

4. CONSULTATIONS

- 4.1 The Council's Roads Development Unit have advised that the application site is located north of Banknock on the west side of the C26 Braeface Road. This road is predominantly rural in nature with restricted width and alignment. There is no footway or lighting provision in the vicinity of the site. Access to the site is via an existing private access which serves six dwellinghouses under construction plus Cloybank. The private access is unlit, without footway, and is single width beyond the six dwellinghouses. Although the development is unlikely to generate significant vehicle movements, any traffic generated increases the likelihood of two vehicles encountering one another at any of the restricted locations on Braeface Road, giving rise to an increased accident risk. Similarly, the development could introduce pedestrian traffic to Braeface Road, which would not be in the best interests of road safety having regard to the absence of footway or lighting provision in the general area. A surface water drainage strategy should be submitted for consideration for approval. Conditions should attach to any grant of planning permission in relation to in-curtilage parking and widening of the private access.
- 4.2 Scottish Water have no objection to the application. The Carron Valley Water Treatment Works currently has sufficient capacity to service the proposed development. Further investigations may be required to be carried out at the time of any submission of a formal connection application. According to their records, there is no public waste water infrastructure within the vicinity of the proposed development therefore private treatment options should be investigated.

- 4.3 The Council's Environmental Protection Unit have advised that noise need not be a determining factor in considering the application. A contaminated land assessment is required due to extensive mining underlying the site and surrounding area and other potential sources of contaminated land within 250 metres of the site. There are no significant local air quality concerns associated with the application.
- 4.4 The Coal Authority have no objection to the application on the basis that the submitted coal mining risk assessment and further supporting information are sufficient for the purposes of the planning system to demonstrate that the application site is safe and stable for the proposed development from the point view of coal mining legacy issues.
- 4.5 The Council's Growth and Investment Unit recognise that this is a local business with a community focus. They note the submitted justification for the proposed additional dwellinghouses in order to complete further development and put infrastructure in place to allow the growth of Cloybank into the future. The current facilities are in need of updating and modernisation, and in some instances are inadequate. Upgraded facilities would ensure that Cloybank is well placed to provide an excellent customer experience and a popular visitor attraction, which fits in with the Falkirk Tourism strategy. In terms of support, the focus has tended to be on identifying funding routes rather than the wider support available. There have been some issues with attracting enough tourists to support that side of the business, which creates money to support the training offer. This is something that they may be able to assist with.
- 4.6 The Council's Employment and Training Unit has advised that they use the Cloybank facility to run programmes and provide placements for their participants. Many of the programmes are subsidised by the Council. A procurement exercise was due to commence in August for delivery in September but has been delayed due to Covid-19. Cloybank will be involved in this process and have potential to secure bids for delivery of a number of training programmes. Although the training can be delivered by other providers the practical element is more difficult to emulate elsewhere. Although there are claims of employment much of this has been secured by Employment Training Unit staff during or after Cloybank training and many of the Cloybank based employment programmes have been subsidised by the Council through wage subsidy (ESF ERI) or supported employment funding.

5. COMMUNITY COUNCIL

- 5.1 The Banknock, Haggs and Longcroft Community Council have not made any representations.

6. PUBLIC REPRESENTATION

- 6.1 During consideration of the application, no letters of objection or representation were received.

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 (LDP2) was adopted on 7 August 2020. It replaces the previous Local Development Plan.

7a.2 The application site lies outwith the urban limits, within the countryside, as defined in LDP2.

7a.3 The policies of LDP2 of relevance to this application are outlined in the policy schedule at the end of this report. The assessment of the application against those policies is outlined below:-

Policy PE14 'Countryside'

7a.4 The application site lies within the countryside and therefore requires assessment against the relevant countryside policy. In this case the relevant countryside policy is Policy HC05 'Housing in the Countryside'.

Policy HC05 'Housing in the Countryside'

7a.5 The proposed development does not meet any of the circumstances prescribed in the policy to support new housing development in the countryside. The application is therefore contrary to this policy.

Policy IR02 'Developer Contributions'

7a.6 There are no specific requirements set out in the LPD or in guidance that would apply to this site. However, developer contributions as set out in Table 4.1 of LDP2 would apply as appropriate. The policy also indicates that, where developer contributions are required, the economic viability of proposals will be taken into account as a material consideration where supported by a Development Viability Statement. As detailed above, the application seeks enabling development to cross-fund development works at Cloybank Estate. The business case in support of the application is discussed in this report.

Policy IR03 'Education and New Housing Development'

7a.7 The proposed development can be considered as part of a larger site which includes the six dwellinghouses approved under P/12/0124/PPP. As a nine unit development, the terms of Policy IR03 will apply and a developer contribution is required towards improving capacity at Bankier Primary School in order to address the cumulative impact of new housing development in the area. The applicable rates are set out in Falkirk Council Revised Supplementary Guidance SG10 'Education and New Housing Development'. Due to identified issues in principle with the application, there have been no discussions with the applicant on this matter. However, the applicant's submissions dated 16 July 2020 seek grant of planning permission in principle without the restrictions of a new Section 75 planning obligation.

Policy IR10 'Drainage Infrastructure'

- 7a.8 The proposed arrangements for sewage are the provision of a new private septic tank and soakaway. The arrangements for treatment, discharge and maintenance would have to be acceptable to SEPA. In terms of surface water, the proposal is to provide for sustainable drainage (e.g. SUDS arrangements). A surface water drainage strategy should be submitted for consideration prior to any grant of planning permission in principle.

Policy IR13 'Low and Zero Carbon Development'

- 7a.9 The details in respect of the provision of on-site low and zero generating technologies (LZCGT) could be the subject of a condition attached to any grant of planning permission in principle. Falkirk Council Supplementary Guidance SG15 'Low and Zero Carbon Development' would be material to this consideration.

Policy PE17 'Open Space and New Development'

- 7a.10 As stated above, the proposed development can be considered as part of a larger site which includes the six dwellinghouses approved under P/12/0124/PPP. As a nine unit development, the terms of Policy PE17 will apply and on-site open space will be required to serve the proposed development or alternatively an open space contribution in lieu of on-site provision, in accordance with the rates set out in Falkirk Council Supplementary Guidance SG13 'Open Space and New Development'. While the application does not specifically identify any on-site provision for the proposed development, it is understood that the path network within the Cloybank Estate is accessible to the public. In terms of active open space, it is noted that the proposed enabling development is intended to fund a children's play area. At this stage, the details in respect of this proposal are not known. Due to identified issues in principle with the application, there have been no discussions with the applicant on this matter.

7b Material Considerations

- 7b.1 The material considerations to be assessed are Falkirk Council non-statutory supplementary guidance, the consultation responses, and additional planning considerations.

Falkirk Council non-statutory Supplementary Guidance

- 7b.2 The Council's non-statutory supplementary guidance of relevance to this application is:-
- SG01 'Development in the Countryside';
 - SG10 'Education and New Development';
 - SG13 'Open Space and New Development'; and
 - SG15 'Low and Zero Carbon Development'.
- 7b.3 This guidance is referred to as appropriate in the assessment of the application against LDP2. SG01 contains design guidance which would be relevant in respect of an application for approval of matters specified in conditions (AMSC) following any grant of planning permission in principle.

Consultation Response

- 7b.4 The consultation responses are summarised in Section 3 of this report. The road safety concerns of the Roads Development Unit are noted, however, it is not considered that these concerns would justify refusal of the application given its scale and nature and that similar sized developments at this location have been supported.
- 7b.5 The comments of the Growth and Investment unit and the Employment Training Unit are noted. These comments highlight the desirability of upgrading the existing estate facilities, the role of the estate in delivering training programmes, and the support provided by the Council in subsidising employment programmes at the facility.

Additional Planning Considerations

- 7b.6 As detailed above, a Section 75 planning obligation attaches to the planning permission for the six dwellinghouses (P/12/0124/PPP). The terms of this obligation include:-
- Completion of the covered golf driving bays/golf tuition station and training support facility prior to occupation of the third dwellinghouse;
 - Completion of the hospitality suite and a permanent road surface to the driveway, service area and visitors parking area prior to occupation of the fifth dwellinghouse;
 - Completion of the hydroponicum prior to occupation of the sixth dwellinghouse; and
 - Providing up to date and accurate accounts to the Council on demand so it can satisfy itself that the expenditure of the income generated by the six house plot disposals has been invested in the business.
- 7b.7 The planning obligation is in breach as four of the dwellinghouses are now occupied and the golfing and training support facilities are not completed.
- 7b.8 The planning obligation is also in breach as it requires the payment of open space and education contributions upon occupation of each dwellinghouse. The obligations under the Section 75 run with the land therefore the new homeowners are liable for the payments. However, the owners have advised that they had a private arrangement whereby the applicant agreed to pay the contributions. This issue of the applicant's failure to meet previous commitments does not instill confidence in the Council entering into a further Section 75 planning obligation or the applicant's commitment that this is an enabling development.
- 7b.9 The current application is supported by a business plan and further supporting statement. This information is considered to be deficient in a number of respects and raises unanswered questions and concerns. These are summarised below:-
- The projected income from the three plot sales is far in excess of what is required to address the change in lending policy issue;
 - The application would appear to be intended not only to address a shortfall in funding to complete the development works cross-funded by the previous six plots, but also additional works;

- There is concern that as future opportunities and development works are identified, or if there was a further funding shortfall for the intended works, the funding route would follow a similar path with further applications for housing development;
- No costings for the additional works, or an explanation of an increase in funding required for the previous cross-funded works, have been submitted;
- The accounts have not been submitted therefore expenditure of the income generated by the six plot disposals in accordance with the terms of the Section 75 planning obligation has not been demonstrated;
- If the principle of further enabling development is accepted, then a fundamental premise is whether the enabling development is the minimum necessary to secure the development works. It has not been demonstrated that the proposed three additional plots is the minimum necessary in this respect; and
- It is not considered that the Council could simply rely on assurances from the applicant in respect of the disposal of the income of the plot sales, or proceed on the basis of no Section 75 planning obligation in the event of a grant of planning permission on the basis of enabling development. This is because the Council would have no means to ensure that the proceeds of the enabling development were put to the intended purpose. This would undermine the integrity and confidence in the planning system.

7b.10 The applicant has referred to a neighbouring property being granted planning permission for three plots without a Section 75 planning obligation. This application was for the erection of three dwellinghouses and associated infrastructure (reference P/19/0190/FUL) and was granted at the Planning Committee meeting on 24th September 2019 contrary to officer recommendation to refuse the application on countryside policy and sustainability grounds. The decision of the Committee was:-

'The committee, exercising its planning judgement, agreed to grant planning permission for the erection of 3 dwellinghouses and associated infrastructure on the grounds that it considered that the proposed development constituted appropriate development in the location, it was satisfied on issues of transportation and road safety and it considered that the site could be a brownfield site given the evidence of previous workings on the site.'

7b.11 The recommendation of Development Services on this application and the current application are similar in that both cite countryside policy reasons. It would be material for the Committee to consider their previous decision making in this area in determining the current application.

7c Conclusion

7c.1 The application does not accord with LDP2, for the reasons detailed in this report. While the potential benefits of upgrade of the facilities, in terms of increasing visitor attractiveness, the quality of the facilities on offer and contribution to the local economy, are noted, the business case as currently presented is considered to be deficient as a means to justify the proposed 'enabling' development contrary to the terms of LDP2. The application is therefore recommended for refusal.

8. RECOMMENDATION

8.1 It is therefore recommended that the Planning Committee refuse planning permission for the following reason(s):-

- 1. The application is contrary to Policies PE14 'Countryside' and HC05 'Housing in the Countryside' of Falkirk Local Development Plan 2 (LDP2) as the proposed development does not meet any of the circumstances prescribed in the policy to support new housing in the countryside. The proposal therefore represents unjustified housing in the countryside within the terms of these policies and the applicant has failed to demonstrate to the satisfaction of the planning authority that there are material planning considerations to otherwise justify granting planning permission contrary to the terms of the LPD2.**

Informative(s):-

- 1. For the avoidance of doubt, the plan(s) to which this decision refer(s) bear our online reference number(s) 01 and 02.**

.....
pp Director of Development Services

Date: 8 October 2020

LIST OF BACKGROUND PAPERS

1. The Falkirk Local Development Plan 2 (LDP2)
2. Supplementary Guidance SG01 'Development in the Countryside'
3. Supplementary Guidance SG10 'Education and New Development'
4. Supplementary Guidance SG13 'Openspace and New Development'
5. Supplementary Guidance SG15 'Low and Zero Carbon Development'

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

FALKIRK COUNCIL

Subject: ERECTION OF 3 DWELLINGHOUSES AND ROAD AT
LAND TO THE EAST OF MAPLE LODGE, BRAEFACE
ROAD, BANKNOCK, BONNYBRIDGE FOR MR JOHN
PENMAN - P/19/0649/PPP

Meeting: PLANNING COMMITTEE
Date: 21 January 2021
Author: DIRECTOR OF DEVELOPMENT SERVICES

Local Members: Ward - Denny and Bannockburn

Councillor Jim Blackwood
Councillor Fiona Collie
Councillor Paul Garner
Councillor Nigel Harris

Community Council: Banknock, Haggs and Longcroft

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

[View this Application on Public Access](#)

UPDATE REPORT

1. Members will recall that the Planning Committee considered this application on 21 October 2020 (copy of report appended), when it was agreed to continue consideration of the application to the January 2021 meeting of the committee or sooner if possible in order for officers to discuss matters further with the applicant and to report back with further information on the following:-
 - The business case for the proposed development including deliverables and financial information;
 - Progress in relation to the requirements of the previous section 75 planning obligation and the position in relation to relevant works at the Cloybank Estate facility;
 - Access and transportation considerations;
 - Proposals for use of the income that would be anticipated to be generated should the application be granted for the benefit of the Cloybank Estate facility;
 - Such other information as may be properly assessed by the Acting Director of Development Services as being required from the applicant.
2. Since the October Committee, the applicant has submitted further information in relation to:-
 - Expenditure of the income from the proceeds of the previous plot disposals;

- The development works and other items to be funded by the proposed additional house plots;
 - Costing of the works and other items; and
 - Pedestrian access to the estate.
3. This information includes information and submissions received on 17 December 2020. While officers provided the applicant with an extended opportunity (until 18 December 2020) to make further submissions, unfortunately the timing and nature of the further information has not afforded sufficient time for it to be fully assessed prior to the deadline for the January Committee meeting. In order to conclude this assessment and enable any necessary further discussions with the applicant, it is recommended that the Committee further continue the application.
4. While it is noted that Members previously expressed some concerns in relation to continuation of the application, it is considered that in light of the nature of the recently submitted further information there is benefit in providing for further time to consider the application.

RECOMMENDATION

5. **It is therefore recommended that the Planning Committee continue consideration of the application to the March 2021 meeting of the Committee or sooner if possible in order for officers to discuss matters further with the applicant and to report back with further information on the following:-**
- **The business case for the proposed development including deliverables and financial information;**
 - **Progress in relation to the requirements of the previous section 75 planning obligation and the position in relation to relevant works at the Cloybank Estate facility;**
 - **Access and transportation considerations;**
 - **Proposals for use of the income that would be anticipated to be generated should the application be granted for the benefit of the Cloybank Estate facility;**
 - **Such other information as may be properly assessed by the Acting Director of Development Services as being required from the applicant.**



.....
pp Acting Director of Development Services

Date: 12 January 2021

LIST OF BACKGROUND PAPERS

1. The Falkirk Local Development Plan 2 (LDP2)
2. Supplementary Guidance SG01 'Development in the Countryside'
3. Supplementary Guidance SG10 'Education and New Development'
4. Supplementary Guidance SG13 'Openspace and New Development'
5. Supplementary Guidance SG15 'Low and Zero Carbon Development'

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

Policy Schedule

PE14 Countryside

1. The Urban and Village Limits defined on the Proposals Map represent the limit to the expansion of settlements. Land outwith these boundaries is designated as countryside. Development in the countryside will be assessed in terms of the relevant countryside policies for specific uses (HC05 and JE05);
2. Development proposals in the countryside for uses not covered by policies for specific uses will only be permitted where:
 - It can be demonstrated that they require a countryside location;
 - They constitute infill development; or
 - They utilise appropriate existing buildings.

Detailed guidance on the application of these criteria will be contained in Supplementary Guidance SG01 Development in the Countryside;

3. Development proposals in the countryside should additionally demonstrate that their scale, siting and design is such that there will be no significant adverse impact on the rural environment, having regard to other policies on the natural and historic environment, and design guidance in Supplementary Guidance SG01 'Development in the Countryside'.

HC05 Housing in the Countryside

Proposals for housing development in the countryside of a scale, layout and design suitable for its intended location will be supported in the following circumstances:

1. Housing required for the pursuance of agriculture, horticulture, or forestry, or the management of a business for which a countryside location is essential;
2. Restoration or replacement of houses which are still substantially intact, provided that the restored/replacement house is of a suitable size and design;
3. Conversion or restoration of non-domestic farm buildings to residential use, including the sensitive redevelopment of redundant farm steadings;
4. Appropriate infill development;
5. Limited enabling development to secure the restoration of historic buildings or structures; or
6. Small, privately owned gypsy traveller sites which comply with Policy HC09.

Detailed guidance on the application of these criteria will be contained in Supplementary Guidance SG01 'Development in the Countryside'.

IR02 Developer Contributions

Developers will be required to contribute to the provision, upgrading and, where appropriate, the maintenance of infrastructure where development will create or exacerbate deficiencies in, or impose significantly increased burdens on, existing infrastructure. The types of infrastructure where contributions may be required are set out in Table 4.1. The nature, scale and phasing of developer contributions will be determined by:

1. Guidance and contribution rates set out in SG13 'Developer Contributions';
2. Site specific requirements set out in the LDP or relevant development brief; and
3. The principles contained in Circular 3/2012 'Planning Obligations and Good Neighbour Agreements'.

In assessing applications where developer contributions are required, the economic viability of proposals will be taken into account as a material consideration where supported by a Development Viability Statement. In rare circumstances developer contributions for education and open space will be waived for flatted residential development, or conversions of buildings for residential use, of up to 50 units within town centre boundaries.

IR03 Education and New Housing Development

Where there will be insufficient capacity within catchment schools to accommodate children from proposed new housing development, or where Council nursery provision will be adversely affected, developer contributions will be sought in line with Policy IR02 to mitigate these impacts. In the rare circumstances where such mitigation cannot be achieved in a manner which is consistent with the Council's education policies, the proposed development will not be supported.

IR10 Drainage Infrastructure

1. Necessary sewerage infrastructure associated with new development should either be adopted by Scottish Water or have alternative maintenance arrangements which are acceptable to SEPA. Connection to the public sewer is the most sustainable option and will ensure that any pollution risk to the environment is minimised.
2. Surface water management for new development should comply with current best practice on Sustainable Urban Drainage Systems (SUDS), where appropriate forming an integral part of the development's landscape structure as set out within Supplementary Guidance SG05 'Green Infrastructure and New Development'. SUDS will be required to meet the specifications as detailed in the most recent version of Sewers for Scotland should the developer wish the surface water system to vest in Scottish Water.
3. For developments that involve a change of use and/or redevelopment, wherever possible, opportunities should be taken to retrofit SUDS.
4. 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. The strategy should follow the latest version of the SUDS Manual.

IR13 Low and Zero Carbon Development

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 12% 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 is contained in Supplementary Guidance SG14 Renewable and Low Carbon Energy. 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 the other sustainability aspects of the current Sections 6 and 7 of the current Building Standards Technical Handbook.

PE17 Open Space and New Development

New development should contribute positively to the provision of open space in the area and support the objectives of the Open Space Strategy. Accordingly:

1. Where appropriate, proposals for new development should include public open space to create a sense of place, integrate the site with the wider green network, promote physical activity, sport and active travel, enhance biodiversity, and manage water within the site; and
2. Where the quantity, quality or accessibility of recreational and sport open space and play facilities in the locality is insufficient to meet the recreational needs of proposed new residential development, as informed by the standards in the Open Space Strategy, the proposal should address the identified deficiencies through either the provision of new on-site recreational and sport open space, or contributions to the improvement of off-site open space.

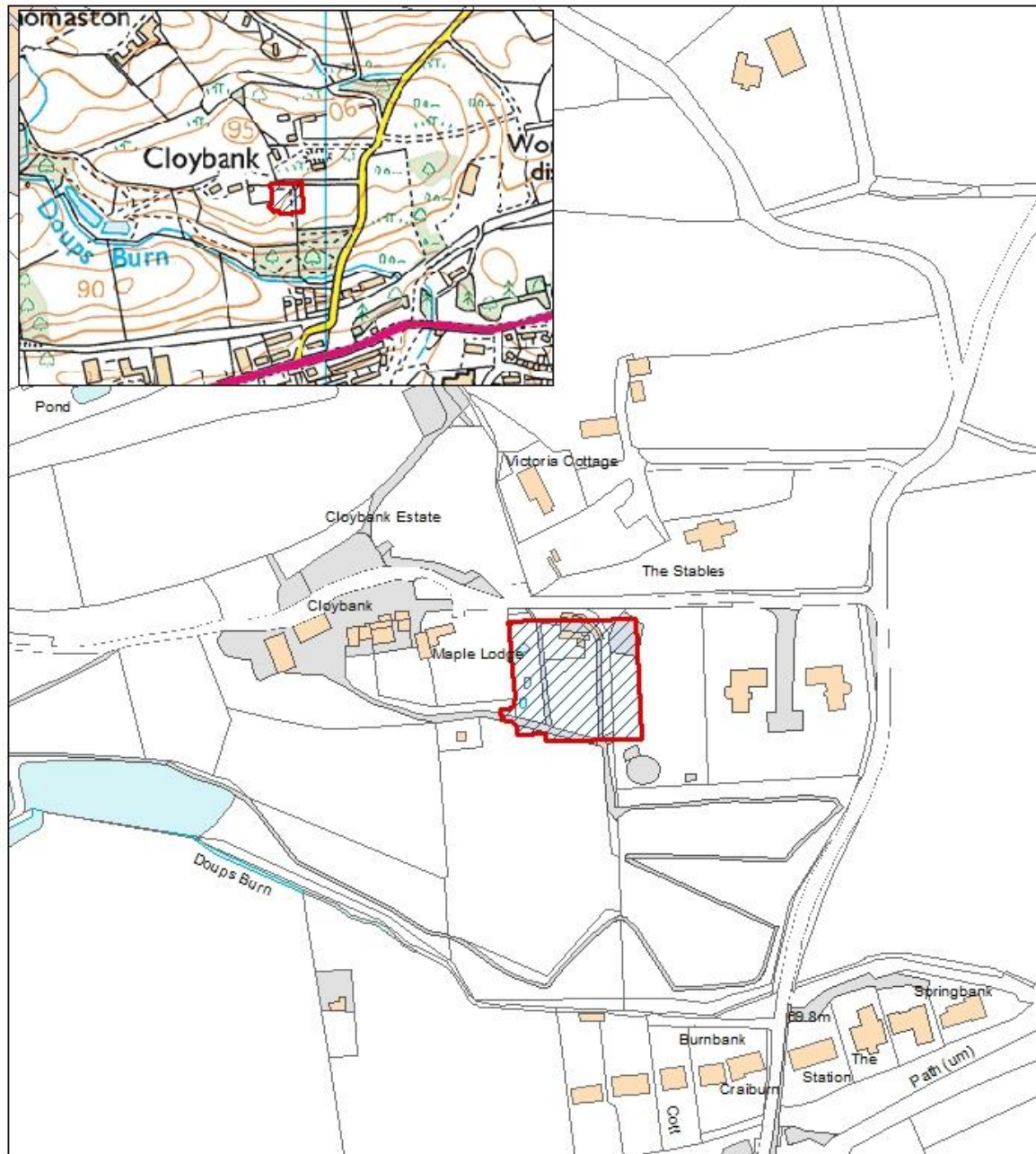
The detailed planning and design of new open space within new developments, including the methodology for determining and addressing recreational open space deficiencies, should accord with SG05 'Green Infrastructure and New Development'.

Planning Committee

Planning Application Location Plan

P/19/0649/PPP

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



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