

FALKIRK COUNCIL

Subject: USE OF LAND FOR THE ESTABLISHMENT OF A PRIVATE GYPSY/TRAVELLER PITCH AND ANCILLARY PORTACABINS AND HARDSTANDING (DETAILED) AT GLENVIEW, OLD NORTHFIELD ROAD, DENNY FK6 6QY FOR MR FRANK STEWART AND FAMILY – P/08/0695/FUL (RETROSPECTIVE)

Meeting: PLANNING COMMITTEE

Date: 25 March 2009

Author: DIRECTOR OF DEVELOPMENT SERVICES

Local Members: Councillor Jim Blackwood
Councillor John McNally
Councillor Martin David Oliver
Councillor Alexander John Waddell

Community Council: Denny and Dunipace

Case Officer: Brent Vivian (Senior Planning Officer), ext 4935

UPDATE REPORT FOLLOWING COMMITTEE SITE VISIT

1. Members will recall that this application was originally considered at the meeting of the Planning Committee on 25 February 2009 (copy of previous report appended), when it was agreed to continue consideration to allow a site visit to be carried out. This visit took place on 19 March 2009.
2. At the site meeting a member of the Denny and Dunipace Community Council spoke on behalf of local residents objecting to the application. He raised concerns about the disruption to local residents caused by the gypsy/travellers site. In particular he suggested that people no longer feel safe using the public road for horse riding and walking due to an increase in traffic associated with the gypsy/traveller site. Concerns were raised at the perceived disregard for planning procedures and also that a business may be operating from the premises. Concern was expressed as to how the recommended conditions could be monitored and enforced. Another representative offered no comment on behalf of Denny and Dunipace Community Council.
3. Members of the Planning Committee including local Members, Councillors Blackwood and Waddell were heard in relation to the proposal. Issues in relation to flooding, visibility at the site access, sewage disposal and motorway noise, the unauthorized nature of the development and the enforceability of conditions were raised. The possible use of the Council's travellers/gypsy site at Redding was suggested.

4. The applicant advised that he did not wish his family to live at the Redding site due to safety concerns. He stated that his site is tidy, he has no intention of extending the existing hardstanding, and there is no business operating from the site. SEPA has advised him on the location of the septic tank and he is aware that authorisation is required for this. His observation was that the adjoining road is regularly used by horse riders, walkers and joggers.
5. Committee was advised that the onus is on the applicant to comply with the conditions of any planning permission and that any alleged breaches of condition would be investigated. In addition visibility at the access would be controlled by a recommended condition, and that normal standards for traffic noise may need to be compromised for this type of development.
6. A question was raised as to why caravan clubs do not require planning permission for 4-5 caravans whilst this development does. It is advised that there are permitted development rights under planning statute for the use of land as a caravan site in certain circumstances specified in the Caravan Sites and Control of Development Act 1960. These circumstances potentially cover exempted organisations where the number of caravans does not exceed five. The gypsy/traveller site under consideration is a material change of use of land requiring planning permission and is not permissible under the Caravan Sites and Control of Development Act 1960.

7. RECOMMENDATION

7.1 The recommendation contained in the previous report is reiterated as follows:-

7.2 It is recommended that planning permission be granted subject to the following conditions:-

- (1) This permission shall enure for the benefit of the applicants and their dependants within the travelling/gypsy community only.**
- (2) The number of caravans occupying the site at any one time shall not exceed four.**
- (3) No more than one caravan occupying the site at any one time shall be used by people who are not members of the applicants' family.**
- (4) Within 3 months of the date of this decision, the application site shall be laid out in full accordance with approved plan 2/3 except as otherwise indicated in condition (5).**
- (5) The planting indicated on approved plan 2/3 shall be fully implemented by the end of the first planting season following the date of this decision.**
- (6) The bellmouth access indicated on approved plan 2/3 shall be maintained in a manner to ensure that surface water run off and loose material is not discharged onto the public road.**
- (7) The parking spaces indicated on approved plan 2/3 shall be maintained at all times for vehicle parking, free of obstruction.**

- (8) The sightlines indicated on approved plan 2/3 shall be maintained clear of any obstruction to visibility exceeding 1 metre in height above carriageway level at all times.
- (9) There shall be no open storage of scrap or waste, vehicle parts, tyres or other materials on the site.
- (10) The extent of hardstanding on the site shall be limited to the area indicated on approved plan 2/3.
- (11) Within 3 months of the date of this decision, the area marked on approved plan 3/3 as a possible extension to finished yard level shall be increased in level to 44.20 AOD.

Reason(s):-

- (1) In recognition of the particular needs of this travelling family, and to ensure that the site is not occupied by people for whom these needs do not apply.
- (2) To control the scale and nature of the development, in the interests of local amenity.
- (3) The site is considered suitable for only one family.
- (4-5,9-10) To protect the visual amenity of the surrounding countryside.
- (6,8) To safeguard the interests of the users of the public highway.
- (7) To ensure that adequate car parking is provided.
- (11) To mitigate the potential for flood risk under a 200 year flow level increase by 20% to allow for climate change.

Informative(s):

- (1) If any unexpected ground conditions or suspect substances are encountered during any site works, the applicant should notify the Planning Authority immediately, as there would be a requirement to undertake further environmental risk assessment in relation to contaminated land.
- (2) The septic tank requires authorisation from SEPA under the Water Environment (Controlled Activities) (Scotland) Regulations (CAR) and a Building Warrant from Falkirk Council.

.....
For Director of Development Services

Date: 23 March 2009

FALKIRK COUNCIL

Subject: USE OF LAND FOR THE ESTABLISHMENT OF A PRIVATE GYPSY/TRAVELLER PITCH AND ANCILLARY PORTACABINS AND HARDSTANDING (DETAILED) AT GLENVIEW, OLD NORTHFIELD ROAD, DENNY FK6 6QY FOR MR FRANK STEWART AND FAMILY – P/08/0695/FUL (RETROSPECTIVE)
Meeting: PLANNING COMMITTEE
Date: 25 February 2009
Author: DIRECTOR OF DEVELOPMENT SERVICES

Local Members: Councillor Jim Blackwood
Councillor John McNally
Councillor Martin David Oliver
Councillor Alexander John Waddell

Community Council: Denny and Dunipace

Case Officer: Brent Vivian (Senior Planning Officer), ext 4935

1. DESCRIPTION OF PROPOSAL / SITE LOCATION

- 1.1 This application seeks detailed planning permission (in retrospect) for the use of land to establish a permanent private gypsy/traveller pitch on a free draining hardstanding area comprising a principal mobile/chalet caravan, a touring caravan, two other household caravans, a utility/laundry/toilet unit and a tool store. The pitch has already been established and is in the ownership of the applicant. Land adjoining the application site to the north and south is also in the ownership of the applicant.
- 1.2 The site is 1150m² in area and situated between Old Northfield Road and the M80 to the west of Dunipace. Bounding the eastern boundary of the site are mature trees and, at a lower level, the Avon Burn. Between the site and Old Northfield Road is planting and fencing. The land to the west of Old Northfield Road is open countryside and interspersed with dwellinghouses and farm buildings.
- 1.3 The site is described in the application form as a derelict field laid out and occupied as a gypsy/traveller pitch.

2. REASON FOR COMMITTEE CONSIDERATION

- 2.1 The proposal is contrary to the Development Plan and previous application (ref: 06/0782/FUL) to use the land as a private gypsy/traveller pitch was considered by the Regulatory Committee at its meeting in February 2007. This is detailed in section 3 of this report.

3. SITE HISTORY

- 3.1 Planning application ref: 06/0782/FUL for the use of land to establish a private gypsy/traveller pitch and a portacabin and hardstanding was refused by the Regulatory Committee in February 2007. The reasons for the refusal were:

“(1) The development is contrary to (a) Policy Rural 1 of the adopted Rural Local Plan and (b) Policies EQ19 and SC3 of the Falkirk Council Local Plan (Finalised Draft) as development in the countryside is only permitted in limited circumstances under these policies and the development does not satisfy any of these circumstances such that the development represents unjustifiable development in the countryside.

(2) Granting the development at this time would be premature pending (a) the outcome of the Falkirk Council Local Housing Strategy Update 2007 which is anticipated to include details and recommendations regarding the needs of gypsies/travellers within the Falkirk Council area and (b) the outcome of the emerging Falkirk Council Local Plan process to which there has been an objection on the grounds that it does not set out policies for dealing with applications for small privately owned gypsies/travellers sites”.

- 3.2 The Council's decision to refuse the application was subsequently appealed to the Scottish Government. The appeal Reporter found that the development was contrary to both the adopted Rural Local Plan and the Falkirk Council Local Plan (Finalised Draft), but acknowledged that neither addressed the needs of gypsies/travellers. He found there were some material considerations to support the appeal but others that did not. His overall conclusion was that the development was unacceptable due to potential flood risk from the Avon Burn and the development detracting from the visual amenity of the area.

4. CONSULTATIONS

- 4.1 The Roads and Development Unit has made recommendations to ensure adequate visibility at the existing access point and an adequate access construction. In addition, the Roads and Development Unit has accepted the Flood Risk Assessment submitted with the application.
- 4.2 The Environmental Protection Unit has requested the undertaking of a noise survey to determine the impact of transportation noise on the development and advised that an adequate risk assessment in relation to contaminated land would appear to have been undertaken.
- 4.3 Scottish Water has no objection to the application.
- 4.4 The Scottish Environment Protection Agency (SEPA) has no objection to the application on flood grounds but has noted that the principal mobile/chalet caravan may be at risk of flooding.

4.5 The Council's Travelling Persons Officer has previously commented, in respect of planning application ref: 06/0782/FUL, that:

- The applicant has a vast knowledge of the history of travelling people and is well known by other travellers in the area and on the Council site at Redding.
- The applicant has lived on Local Authority sites in the north of Scotland and on private sites and encampments in the Falkirk area.
- In Scotland a number of individual gypsy/traveller families are purchasing land to provide a family only environment to live in.
- This development permits the family to retain their traditional lifestyle and culture and gives an alternative to accommodation available at present for gypsy/travellers from Local Authorities and private site operators.

5. COMMUNITY COUNCIL

5.1 The Denny and Dunipace Community Council has objected to the application but has not outlined any reasons for this objection.

6. PUBLIC REPRESENTATION

6.1 Two objections have been received in respect of this application. One of these objections is for the same reasons as detailed for the previous application (ref: 06/0782/FUL). These reasons were:

- The development has been established illegally without planning authorisation.
- A septic tank has been installed without SEPA authorisation.
- The land was previously used for agriculture.
- The site is outwith the urban limit.
- The caravans are not in keeping with the residential properties in the area.
- The development has added to increased usage of a narrow countryside road (Old Northfield Road).

6.2 The other objection requests that the reasons for dismissal of the previous application (ref: 06/0782/FUL) by the Scottish Government Reporter be taken into consideration.

7. DETAILED APPRAISAL

When determining planning applications, the status of the Development Plan is emphasised in Section 25 of the Town and Country Planning (Scotland) Act 1997. This requires that:

“the determination shall be made in accordance with the plan unless material considerations indicate otherwise”.

Accordingly,

7a The Development Plan

Approved Falkirk Council Structure Plan

- 7a.1 The proposed development does not have any strategic implications and therefore the policies of the Falkirk Council Structure Plan are not considered to be relevant.

Adopted Rural Local Plan

- 7a.2 The application site is located in the Countryside under the adopted Rural Local Plan.

- 7a.3 Policy RURAL 1 ‘New Development in the Countryside’ states:

“That within the countryside (as defined in paragraph 3.19), there will be a general presumption against new development except in the following circumstances :-

- 1. Housing development absolutely essential to the pursuance of agriculture, forestry or other economic activity appropriate to a rural location. The occupation of new houses shall be limited to persons employed in agriculture as defined in Section 275(1) of the Town and Country Planning (Scotland) Act 1972, or to persons employed in forestry or other appropriate rural activities and the dependants of such persons.*
- 2. Small scale housing developments within the wooded policies of former country estates, where servicing costs will be met by the developer, where the development can be satisfactorily integrated into the landscape, where detailed development briefs have been drawn up by the District Council and provided that the proposed development does not lie within a site included in the “Inventory of Gardens and Designed Landscapes in Scotland”.*
- 3. On the Slamannan Plateau as indicated on the Policies and Proposals Map, single dwellinghouses developed in conjunction with significant tree planting schemes. Such proposals will be considered on merit with due regard to the provisions of the District Council’s “Guide to Tree Planting/Housing Proposals on Slamannan Plateau”.*
- 4. Appropriate infill development where a clear gap site exists which would not contribute to ribbon, backland or sporadic development forms.*
- 5. Industrial/business development where there is an overriding national or local need and a rural site is the only suitable location.*

6. *Development for tourism and countryside recreation purposes where the District Council is satisfied that the proposal requires a rural setting, is appropriate in terms of its type, scale and location and that it would enhance the image of the District. Proposals which accord with the District Council's Tourism Strategy are particularly welcomed.*
7. *Telecommunications development and development relating to the temporary use of land particularly for the working of minerals. Such proposals will be considered on merit, with due regard to the relevant specialised policies of the District Council.*

The scale, siting and design of those developments which are granted permission will be strictly controlled. Building designs compatible with the District Council's "Design Guide For Buildings In The Rural Areas" and sympathetic to vernacular architectural forms will be expected."

7a.4 Under this policy, new development in the countryside is only supported in limited circumstances. It is considered that the development does not satisfy any of these circumstances. The development therefore does not accord with this policy.

7a.5 Accordingly, the development does not accord with the Development Plan.

7b Material Considerations

7b.1 The material planning considerations in determining this application are national planning policy and guidance, relevant reports and guidance adopted by the Scottish Government in respect of gypsies/travellers, the Falkirk Council Local Plan Finalised Draft (Deposit Version), the planning history for the site, Falkirk Council's recent planning history for gypsy/traveller pitches, the consultation responses and the representations received.

National Planning Policy and Guidance

7b.2 Scottish Planning Policy 3: Planning for Homes (Revised 2008) states in paragraph 83 that:

"Planning Authorities should identify suitable locations for sites for Gypsies and Travellers and set out policies for dealing with planning applications for small privately owned sites".

7b.3 The Development Plan does not identify suitable locations for gypsies/travellers' sites or set out policies for dealing with applications for small privately owned gypsy/traveller sites. However, following the appeal decision on the previous application (ref: 06/0782/FUL), in response to representations to the emerging Local Plan and to satisfy the requirements of Scottish Planning Policy 3, a specific policy (Policy SC4A) has been included in the proposed Pre-Inquiry Modifications to the Falkirk Council Local Plan Finalised Draft (Deposit Version). This policy sets out specific guidance for dealing with small privately owned gypsy/traveller pitches. This is detailed in paragraphs 7b.23-7b.26 of this report.

7b.4 Scottish Planning Policy 7: Planning and Flooding states that new development should not take place if it would be at significant risk of flooding from any source or would materially increase the probability of flooding elsewhere. A precautionary approach is advocated whenever flooding is an issue. Areas with an annual probability of watercourse flooding above 0.5% (1:200) are characterised as having a medium to high risk of flooding. In this instance the gypsy/traveller pitch lies outwith the 0.5% (1:200) flood envelope and the development is acceptable under SPP7.

7b.5 SPP7 states that it is not national policy to add an additional allowance on for climate change above the 0.5% probability but planning authorities may do so if it can be justified. SEPA support a climate change allowance of 20% for residential properties. Climate change allowance in relation to this application is discussed in paragraphs 7b.13 - 7b.15.

Reports and Guidance Adopted by the Scottish Government

7b.6 These documents are:

- The Secretary of State's Advisory Committee on Scotland's Travelling People (ACSTP) Guidance Notes on Site Provision for Travelling People (GNSPTP), 1997, adopted by the Scottish Executive.
- The terms and recommendations of the ACSTP's Ninth and Final Report of the Advisory Committee on Scotland's Travelling People, 1998-1999, adopted by the Scottish Executive in 2000.
- The Scottish Parliament Equal Opportunities Committee 1st Report 2001, Inquiry into Gypsy Travellers and Public Sector Policies (IGTPSP), adopted by the Scottish Executive.

7b.7 The GNSPTP states at paragraph 2.3 that: *'Applications for planning permission from Travellers in respect of private sites should be sympathetically considered'*. Paragraph 2.4 states: *'The principal task continues to be the provision of long stay sites'*. Paragraph 3.1 states that: *'Site selection can be affected by the need to find the location which is least unacceptable to the settled community'*. Criteria for choosing a location include: accessibility; provision of services; the settled community; the nature of the site; employment; schools; community services; and provision for Gypsies/Travellers in neighbouring areas.

7b.8 The recommendations of the ACSTP's Ninth and Final Report, 1998-1999, place a duty on local authorities in the preparation and implementation of community plans, housing strategies and development plans to identify, assess and make explicit arrangements for the needs of gypsies/travellers. This report also suggests that applications by travellers for small sites should be treated as 'agricultural' rather than 'residential' in recognition that the type of accommodation required and the types of vehicles involved are more akin to an agricultural form of development.

7b.9 The IGTPSP stresses the rights to and security of a home, which should be defined to include sites which are home to gypsies/travellers, and notes the difficulties of travellers in obtaining planning permission for private sites.

7b.10 The Scottish Government Reporter for the appeal to the previous application (ref: 06/0782/FUL) noted that the ACSTP's GNSPTP and Ninth Report acknowledge the possible need for compromise of normal planning considerations. He stated that the fact that a site may be unsuitable for housing does not necessarily mean that it is unsuitable for a travellers' pitch.

Planning History for the Site

- 7b.11 The planning history for the site is detailed in section 3 of this report. As explained, the Council refused a previous application for a private gypsy/travellers pitch at this location (ref: 06/0782/FUL) contrary to officer recommendation, and an appeal against the Council's decision was dismissed. The reasons for the Council's refusal of the previous application are set out in section 3.
- 7b.12 In relation to the appeal, the Reporter agreed that the development subject to the appeal was contrary to both the adopted and the emerging Local Plan (as it stood at that time), although he acknowledged that neither addressed the needs of gypsies/travellers. With regard to part (a) of the second reason of the Council's refusal, the Falkirk Council Local Housing Strategy Update 2007 was available by the time of the appeal decision. This document refers to research carried out to explore the housing needs of minority ethnic communities, including gypsies/travellers. However, the Reporter concluded that it *"does not state that anything tangible has been done or is proposed to be done in the short term to resolve the issue"*. With regard to part (b) of the second reason of the Council's refusal, the Reporter concluded that the appeal should be determined on the basis of the material considerations which were relevant at the time. He therefore did not accept the Council's reasoning that granting the application would be premature pending the outcome of the emerging Falkirk Council Local Plan process. As detailed in paragraph 7b.3, the Council has, in May 2008, introduced a specific policy (Policy SC4A) in the proposed Pre-Inquiry Modifications to deal with small privately owned gypsy/traveller sites.
- 7b.13 The reasons for the appeal being dismissed related to two material considerations. These were (a) the potential for flood risk from the Avon Burn and (b) the development detracting from the visual amenity of the area. In respect of flood risk, the Reporter favoured the more 'cautious' approach taken by SEPA and the Council's consultants in consideration of the Flood Risk Assessment submitted as part of the appeal. Under this approach, the 200 year flow level increased by 20% to allow for climate change was considered, and it was concluded that at this flow level the majority of the application site would flood (although floor levels could be set above flood levels).
- 7b.14 The Roads and Development Unit, as advised by its consultants, and SEPA do not object, on flood grounds, to the current application. This is for two reasons. First, the application site has been reduced in area to include only the hardstanding area utilised for the gypsy/traveller pitch. The previous application included adjoining land owned by the applicant which is lower lying than the hardstanding area, thereby leading to the conclusion that the majority of the land under consideration (and assumed to potentially house caravans) was at risk of flooding. Second, the Council's consultants have, since the appeal decision, accepted the alternative climate change allowance of 5% proposed in the FRA as being a reasonable compromised figure based on the lifespan of the development being predominantly mobile wheeled trailers and caravans. In other words, flooding of the site would, in theory, be unlikely within the design life of the caravans. SEPA has accepted the reasonableness of the compromised figure in this instance, and therefore has not objected to the application on flood grounds.

- 7b.15 Notwithstanding this, granting the application would potentially allow for replacement caravans and it is considered, under a precautionary approach, that the caravans should be free of flood risk from a 200 year flow level increased by 20% to allow for climate change. In that regard, the applicant has agreed to raise the level of all ground housing the caravans to the maximum flood level (200 year plus 20%) or temporarily relocate the affected caravans outwith the maximum flood level area when required. The affected caravans are the principal mobile/chalet caravan and part of one of the touring caravans. The proposal to raise ground level is considered to be the more appropriate response. The depth of land raising would not exceed 190mm, which is considered to be minor. This matter could be the subject of a condition of any approval of the application.
- 7b.16 With regard to visual amenity, the Reporter made specific reference to the unattractive portacabin on the site. This portacabin has now been replaced with a more modest utility unit and tool store, coloured green, to blend in with the tree backdrop. In addition, a detailed landscape specification has been submitted to soften and screen the development from the adjoining road, albeit that the new planting would take time to mature to provide full screening. Provided the site layout and planting is undertaken in accordance with the layout and landscaping plan submitted with the application, and the site is maintained in a tidy state, it is considered that the development would not detract from the visual amenity of the area.

Falkirk Council Recent Planning History for Gypsy/Traveller Sites

- 7b.17 Planning application ref: 06/0411/FUL for the use of land for the establishment of a gypsy/traveller pitch at land to the south of Thorndale Gardens, Allandale, was also refused by the Regulatory Committee at its meeting of 28 February 2007 contrary to officer recommendation. A subsequent appeal against the Council's decision to refuse the application was upheld. In the case of the appeals for both the Old Northfield Road site (ref: 06/0782/FUL) and the Allandale site (ref: 06/0411/FUL), the Reporter gave significant weight to the Scottish Government adopted reports and guidance for gypsies/travellers, which promote applications for private sites being sympathetically considered. The reason planning application ref; 06/0782/FUL was dismissed on appeal whilst the appeal for planning application ref: 06/0411/FUL was successful related to site specific considerations. These considerations and how they have been addressed in the current application are detailed in paragraphs 7b.13 and 7b.16.

The Falkirk Council Local Plan Finalised Draft (Deposit Version)

- 7b.18 The site is located within the Countryside under the Falkirk Council Local Plan Finalised Draft (Deposit Version). The Deposit Version has been amended, in April 2008, to incorporate Proposed Pre-Inquiry Modifications.

- 7b.19 Policy EQ19 - 'Countryside' states:

“(1) The Urban and Village Limits represent the desirable limit to the expansion of settlements for the period of the Local Plan. Land outwith these boundaries is designated as countryside and will be subject to the detailed policies for specific uses indicated in Table 3.3. Development proposals in the countryside for uses not covered by these policies will only be permitted where:

- *it can be demonstrated that they require a countryside location;*
- *they constitute appropriate infill development; or*

- *they utilise suitable existing buildings.*
- (2) *In circumstances where development meets the relevant countryside policy criteria, the scale, siting and design of development will be strictly controlled to ensure that there is no adverse impact on the character of the countryside. In particular:*
- *the siting should be unobtrusive, making use of natural features to integrate development into the landform and avoiding skylines;*
 - *building design should be sympathetic to vernacular building styles and comply with the design principles contained within the Council's 'Design Guide for Buildings in the Rural Areas'; and*
 - *boundary and curtilage treatments should be sympathetic to the rural area, with a preference for stone walling and hedging using native species."*

7b.20 As the site is located outwith the urban limit, the development is subject to the detailed policies for specific uses indicated in Table 3.3 or alternatively to the three criteria set out in Section (1) above, if the development is not covered by the specific policies. In this instance, none of the specific uses indicated in Table 3.3 cover a gypsy/traveller site. In order to accord with this policy, compliance with the three criteria set out in Section (1) is therefore required. In this instance the only relevant criterion is considered to be whether it can be demonstrated that a countryside location is required. Consideration of this is guided by the terms of the Advisory Committee on Scotland's 'Travelling Peoples' (ACSTP) Ninth Report, 1998-1999, adopted by the Scottish Executive in 2000, which suggests that applications for small sites should be treated as 'agricultural' rather than 'residential' in recognition of the type of accommodation required and the types of vehicles involved.

7b.21 With regard to Section 2 of this policy, it is considered that the development would not have any adverse impact on the character of the countryside provided the site is laid out and landscaped in accordance with the submitted plan.

7b.22 Having regard to the guidance contained in the ACSTPs' Ninth Report it is considered that the development accords with this policy.

7b.23 Policy SC4A - 'Gypsy / Travellers' Sites' states:

"Proposals for small privately-owned sites to accommodate gypsy / travellers will be permitted where:

- (1) *The site satisfies policies in the Local Plan relating to the protection of the built and natural heritage (EQ12-EQ30) and the protection of the public open space (SC12);*
- (2) *The site can be appropriately landscaped, such that there will be no adverse effect on the character, appearance and amenity of the area;*
- (3) *The site affords an appropriate level of residential amenity and access to community facilities; and*
- (4) *Access, parking and other servicing can be provided to a satisfactory standard, and the site is not at risk from flooding, in terms of Policy ST12."*

7b.24 This policy has been introduced by the Council into the emerging Local Plan as a proposed Pre-Inquiry Modification in response to representations and the requirements of Scottish Planning Policy 3: Planning for Homes.

- 7b.25 Policy SC4A sets out 4 criteria for considering applications for small privately owned gypsy/traveller sites. It is considered that the development accords with the general terms of these criteria. In, particular, implementation of the site layout and landscape proposals would ensure there is no adverse effect on the character of the area. Whilst the development is subject to noise from the M80, it is considered that an acceptable level of amenity is achieved for the nature of the use. As acknowledged in the ACSTPs' Ninth Report, there may be the need for compromising of normal planning considerations. In this instance, this compromise is in relation to noise. The site is conveniently located to community facilities at Denny and Dunipace, and there are no access, parking or servicing issues that cannot be addressed by conditions of any grant of the application. The flood risk to the gypsy/traveller pitch is considered to be addressed, for the reasons detailed in this report. The development is therefore considered to accord with this policy.
- 7b.26 Policies SC4A and EQ19 have been objected to in the Local Plan review process on the grounds that the specific uses provided for in the countryside, as detailed in Table 3.3, do not include small privately owned gypsy/traveller pitches. The objector argues that a gypsy/traveller applicant should not have to demonstrate that a countryside location is required, as the countryside is a natural and appropriate location for this type of use.
- 7b.27 Policy ST12 - 'Flooding' states:
- "In areas where there is significant risk of flooding, there will be a presumption against new development which would be likely to be at risk, would increase the level of risk for existing development or would be likely to require high levels of public expenditure on flood protection works. Applicants will be required to provide information demonstrating that any flood risks can be adequately managed both within and outwith the site."*
- 7b.28 The issue of flooding has been discussed in detail in paragraphs 7b.13 - 7b.15. As explained, it is considered that the application site would not be at risk of flooding subject to minor land raising. The development would not increase the level of flood risk to other development or require high levels of public expenditure on flood protection works. The development is therefore considered to accord with this policy.

Consultation Responses

- 7b.29 A summary of the consultation responses is set out in paragraph 4.
- 7b.30 The matters raised by the Roads and Development Unit in relation to visibility and access construction could be the subject of conditions of any grant of the application. Flood risk issues have been adequately addressed and SEPA has no objection on flood grounds.
- 7b.31 The request by the Environmental Protection Unit for a Noise Survey is not considered to be necessary in this instance as it is accepted that an adequate level of amenity is achieved for the nature of the use.
- 7b.32 The comments of the Council's Travelling Persons Officer in respect of the previous application (ref: 06/0782/FUL) are noted.

Representations

7b.33 The concerns raised in the objections to the application have been summarised in paragraph 6 of this report.

7b.34 With regard to these concerns, the following comments are considered to be relevant:

- It is legitimate for the applicants to apply for retrospective planning permission to seek to authorise their development.
- The applicant has advised that the specific location of the septic tank and soakaway was determined on the basis of advice on site by SEPA officials. The applicant has indicated that authorisation from SEPA under the Water Environment (Controlled Activities) (Scotland) Regulations (CAR) and securing of a Building Warrant for the septic tank would be sought on obtaining planning permission.
- Conditions would be imposed on any grant of the application to ensure the site is maintained in a tidy condition and to ensure adequate screening thereby ensuring that the development does not detract from the visual amenity of the area.
- Conditions would be imposed on any grant of the application to limit the scale of the development to an acceptable level and to ensure satisfactory access and parking arrangements are achieved, thereby alleviating potential road safety concerns.
- The reasons for the dismissal of the previous application (ref: 06/0782/FUL) have been taken into account in this report.

7c Conclusion

7c.1 This application, for the use of land to establish a small privately owned gypsy/traveller site, has been assessed in this report as contrary to the Development Plan. The Development Plan does not, however, satisfy the requirements of Scottish Planning Policy 3: Planning for Homes, which states that Planning Authorities should set out policies for dealing with planning applications for small privately owned gypsy/traveller sites.

7c.2 This report sets out a number of material considerations which it is considered give support to the application. These include Scottish Government adopted reports and guidance for Scotland's gypsies/travellers which suggest that applications for private sites should be sympathetically considered, and the Falkirk Council Local Plan Finalised Draft (Deposit Version) as amended by Proposed Pre-Inquiry Modifications, which introduces a specific policy (Policy SC4A) to consider small privately owned gypsy/traveller pitches. The application is considered to accord with this policy, for the reasons detailed in this report. In addition, the concerns which led to the appeal against the Council's refusal of the previous application (ref: 06/0782/FUL) being dismissed, are considered to have been addressed in this current application.

7c.3 In conclusion, it is considered that the weight of material considerations support the current application and justify setting aside the terms of the Development Plan in this instance. The application is therefore recommended for approval subject to the imposition of appropriate conditions.

- 7c.4 It is considered that the proposal does not constitute a significant departure to the Development Plan due to the nature and scale of the use and as such would not require to be referred to Scottish Ministers.
- 7c.5 As the gypsy/traveller pitch has already been established, if the Planning Committee is minded to refuse to grant planning permission, it would be necessary for the Director of Development Services to give consideration to the authorisation of enforcement action to have the caravans, ancillary units and the hardstanding removed.

8. RECOMMENDATION

8.1 It is recommended that planning permission be granted subject to the following conditions:-

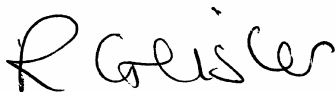
- (1) This permission shall enure for the benefit of the applicants and their dependants within the travelling/gypsy community only.
- (2) The number of caravans occupying the site at any one time shall not exceed four.
- (3) No more than one caravan occupying the site at any one time shall be used by people who are not members of the applicants' family.
- (4) Within 3 months of the date of this decision, the application site shall be laid out in full accordance with approved plan 2/3 except as otherwise indicated in condition (5).
- (5) The planting indicated on approved plan 2/3 shall be fully implemented by the end of the first planting season following the date of this decision.
- (6) The bellmouth access indicated on approved plan 2/3 shall be maintained in a manner to ensure that surface water run off and loose material is not discharged onto the public road.
- (7) The parking spaces indicated on approved plan 2/3 shall be maintained at all times for vehicle parking, free of obstruction.
- (8) The sightlines indicated on approved plan 2/3 shall be maintained clear of any obstruction to visibility exceeding 1 metre in height above carriageway level at all times.
- (9) There shall be no open storage of scrap or waste, vehicle parts, tyres or other materials on the site.
- (10) The extent of hardstanding on the site shall be limited to the area indicated on approved plan 2/3.
- (11) Within 3 months of the date of this decision, the area marked on approved plan 3/3 as a possible extension to finished yard level shall be increased in level to 44.20 AOD.

Reason(s):-

- (1) In recognition of the particular needs of this travelling family, and to ensure that the site is not occupied by people for whom these needs do not apply.
- (2) To control the scale and nature of the development, in the interests of local amenity.
- (3) The site is considered suitable for only one family.
- (4-5,9-10) To protect the visual amenity of the surrounding countryside.
- (6,8) To safeguard the interests of the users of the public highway.
- (7) To ensure that adequate car parking is provided.
- (11) To mitigate the potential for flood risk under a 200 year flow level increase by 20% to allow for climate change.

Informative(s):

- (1) If any unexpected ground conditions or suspect substances are encountered during any site works, the applicant should notify the Planning Authority immediately, as there would be a requirement to undertake further environmental risk assessment in relation to contaminated land.
- (2) The septic tank requires authorisation from SEPA under the Water Environment (Controlled Activities) (Scotland) Regulations (CAR) and a Building Warrant from Falkirk Council.



.....
Director of Development Services

Date: 18 February 2009

LIST OF BACKGROUND PAPERS

- 1. Approved Falkirk Council Structure Plan
- 2. Adopted Rural Local Plan
- 3. Falkirk Council Local Plan Finalised Draft (Deposit Version)
- 4. Scottish Planning Policy 3 (Planning for Housing)

5. The Secretary of State's Advisory Committee on Scotland's Travelling People (ACSTP) Guidance Notes on Site Provision for Travelling People (GNSPTP), 1997
6. The terms and conditions of the ACSTP Ninth and Final Report of the Advisory Committee on Scotland's Travelling People, 1998-1999
7. The Scottish Parliament Equal Opportunities 1st report 2001, Enquiry into Gypsy Travellers and Public Sector Policies (IGTPSP)
8. Application file ref's: 06/0782/FUL and 06/0411/FUL
9. Letter of representation from Mr J A McMaster, Old Quarter House, Denny FK6 6QZ
10. Letter of representation from Mr R S Manson, Low Quarter Mill Cottage, Denny FK6 6QY

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