

**FALKIRK COUNCIL**

**Subject: ERECTION OF DWELLINGHOUSE AND DETACHED GARAGE  
(DETAILED) AT PLOT 2 AT DENOVAN MAINS FARM, DENNY FOR  
MUSTO PROPERTIES LTD - P/09/0174/FUL**  
**Meeting: PLANNING COMMITTEE**  
**Date: 26 August 2009**  
**Author: DIRECTOR OF DEVELOPMENT SERVICES**

**Local Member:** 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 17 June 2009 (a copy of the previous report is appended), when it was agreed to continue consideration to allow a site visit to be carried out. This visit took place on 5 August 2009.
2. The Development Manager confirmed at the site meeting that enforcement action is being taken in respect of breach of access related conditions of the original planning permission granted for the steading conversion and new dwellinghouses. Discussion is underway between the applicant and planning officials, with a view to resolving this matter.
3. The agent for the applicant advised that separate planning permission has previously been granted for a dwellinghouse on Plot 2 and considers that the applicant should not be held responsible for the lack of progress on access related matters as required by the original permission. The applicant accepts the recommended condition requiring the submission of a contaminated land assessment for Plot 2.
4. Members of the Planning Committee and Local Members were heard in relation to the application. Members noted concerns at the lack of progress regarding access provision and land contamination assessment. Members also noted that the overall development had been originally granted to enable improvements to the adjacent farmhouse buildings which are listed.

**5. Recommendation**

**5.1 It is recommended that detailed planning permission be granted subject to the following conditions:-**

- (1) The development to which this permission relates must be begun within five years from the date of this permission.**
- (2) Before the development commences, samples of all proposed external finishing materials for the buildings, hardsurfaces and retaining walls shall be submitted to and approved in writing by this Planning Authority. Thereafter the development shall be completed in accordance with the approved details.**
- (3) Before the development commences, a contaminated land assessment shall be submitted to and approved in writing by this Planning Authority. Before the dwellinghouse is occupied, any necessary remedial works to make the ground safe shall be carried out in accordance with an approved remediation strategy and any necessary remediation completion reports/validation certificates shall be submitted to and approved in writing by this Planning Authority.**
- (4) Notwithstanding the provisions of the Town and Country Planning Act 1992 (or any order revoking and re-enacting that order), no development within classes 1-7 shall be undertaken without the express prior approval of this Planning Authority.**

**Reason(s):**

- (1) To comply with Section 58 of the Town and Country Planning (Scotland) Act 1997.**
- (2) To safeguard the visual amenity of the area.**
- (3) To ensure the ground is suitable for the development.**
- (4) To retain proper control over development of the site in the interests of visual amenity and the setting of a listed building.**

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**Director of Development Services**

**Date: 18<sup>th</sup> August 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)

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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(DETAILED) AT PLOT 2 AT DENOVAN MAINS FARM, DENNY FOR  
MUSTO PROPERTIES LTD - P/09/0174/FUL  
**Meeting:** PLANNING COMMITTEE  
**Date:** 17 June 2009  
**Author:** DIRECTOR OF DEVELOPMENT SERVICES

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

**Community Council:** Denny and Dunipace

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

**1. DESCRIPTION OF PROPOSAL / SITE LOCATION**

- 1.1 The application seeks detailed planning permission for the erection of a one and a half storey detached dwellinghouse and a detached garage.
- 1.2 The application site is described as plot 2 and lies within the envelope of an existing group of buildings at Denovan Mains Farm. Adjoining the site are a steadings (Category B Listed), a former stables block converted to a dwellinghouse (plot 1) and a new dwellinghouse (plot 3) currently under construction. Beyond these buildings is open countryside.

**2. REASON FOR COMMITTEE CONSIDERATION**

- 2.1 An almost identical proposal was subject to planning application ref: P/07/0638/FUL which was refused by the then Regulatory Committee at its March 2008 meeting. The only difference between the current application and the previously refused application is the deletion of windows considered by the Development Management Unit to give rise to privacy issues.

**3. SITE HISTORY**

- 3.1 Denovan Mains Farm has an extensive planning history. In 2002, planning application ref: F/2001/0578 was granted for conversion of the listed farm buildings to form four dwellinghouses and for the erection of three dwellinghouses (one of these being the conversion of the former stables).

- 3.2 In 2003, planning application ref: F/2003/0431 was granted for alterations and extension to the former stables to form a dwellinghouse (plot 1). This dwellinghouse is now occupied.
- 3.3 In 2006, planning application ref: 05/0426/FUL was granted for the erection of a dwellinghouse (plot 2). The permission has not, to date, been implemented.
- 3.4 In 2006, planning application ref: 06/0050/FUL was granted for the erection of a dwellinghouse (plot 3). This dwellinghouse is nearing completion.
- 3.5 In 2008, the Regulatory Committee refused planning application ref: P/07/0638/FUL for the erection of a dwellinghouse and detached garage at plot 2. This decision was contrary to officer recommendation to approve the application subject to appropriate conditions. The reasons for refusing the application were:
- (1) In the interest of road safety. The construction of a dwellinghouse is premature until such time as the required vehicular access to the site is completed and the existing vehicular access is stopped up.
  - (2) The applicant has failed to satisfactorily demonstrate that potential ground contamination has been identified and can be remediated to a satisfactory extent.

#### **4. CONSULTATIONS**

- 4.1 The Roads Development Unit has requested that conditions of the original planning permission (ref: F/2001/0578) relating to formation of a new access from Denovan Road and closure of the existing access be imposed as conditions of any approval of the current application. The new access and ancillary works have been started but not completed.
- 4.2 Scottish Water has no objection to the application.
- 4.3 The Environmental Protection Unit has requested the undertaking of a Contaminated Land Assessment to establish if contamination is present on the site.
- 4.4 Historic Scotland has no comments.

#### **5. COMMUNITY COUNCIL**

- 5.1 The Denny and District Community Council has not made any representations.

#### **6. PUBLIC REPRESENTATION**

- 6.1 No public representations to the application have been received.

## 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 Policy ENV.1 ‘Countryside and Protected Areas’ states:

*“(1) There is a general presumption against development in areas defined as countryside, unless it can be demonstrated that a countryside location is essential or is an appropriate form of agricultural diversification. Where it is established that a countryside location is essential, development proposals will also be assessed in relation to Local Plan policies appropriate to specific protected areas as defined generally by Schedules ENV.1 and ENV.3.*

*(2) The policies applicable to countryside and protected areas within it, together with the detailed boundaries of each area, will be set out in Local Plans.”*

7a.2 This policy sets out a general presumption against development in the countryside unless it has been demonstrated that a countryside location is essential. In this instance it has not been demonstrated that a countryside location is essential for the proposed development. The application is therefore contrary to this policy.

#### ***Adopted Rural Local Plan***

7a.3 The application site lies within the countryside under the adopted Rural Local Plan and therefore the countryside policies apply.

7a.4 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. 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”.*

3. *Appropriate infill development where a clear gap site exists which would not contribute to ribbon, backland or sporadic development forms.*
4. *Industrial/business development where there is an overriding national or local need and a rural site is the only suitable location.*
5. *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.*
6. *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.5 This policy presumes against development in the countryside except in limited circumstances, as detailed in the policy. In this instance it has not been demonstrated that the proposed dwellinghouse is absolutely essential to the pursuance of an economic activity requiring a rural location (criterion 1). The only other criterion of potential relevance is criterion 3. Under this policy the proposed development in strict terms could be considered backland development as the application site does not have a road frontage. The proposed development therefore does not accord with this policy.

7a.6 Accordingly, the proposal does not accord with the Development **Plan**.

## **7b Material Considerations**

7b.1 The material considerations in respect of this application are the Falkirk Council Local Plan Finalised Draft (Deposit Version), the planning history for the site, the consultation responses, the design and layout of the proposed development and potential impact on residential amenity.

### ***The Falkirk Council Local Plan Finalised Draft (Deposit Version)***

7b.2 The application site lies within a rural housing opportunity area (H.RUR2) under the Falkirk Council Local Plan Finalised Draft (Deposit Version). This plan indicates that H.RUR2 has a capacity of 7 units, which reflects the number of units granted under the original planning permission (ref: F/2001/0578).

7b.3 The proposed development is of plot 2, which forms one of the two new build plots approved under the original planning permission. On this basis the proposed development accords with H.RUR2.

7b.4 Policy EQ14 'Listed Buildings' states:

*"The Council will seek to preserve the character and appearance of listed buildings. Accordingly:*

- (1) Development affecting a listed building, or its setting, shall preserve the building or its setting, or any features of special architectural or historic interest which it possesses. The layout, design, materials, scale, siting and use of any development shall be appropriate to the character and appearance of the listed building and its setting.*
- (2) Proposals for the total or substantial demolition of a listed building will only be supported where it is demonstrated beyond reasonable doubt that every effort has been exerted by all concerned to find practical ways of keeping it. This will be demonstrated by inclusion of evidence to the Council that the building:*
  - has been actively marketed at a reasonable price and for a period reflecting its location, condition and possible viable uses without finding a purchaser; and*
  - is incapable of physical repair and re-use through the submission and verification of a thorough structural condition report; and*
- (3) RCAHMS shall be formally notified of all proposals to demolish listed buildings to enable features to be recorded."*

7b.5 The layout of the proposed development is considered to be appropriate to the character of the listed B steading on the property. This is explained in more detail in paragraph 7b.9 of this report.

7b.6 The design of the proposed dwellinghouse reflects traditional Scottish vernacular in terms of massing, scale and form, whilst incorporating some contemporary design elements, and the proposed external finishes are predominantly traditional, in keeping with the setting of the listed building.

7b.7 The proposed development therefore accords with this policy.

### ***Planning History***

7b.8 As detailed previously in the report, planning permission ref: F/2001/0578 was granted in 2002 for the conversion of the listed farm building at Denovan Mains Farm to form 4 dwellinghouses and the erection of three additional dwellinghouses. Subsequent to this, stand alone applications for plots 1, 2 and 3 have been granted for amendments to the proposals for these plots granted under the original permission. The conversion of the stables (plot 1) has now been completed and the new build on plot 3 is nearing completion. Plot 2 has an extant planning permission and the current application seeks to change the development for this plot.

7b.9 Under the original planning permission, plots 1, 2 and 3 were arranged around a courtyard to reflect the character of the listed steading on the property. Whilst the courtyard concept has been compromised by the varying levels in this area, particularly between plots 1 and 2, the current application seeks, as far as practicable, to adhere to the original concept.

7b.10 In view of these comments, it is accepted that the current proposal seeks to adhere to the original courtyard concept and is essentially a change of house type on a previously approved plot. These considerations are strong material considerations in support of the application.



- 7b.11 The application for plot 2 considered by the Regulatory Committee in 2008 was refused due to issues surrounding the lack of progress in upgrading the new vehicular access and the failure to address potential contaminated land issues. In accordance with the previous report to committee, it remains the view that these issues should be addressed with reference to conditions of the original planning permission (ref: F/2001/0578). Enforcement action is currently being pursued in relation to breach of the access and contaminated land related conditions of this permission. An update regarding this matter will be provided at the Committee Meeting.

### ***Consultation Responses***

- 7b.12 The consultation responses have been summarised in section 4 of this report. The matters raised by the Roads Development Unit and the Environmental Protection Unit could be the subject of conditions of any grant of the application.

### ***Design and Layout***

- 7b.13 The design and layout of the proposed development are supported for the reasons detailed in this report. These aspects are considered to be material considerations in favour of the proposed development.

### ***Impact on Residential Amenity***

- 7b.14 The courtyard arrangement of the dwellinghouses at this location raises the potential for impacts on residential amenity. In particular, a material impact on the sunlighting and daylighting of plot 3 is unavoidable given the proximity of the proposed dwellinghouse to this plot. However, this impact is considered acceptable in this instance in order to realise the original vision of a courtyard development. There are constraints to easing the proposed dwellinghouse away from the dwellinghouse on plot 3 due to a steep fall in levels.

## **7c Conclusion**

- 7c.1 This application, for the erection of a dwellinghouse and detached garage, does not comply with the Development Plan as it has not been demonstrated that it requires a countryside location. However, there are considered to be material planning considerations to justify setting aside the terms of the Development Plan in this instance. The application accords with the Falkirk Council Local Plan Finalised Draft (Deposit Version), which designates the site as within a rural housing opportunity area, there is an extant permission for the erection of a dwellinghouse on the application site, and the design and layout of the proposed dwellinghouse reflects the original approval for a courtyard arrangement at this location and respects the character and the setting of the listed building on the property.
- 7c.2 Enforcement action is currently being pursued against the breach of conditions of the original planning permission (ref: F/2001/0578) relating to vehicular access and contaminated land. As previously advised, it is considered that issues surrounding these matters should not impact on determination of this application and the issues as they apply to this proposal could be the subject of conditions.
- 7c.3 The application is therefore recommended for conditional approval. Conditions are recommended to enable the dwellinghouse to be constructed but not occupied prior to satisfactory completion of the new vehicular access.

## 8. RECOMMENDATION

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

- (1) The development to which this permission relates must be begun within five years from the date of this permission.
- (2) Before the development commences, samples of all proposed external finishing materials for the buildings, hardsurfaces and retaining walls shall be submitted to and approved in writing by this Planning Authority. Thereafter the development shall be completed in accordance with the approved details.
- (3) Before the development commences, a contaminated land assessment shall be submitted to and approved in writing by this Planning Authority. Before the dwellinghouse is occupied, any necessary remedial works to make the ground safe shall be carried out in accordance with an approved remediation strategy and any necessary remediation completion reports/validation certificates shall be submitted to and approved in writing by this Planning Authority.
- (4) Before the dwellinghouse is occupied, the existing access shall be closed up and the new access indicated in RED on approved plan 01 shall be formed to a width of 5.5 metres with a 6 metre radii and with the bellmouth constructed in accordance with the Council's Design Guidelines and Construction Standards within the Falkirk Area, October 1997 as amended January 2000. A bound surface for the access shall be provided.
- (5) Before the dwellinghouse is occupied, a 4.5 x 140 metre visibility splay shall be provided to the north from the new access and a splay of 4.5 metres depth shall be provided in a southerly direction to the outside of the bend in Denovan Road, within which there shall be no obstruction in visibility above 1 metre in height of the carriageway level.
- (6) Before the dwellinghouse is occupied, the private road and driveway to serve the proposed dwellinghouse shall be constructed with a maximum gradient of 1:10 and in a manner to ensure that no surface water or loose material is discharged onto the public road.
- (7) Notwithstanding the provisions of the Town and Country Planning Act 1992 (or any order revoking and re-enacting that order), no development within classes 1-7 shall be undertaken without the express prior approval of this Planning Authority.

Reason(s):

- (1) To comply with Section 58 of the Town and Country Planning (Scotland) Act 1997.
- (2) To safeguard the visual amenity of the area.
- (3) To ensure the ground is suitable for the development.

- (4-6) To safeguard the interests of the users of the public highway.
- (7) To retain proper control over development of the site in the interests of visual amenity and the setting of a listed building.

R Geisler

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Director of Development Services

Date: 10 June 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)

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

## Planning Committee

## Planning Application Location Plan

**P/09/0174/FUL**

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



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