

FALKIRK COUNCIL

Subject: DEVELOPMENT OF LAND FOR RESIDENTIAL PURPOSES AT LAND TO THE NORTH EAST OF BURNSIDE, VELLORE ROAD, MADDISTON, FOR MANOR FORREST LTD (P/09/0457/OUT)

Meeting: PLANNING COMMITTEE

Date: 2 December 2009

Author: DIRECTOR OF DEVELOPMENT SERVICES

Local Members: Councillor Gordon Hughes
Councillor Stephen Fry
Councillor John McLuckie

Community Council: Maddiston

Case Officer: Kevin Brown (Planning Officer) ext 4701

1. DESCRIPTION OF PROPOSAL / SITE LOCATION

- 1.1 This outline application proposes an area of farmland (approximately 1.2 hectares) to the east of Maddiston, accessed from Vellore Road, to be developed for residential purposes.

2. REASON FOR COMMITTEE CONSIDERATION

- 2.1 Application called in by Councillor McLuckie.

3. SITE HISTORY

- 3.1 None relevant to this application.

4. CONSULTATIONS

- 4.1 Transport Planning Unit have raised a number of concerns in relation to this application in conjunction with other proposed developments off Vellore Road and have requested that a Transport Assessment be carried out to assess the cumulative impacts of these developments.
- 4.2 Roads Development Unit have no objections however they have requested that a flood risk assessment and drainage impact assessment be carried out. In addition to this, the Unit has supported the request by the Transport Planning Unit for the access strategy for this site to be considered in tandem with applications P/09/0527/OUT and P/09/0483/OUT on adjacent sites.

- 4.3 Scottish Water has no objections.
- 4.4 Environmental Protection Unit has no objections however a request has been made for a contaminated land survey to be carried out to establish if contamination is present on the site. This could adequately be covered by way of a condition attached to any consent given.
- 4.5 Scottish Environment Protection Agency have objected to this proposal on the grounds of lack of information provided in relation to flood risk.
- 4.6 Scottish Natural Heritage (SNH) have reserved its position in light of the lack of information provided in relation to European Protected Species. In particular, SNH has identified that the application site includes areas that have the potential to act as habitats for Bats and Otters and has cited Water Voles and Badgers as other species of importance that need to be considered.

5. COMMUNITY COUNCIL

- 5.1 Maddiston Community Council have not commented on this application.

6. PUBLIC REPRESENTATION

- 6.1 In the course of the application, 1 contributor submitted a letter to the Council. The salient issues are summarized below:-
- Possible land ownership dispute and concerns in relation to the proposal being contrary to the terms of the Development Plan.

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

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 A countryside location is not considered essential for this form of development and as such the proposal is contrary to the terms of Policy ENV.1 of the Falkirk Council Structure Plan.

Polmont Local Plan

- 7a.3 Policy POL 11.1 'New Development in the Countryside' states:

"Within the countryside (i.e. outwith the urban limit), there will be a general presumption against new development except in the following circumstances:

- (i) 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 277(1) of the Town and Country Planning (Scotland) Act 1997, or to persons employed in forestry or other appropriate rural activities and the dependants of such persons;*
- (ii) appropriate infill development where a clear gap site exists which would not contribute to ribbon, backland or sporadic development forms;*
- (iii) industrial/ business development where there is an overriding national or local need and a rural site is the only suitable location;*
- (iv) development for tourism and countryside recreation purposes where the 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 area. Proposals which accord with the Council's Economic Development Strategy are particularly welcomed; and*
- (v) 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 Council.*

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

- 7a.4 The proposed development site lies outwith the urban limit as defined in the Development Plan and there is no evidence to suggest that a countryside location is essential. The development would not be an appropriate form of agricultural diversification or be essential to the pursuance of agriculture, forestry or other economic activity appropriate to a rural location. The site is not considered to form an appropriate infill development. With these comments in mind it is clear that the development is contrary to the terms of Policy ENV 1 of the Falkirk Structure Plan and Policy POL 11.1 of the Polmont and District Local Plan.

- 7a.5 Policy POL 8.5 'Ecological Sites' states:

"In order to protect and conserve species, habitats and other natural features of importance:

- (i) there will be an overriding presumption against development which would be likely to adversely affect Natura 2000 sites, designated or proposed under the EC Habitats and Wild Birds Directives, wetlands of international importance designated under the Ramsar convention, existing or proposed Sites of Special Scientific Interest, or sites which support species protected by specific legislation;*

- (ii) *development likely to adversely affect Local Nature Reserves, Wildlife Sites, Sites of Importance for Nature Conservation, wildlife corridors and other sites considered to be of regional or local nature conservation value, will not be permitted unless it can be clearly demonstrated that there are reasons for the proposals which clearly outweigh the need to safeguard the intrinsic nature conservation value of the site or feature and there are no reasonable alternative means of meeting the development need;*
- (iii) *where development is to be approved which could affect any site of significant nature conservation value, appropriate measures will be required to conserve, as far as possible, the site's nature conservation interest and to provide for replacement habitats or features where damage is unavoidable;*
- (iv) *consent will not normally be given to development likely to adversely affect species which are specially protected under the Wildlife and Countryside Act 1981, as amended (Schedules 1.5 and 1.6), or the Protection of Badgers Act 1992;*
- (v) *in partnership with relevant interests, the Council will develop management proposals to conserve the nature conservation interest and enhance the biodiversity of sites of local value; and*
- (vi) *the Council will designate Local Nature Reserves as appropriate, in consultation with communities, local wildlife groups and statutory bodies."*

7a.6 The site encompasses part of the Maddiston SINC and, following the consultation response from SNH, it would appear that insufficient information has been provided to demonstrate that the proposed development would not result in an adverse impact on the ecology of the area, particularly in reference to European Protected Species. The proposal is therefore contrary to the terms of policy POL 8.5 of the Polmont and District Local Plan.

7a.7 Policy POL 8.8 '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 measures to mitigate the effects of flooding both within and outwith the site."

7a.8 The site has been identified as being at risk from flooding. However, no information has been submitted to demonstrate that the development of the surrounding area would not be adversely affected and as such, the development is contrary to the terms of policy POL 8.8 of the Polmont and District Local Plan.

7a.9 Policy POL 6.4 'Roads and New Development' states:

"Road layout, access and parking provision in new developments should generally conform with the Council's standards entitled 'Design Guidelines and Construction Standards for Roads in the Falkirk Council Area'. In the case of major development proposals likely to generate significant volumes of additional traffic, a Transport Impact Assessment will be required. (see also Policy POL 7.2 'Landscape Design')."

7a.10 The Transport Planning Unit has requested that a Transport Assessment be undertaken for this site. As this has not been carried out, the proposal is considered contrary to Policy POL 6.4 of the Polmont and District Local Plan.

7a.11 Accordingly, the proposal does not accord with the Development Plan.

7b Material Considerations

7b.1 The following matters were considered to be material in the consideration of the application:

- Falkirk Council Local Plan Finalised Draft (Deposit Version).
- Planning History
- Responses to Consultation
- Assessment of Public Representations.

Falkirk Council Local Plan Finalised Draft (Deposit Version)

7b.2 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.3 Policy SC3 - 'Housing Development In The Countryside' states:

“Housing development in the countryside will only be permitted in the following circumstances:

- (1) Housing essential to the pursuance of agriculture, horticulture or forestry, or the management of a business for which a countryside location is essential. In these instances, the applicant must demonstrate:*
- The operational need for the additional house in association with the business*
 - That no existing dwelling which might have served that need has been sold or otherwise alienated from the holding*

- *That there are no reasonable opportunities for reusing or converting redundant buildings rather than building a new dwellinghouse*
 - *That the business as a whole is capable of providing the main source of income for the occupant;*
- (2) *Proposals involving the rehabilitation of former residential properties, or the conversion of farm and other buildings to residential use, where*
- *The building, by virtue of its existing character, makes a positive contribution to the rural landscape*
 - *The building is in a reasonable state of repair, still stands substantially intact and is capable of beneficial restoration, as verified by a report and certificate from a qualified structural engineer*
 - *The restored or converted building is of comparable scale and character to the original building*
 - *In the case of former non-residential buildings, the building is no longer required for the purpose for which it was built; or*
- (3) *Appropriate infill opportunities within the envelope of an existing group of buildings, where the development would not result in ribbon, backland or sporadic development, and the proposal satisfies Policy SC8.”*

7b.4 Policy EQ24 ‘Ecological Sites and Features’ states:

- “(1) *Development likely to have a significant effect on Natura 2000 sites (including Special Protection Areas, Special Areas of Conservation, and Ramsar Sites) will be subject to an appropriate assessment. Where an assessment is unable to conclude that a development will not adversely affect the integrity of the site, development will only be permitted where there are no alternative solutions; and there are imperative reasons of overriding public interest, including those of a social or economic nature. These can be of a social or economic nature except where the site has been designated for a European priority habitat or species. Consent can only be issued in such cases where the reasons for overriding public interest relate to human health, public safety, beneficial consequences of primary importance for the environment or other reasons subject to the opinion of the European Commission (via Scottish Ministers)..*
- (2) *Development affecting Sites of Special Scientific interest will not be permitted unless it can be demonstrated that the overall objectives of the designation and the overall integrity of the designated area would not be compromised, or any adverse effects are clearly outweighed by social or economic benefits of national importance.*
- (3) *Development affecting Wildlife Sites, Sites of Importance for Nature Conservation, Local Nature Reserves, wildlife corridors and other nature conservation sites of regional or local importance will not be permitted unless it can be demonstrated that the overall integrity of the site will not be compromised, or any adverse effects are clearly outweighed by social or economic benefits of substantial local importance.*
- (4) *Development likely to have an adverse affect on species which are protected under the Wildlife and Countryside Act 1981, as amended, the Habitats and Birds Directives, or the Protection of Badgers Act 1992, will not be permitted.*
- (5) *Where development is to be approved which could adversely affect any site of significant nature conservation value, the Council will require mitigating measures to conserve and secure future management of the site’s natural heritage interest. Where habitat loss is*

unavoidable, the creation of replacement habitat to compensate for any losses will be required along with provision for its future management.

- (6) *The Council, in partnership with landowners and other relevant interests, will seek the preparation and implementation of management plans for sites of nature conservation interest."*

7b.5 Policy ST11 - 'Sustainable Urban Drainage' states:

"Surface water management for new development should comply with current best practice on sustainable urban drainage systems, including opportunities for promoting biodiversity through habitat creation. A drainage strategy, as set out in PAN 61, 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."

7b.6 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.7 Policy ST7 - 'Transport Assessments' states:

- (1) *Falkirk Council will require transport assessments of developments where the impact of that development on the transport network is considered likely to require mitigation. In all cases, this mitigation will be delivered to a level that achieves no net detriment to the capacity of the network.*
- (2) *Transport assessments will include travel plans and, where necessary, safety audits of proposed mitigation measures and assessment of the likely impacts on air quality as a result of proposed development.*
- (3) *Developers will agree the scope of the assessment with Falkirk Council, then undertake the assessment in accordance with the scoping. In all cases, the assessment will focus on the hierarchy of transport modes, favouring the use of walking, cycling and public transport over unnecessary use of the car.*
- (4) *The Council will only grant planning permission where it is satisfied that the transport assessment and travel plan has been appropriately scoped, the network impacts properly defined and suitable mitigation measures identified."*

7b.8 The emerging Falkirk Council Local Plan Finalised Draft (Deposit Version) supports the policies set out in the existing Falkirk Council Structure Plan and Polmont Local Plan covering this site and as such the proposed development is contrary to the terms of this document.

Reponses to Consultation

7b.9 The consultation responses received have raised a number of concerns with specific mention being given to ecological, transportation and flooding issues. A number of the responses have requested additional information in reference to ecological surveys, transport assessment, flood risk assessments and drainage impact assessments. These have not been requested by the planning authority in light of the weight given to the policy assessment and likely recommendation to refuse planning permission on clear policy grounds.

Assessment of Public Representations

- 7b.10 Land ownership is a civil matter and not a material planning consideration. In any case, the plan submitted by the objector appears to show the area of land being disputed to be outwith the boundaries of the application site. The comments in relation to policy issues are noted and have already been assessed in this report.

7c Conclusion

- 7c.1 The proposal is contrary to the terms of the Falkirk Council Structure Plan, Adopted Polmont Local Plan and the Finalised Draft Local Plan (Deposit Version). There are no material planning considerations that warrant an approval of planning permission in these circumstance. If, however, the Committee were minded to approved the application, it would be subject to referral to Ministers in regard to possible objections from SEPA and SNH.

8. RECOMMENDATION

- 8.1 It is therefore recommended that Committee refuse the planning application for the following reason(s):
- (1) The proposal forms an unacceptable intrusion into the countryside and does not form a logical rounding-off of the urban limit and as such the proposal is contrary to Policy ENV 1 –Countryside and Protected Areas of the Falkirk Structure Plan, Policy POL 11.1 – New Development in the Countryside of the Polmont and District Local Plan and Policy EQ19 – Countryside and SC3 – Housing Development in the Countryside of the Falkirk Council Local Plan Finalised Draft (Deposit Version).
 - (2) It has not been demonstrated that the proposed development would safeguard the ecological importance of the Maddiston SINC and other potential habitats for European Protected Species, and as such the proposal is contrary to the terms of Policy POL 8.5 – Ecological Sites of the Polmont and District Local Plan and Policy EQ 24 – Ecological Sites and Features of the Falkirk Council Local Plan Finalised Draft (Deposit Version).
 - (3) It has not been demonstrated that flood risk can be adequately managed both within and outwith the application site boundary and as such the development is contrary to the terms of Policy POL 8.8 – Flooding of the Polmont and District Local Plan and Policy ST12 – Flooding of the Falkirk Council Local Plan Finalised draft (Deposit Version).

- (4) It has not been demonstrated that the proposed development would not have an adverse impact on the surrounding transport network. The development has not been assessed by way of a Transport Assessment as such the development is contrary to the terms of Policy POL 6.4 - Roads and New Development of the Polmont and District Local Plan and Policy ST7 - Transport Assessments of the Falkirk Council Local Plan Finalised Draft (Deposit Version).

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For Director of Development Services

Date: 25 November 2009

LIST OF BACKGROUND PAPERS

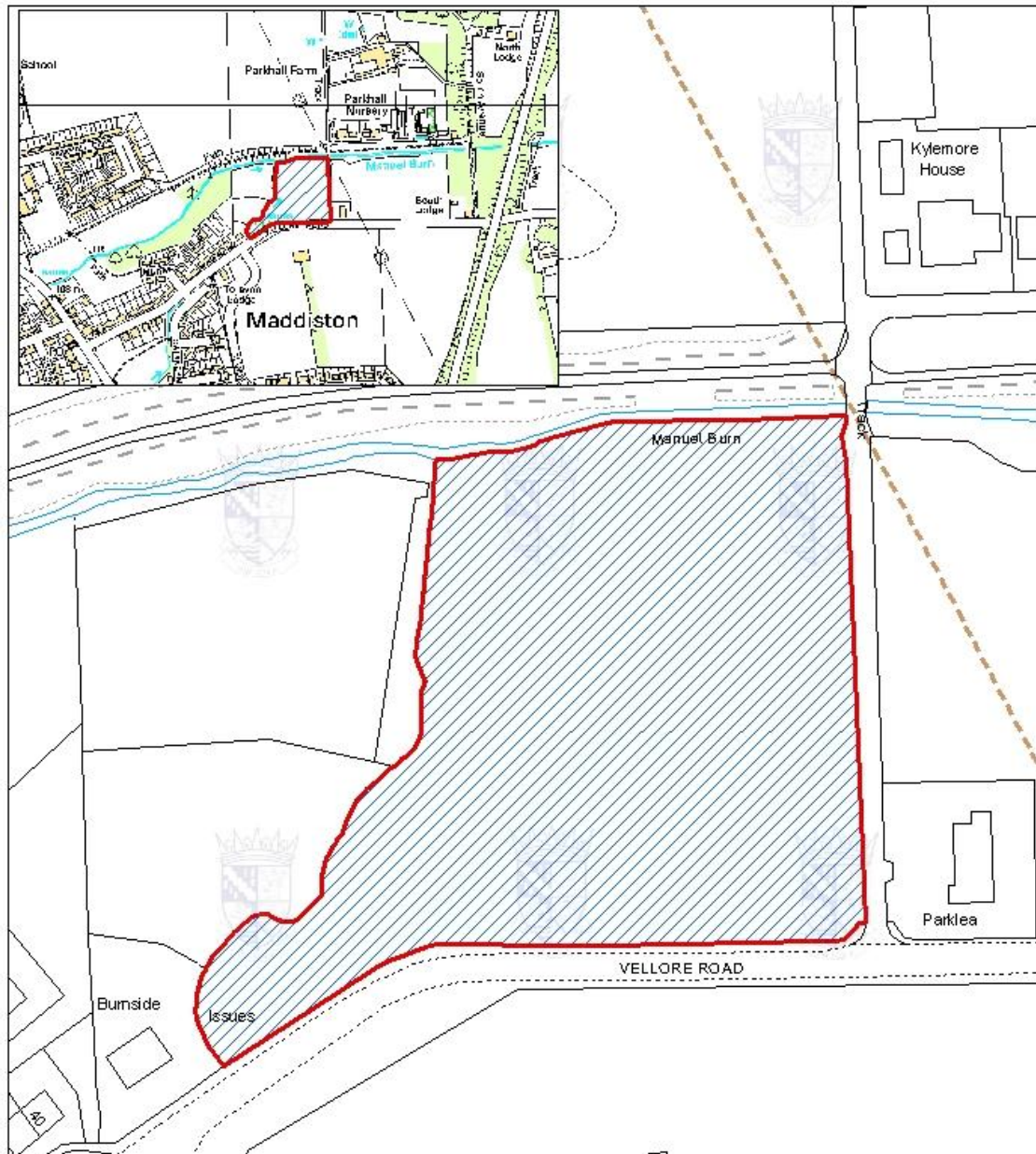
1. Falkirk Council Structure Plan.
2. Polmont and District Local Plan
3. Falkirk Council Local Plan Finalised Draft (Deposit Version).
4. Letter of objection received from Russell & Aitken, 22 - 24 Stirling Street Denny FK6 6DU on 21 July 2009.

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

Regulatory Committee

Planning Application Location Plan **P/09/0457/OUT**

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



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