

FPRB Reference: 21/358

Review Decision Notice

Decision by Fife Planning Review Body (the FPRB)

- Site Address: 60 Seafar Drive, Kelty, Fife KY4 0JX
- Application for review by Mr & Mrs Stewart MacGregor against the decision by an appointed officer of Fife Council
- Application 21/00376/FULL for Full Planning Permission for Change of use from treebelt/vegetation to private garden ground and erection of fencing to side of dwellinghouse (part retrospect)
- Application Drawings:
01 - Location Plan, 03 - Block Plan, 04 - Proposed Elevations, 05 - Proposed Elevations, 06 - Report, 07 - Tree Removal Plan

Date of Decision Notice: 14th February, 2022.

Decision

The FPRB reverses the determination reviewed by them and approves Planning Permission subject to the conditions outlined below in section 4.0.

1.0 Preliminary

- 1.1 This Notice constitutes the formal decision notice of the Local Review Body as required by the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.
- 1.2 The above application for Planning Permission was considered by the FPRB at its meeting on 31st January, 2022. The Review Body was attended by Councillors David Barratt (Convener), Alice McGarry, Bill Porteous, Mino Manekshaw and Ross Paterson.

2.0 Proposal

- 2.1 The development site relates to an area of scrubland vegetation to the north of a residential property at 60 Seafar Drive, itself situated within a modern residential estate within the settlement boundary of Kelty. Per FIFEplan Local Development Plan (2017), the development site is identified as being within the Kelty settlement boundary, forming part of an identified green network asset. The site is considered to be potentially contaminated due its former use as railway land and its proximity to a gas works. A footpath, which forms part of the Core Path Network and Pilgrim's Way/

Way route runs along the northern boundary of the site; and along the full length of the northern boundary of the residential estate, separating residential properties from the agricultural fields and woodland to the north. The footpath is flanked on either side by scrubland vegetation and trees along its length. The centre point of the public footpath is located approximately 2 metres to the north of the application site. Opposite the development site is a 1.8m high metal bar fence which encloses the northern side of the footpath from the area of woodland – approximately 1.5m from the centre point of the footpath.

- 2.2 The recorded planning history of the application property and wider residential estate is incomplete. It appears that the scrubland vegetation along the northern boundary of the estate was envisaged as land of some sort to serve the housing development, most probably landscaping to help integrate the development visually into its setting. The space does not appear to have ever been laid out in any formal sense but the scrub is well-established and does now help soften the development edge. It has not however been maintained for some time and is now unkempt throughout.
- 2.3 Along the route of the Core Path, the relationship between the footpath and rear boundaries of properties varies, with the land rising and falling meaning at times the eyelevel from the path is approximately level with first floor windows (providing views over fences) whilst at other points the path sits lower than the ground level of dwellings. The distance between the centre point of the footpath and rear property boundaries is largely consistent (approximately 6-7m), however, it does widen and narrow at points. To the west of the application site, properties start to bend away from the footpath, resulting in a much larger distance; this space is occupied by scrubland vegetation. Approximately 700m west of the application site, the footpath enters an area of woodland, with 1.8m high metal bar fencing enclosing either side of the path (the fences are approximately 1-1.5m from the path centre point).
- 2.4 The related residential property (60 Seafar Drive) is typical in design and scale to others throughout the estate. The side and rear garden of the property is enclosed by a 1.8m high timber fence, similar to neighbouring properties. Although this is the delineated boundary of the property, the appellant's landownership extends to a 278sqm area of land immediately north of the existing fence line. The application seeks to change the use of this area of scrubland and bring the area of land into the garden ground of the property, enclosing it with a 1.8m high timber fence. The works are partly retrospective, with the posts of the timber fence installed; two trees within the site have also been removed.

3.0 Reasoning

- 3.1 The determining issues in this review were the principle of development, visual amenity and natural heritage. The FPRB also considered issues of land stability/contamination, an issue not covered by the Appointed Officer. The FPRB considered the terms of the Development Plan which comprises the SESplan (2013) ("Strategic Development Plan") and the Adopted FIFEplan (Fife Local Development Plan 2017). The FPRB also considered the provisions of Making Fife's Places Supplementary Guidance (2018) (including Appendices).

- 3.2 The FPRB assessed the principle of development and noted that the site was located within the settlement boundary and had no specific land use designation other than it being identified as a green network asset. The FPRB considered that the proposed use would be suitable subject to the proposal not having any significant impacts under the terms of other planning policy requirements covering the site. The FPRB concluded that the proposal complied with Policy 1 of the Adopted FIFEplan (2017) subject to further detailed considerations demonstrating that other planning policy requirements for the area were met.
- 3.3 The FPRB assessed the amenity impacts of the proposal, including the visual impacts of erecting the timber fencing within close proximity of the footpath and how this would impact the useability and sense of safety for users of the Core Path/Pilgrim's Way route. In their assessment, the FPRB considered the sense of enclosure of the footpath along its full route, as well as how the associated residential property fronts onto a small area of green space which permits access to the footpath. Whilst the proposed enlarged garden area and timber fencing would bring the fence close to the footpath and remove the scrubland vegetation that flanks the footpath, given the overall visibility of the section of footpath and as the footpath is tightly enclosed by metal bar fencing and woodland on both sides just 70m to the west of the site, where there is little to no overlooking available, the FPRB concluded that the proposal would not give rise to a significantly adverse visual impact in this location, nor would the useability and sense of safety for users of the footpath be compromised. The FPRB therefore overturned the Appointed Officer's assessment and first reason for refusal. The FPRB thus concluded that the proposal would comply with Policies 1, 10 and 13 of the Adopted FIFEplan with respect to this matter and would not raise any significantly adverse amenity issues.
- 3.4 The FPRB assessed the natural heritage impacts of the proposal. The FPRB did not concur with the Appointed Officer's assessment of the application site's natural heritage value and description of the area as a 'treebelt' given the sporadic placement of trees along the route of the footpath. The FPRB concluded that the application site was an area of unkempt scrubland planting which has little natural heritage value. The FPRB therefore concluded that the loss of the area of scrubland to garden ground, and the removal of the two trees within the scrubland, would not have a significantly adverse impact on the natural environment, overturning the Appointed Officer's assessment and second reason for refusal. The FPRB thus concluded that the proposal would comply with Policies 1, 10 and 13 of the Adopted FIFEplan with respect to this issue and would not raise any significantly adverse natural heritage issues.
- 3.5 The FPRB assessed the potential land stability/contamination issues of the proposal. This issue was not assessed by the Appointed Officer. A Desktop Environmental Report was submitted by the appellant which concluded that the development site was not subject to land contamination. The FPRB also took consideration of similar reports submitted for similar development proposals within the vicinity of the appeal site. The FPRB concluded that the development proposal was unlikely to give rise to land contamination issues, however, a condition was considered necessary in the event that if any unexpected contamination is encountered to make sure that works cease immediately and the Planning Authority contacted. With this condition, the FPRB concluded that the change of use would not give rise to adverse land contamination issues and was in compliance with Policies 1 and 10 of the Adopted FIFEplan (2017) with respect to this matter.

3.6 The FPRB concluded that the development would have no significant detrimental impact in terms of the matters addressed by the Report of Handling, nor would it give rise to significantly adverse land contamination issues and the proposal would therefore comply with the Development Plan. The FPRB also considered that the letters of representation submitted for the application did not raise any matters which would warrant refusal of the application. The FPRB did not consider there to be any other matters for consideration or any material considerations which would outweigh the Development Plan position. The FPRB did not consider there to be any grounds to refuse the application and reversed the decision of the Appointed Officer.

4.0 Decision

4.1 The FPRB therefore reverses the decision of the Appointed Officer and approves Planning Permission subject to the following condition and reason:

- 1) IN THE EVENT THAT CONTAMINATION NOT PREVIOUSLY IDENTIFIED by the developer prior to the grant of this planning permission is encountered during the development, all development works on site (save for site investigation works) shall cease immediately and the planning authority shall be notified in writing within 2 working days.

Unless otherwise agreed in writing with the local planning authority, development work on site shall not recommence until either (a) a Remedial Action Statement has been submitted by the developer to and approved in writing by the planning authority or (b) the planning authority has confirmed in writing that remedial measures are not required. The Remedial Action Statement shall include a timetable for the implementation and completion of the approved remedial measures. Thereafter, remedial action at the site shall be completed in accordance with the approved Remedial Action Statement. Following completion of any measures identified in the approved Remedial Action Statement, a Verification Report shall be submitted to the local planning authority. Unless otherwise agreed in writing with the planning authority, no part of the site shall be brought into use until such time as the remedial measures for the whole site have been completed in accordance with the approved Remedial Action Statement and a Verification Report in respect of those remedial measures has been submitted by the developer to and approved in writing by the local planning authority.

Reason: To ensure all contamination within the site is dealt with.

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Proper Officer

Advisory notes

1. The length of the permission: This planning permission will lapse on the expiration of a period of three years from the date of this decision notice, unless the development has been started within that period (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).
2. Notice of the start of development: The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).
3. Notice of the completion of the development: As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended))

NOTICE TO ACCOMPANY REFUSAL ETC. TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

*Notification to be sent to applicant on refusal of planning permission or
on the grant of permission subject to conditions*

NOTICE TO ACCOMPANY REFUSAL ETC. TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

*Notification to be sent to applicant on determination by the planning authority of an
application following a review conducted under section 43A(8).*

1. If the applicant is aggrieved by the decision of the planning authority -
 - (a) to refuse permission for the proposed development;
 - (b) to refuse approval, consent or agreement required by a condition imposed on a grant of planning permission; or
 - (c) to grant permission or approval, consent or agreement subject to conditions,

the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.

2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.

Notice under the Town and Country Planning (Scotland) Act 1997 as amended by Sections 27A and 27B of the Planning etc. (Scotland) Act 2006

You are required, prior to the development hereby approved commencing on site, to submit written notification to Fife Council as Planning Authority ("this Council") of the intended date of commencement of the development. The development shall not commence until this notification has been acknowledged in writing by this Council. On completion of the development, you are also required to submit written notification to this Council of this as soon as practicably possible. Any submission on this matter should be addressed to Economy, Planning and Employability Services, Kingdom House, Kingdom Avenue, Glenrothes, KY7 5LT.

COAL MINING DEVELOPMENT INFORMATIVE NOTE

The proposed development lies within an area that has been defined by The Coal Authority as containing potential hazards arising from former coal mining activity. These hazards can include: mine entries (shafts and adits); shallow coal workings; geological features (fissures and break lines); mine gas and previous surface mining sites. Although such hazards are seldom readily visible, they can often be present and problems can occur in the future, particularly as a result of development taking place.

It is recommended that information outlining how the former mining activities affect the proposed development, along with any mitigation measures required (for example the need for gas protection measures within the foundations), be submitted alongside any subsequent application for Building Standards approval (if relevant). Your attention is drawn to The Coal Authority Policy in relation to new development and mine entries available at:

<https://www.gov.uk/government/publications/building-on-or-within-the-influencing-distance-of-mine-entries>

Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires a Coal Authority Permit. Such activities could include site investigation boreholes, digging of foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Failure to obtain a Coal Authority Permit for such activities is trespass, with the potential for court action.

Property specific summary information on past, current and future coal mining activity can be obtained from: www.groundstability.com

If any of the coal mining features are unexpectedly encountered during development, this should be reported immediately to The Coal Authority on 0345 762 6848. Further information is available on The Coal Authority website at:

www.gov.uk/government/organisations/the-coal-authority