

FPRB Reference: 21/371

## Review Decision Notice

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Decision by Fife Planning Review Body (the FPRB)

- Site Address: Land North of The Steading, Lundin Road, Crossford, Fife
- Application for review by Mr & Mrs Dan Lyth against the decision by an appointed officer of Fife Council
- Application 21/01846/FULL for Full Planning Permission for Erection of dwellinghouse and carport with associated access and landscaping works
- Application Drawings:  
01 - Location Plan, 02 - Existing Site Plan, 03 - Proposed Site Plan, 04B - Visibility splay plan, 05 - Floor Plan Proposed, 06 - Floor Plan Proposed, 07 - Proposed Elevations, 08 - Proposed various - elevation, floor etc, 09 - Design and/or Access Statement, 10 - Low Carbon Sustainability Checklist, 11 - Report, 12 – Statement, 13 - Drainage Plan, 14 - Visibility splay plan, 15 - Visibility splay plan, 16 – Statement
- No Site Inspection took place.

Date of Decision Notice: 2nd March, 2023

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### Decision

The Fife Planning Review Body (FPRB) varies the determination reviewed by them and refuses Planning Permission for the reason(s) 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 13th February, 2023. The Review Body for this Notice of Review was attended by Councillors David Barratt, Jane Ann Liston, Fiona Corps, Ken Caldwell and Lynn Mowatt.

#### 2.0 Proposal

- 2.1 The application site relates to an area of grass/ground located to the north of a group of 4 houses to the west of Lundin Road, between Crossford and Backmuir of Pitfirrane and located in a countryside location as defined by the adopted local development plan FIFEplan (2017). There is one house 'Bankier', situated to the North of the site, along with the converted old steadings and farm house building to the South.

- 2.2 Planning permission is sought for the erection of a single dwellinghouse.
- 2.3 A planning permission in principle application for the erection of a dwellinghouse (Ref: 06/04283/WOPP) was refused on this site in March 2007 due to road safety reasons and unjustified development in the countryside.

### **3.0 Reasoning**

- 3.1 The determining issues in this review were the principle of development, design and visual impact, residential amenity including garden ground, road safety / transportation, low carbon, drainage/water issues, houses in multiple occupancy, coal mining risk area / ground stability, ecology and arboriculture (an issue not covered by the Appointed Officer).
- 3.2 The FPRB considered the terms of the Development Plan which comprises the Adopted National Planning Framework 4 (2023) (“NPF4”) and the Adopted FIFEplan Local Development Plan (2017) (“FIFEPlan”). The FPRB also considered the provisions of Making Fife’s Places Supplementary Guidance (2018) (including Appendices), Low Carbon Fife Supplementary Guidance (2019), Fife Council's Planning Customer Guidelines on Garden Ground (2016), Fife Council's Planning Customer Guidelines on Daylight and Sunlight (2018) and Fife Council's Planning Customer Guidelines on Minimum Distances between Window Openings (2011),
- 3.3 Firstly, the FPRB considered whether the proposal was acceptable in principle, assessing the proposal for housing development outwith the settlement boundary to consider whether it was compliant with strategic objectives for rural and countryside land under NPF4 Policy 16 (Quality Homes), NPF4 Policy 17( Rural Homes) and FIFEPlan Policies 1 (Development Principles), 7 (Development in the Countryside) and Policy 8 (Houses in the Countryside).
- 3.4 The FPRB considered that the proposal would not meet the relevant tests within NPF4 Policy 16 as the site was not allocated for housing in FIFEplan and would not comply with other exemptions within NPF4 Policy 16, including criterion (f) requiring compliance with NPF4 Policy 17 and policies on rural homes. With respect to NPF4 Policy 17, the FPRB considered the tests criteria 17 (a) and (b) where housing could be appropriate on non-allocated housing sites in rural areas. In particular, whether any exemptions would apply. For example, reinstating a former dwelling, subdivision of existing dwellings or reuse of brownfield land but none were considered to applicable to warrant support for the proposal in this instance. The FPRB therefore concluded that the proposal would not comply with NPF4 Policies 16 and 17.
- 3.5 The proposal was then assessed against FIFEPlan Policy 8 (Houses in the Countryside) tests to consider whether any exceptions were applicable. In this instance, the most critical test related to whether the proposal met Policy 8 Criteria 2 that suggests support for housing ‘*within an established and clearly defined cluster of five houses or more*’. The FPRB interrogated this requirement in detail, assessing the existing site context and what they considered to represent an existing housing cluster once the two competing positions from the appellant and the Appointed Officer had been reviewed. They also reviewed Figure 8.2 – ‘*Examples of suitable housing proposals as part of cluster*’ of FIFEPlan to consider the proposal against acceptable and unacceptable locations for housing within an existing cluster. The FPRB agreed that the existing cluster contained 4 dwellings and not five, as suggested by the appellant, deciding that Dean Cottage to the north of Bankier would not form part of the same cluster. They suggested that Dean Cottage would be disconnected from

the existing 4 dwelling cluster by virtue of the large distances involved and the barrier created by the existing woodland and corresponding access/road operated by the Forestry Commission. The FPRB therefore concluded that the proposal was contrary to FIFEPlan Policy 8.

- 3.6 On account of the above, the FPRB contended that the proposal would not meet the relevant FIFEPlan Policy 7 test which requires compliance with both FifePlan Policy 8 and that proposals are of a scale and nature compatible with surrounding uses, well located in terms of infrastructure and designed to protect land use and environmental quality. Given the above non-compliance within Policy 7 and 8 of FIFEPlan, the FPRB also contended that the proposal would not comply with FIFE Plan Policy 1 (Development Principles) as it would not be located within an allocated housing site and would not accord with housing exemptions or other policy objectives within FIFEPlan supporting its development.
- 3.7 The FPRB assessed the design and visual impact of the proposal on the rural setting of the countryside against NPF4 Policy 4 (Natural Places), NPF4 Policy 14 (Design, Quality and Place) and FIFEplan Policies 1 (Development Principles), 7 (Development in the Countryside), 8 (Houses in the Countryside) and 10 (Amenity). They contended that the proposed development would be of an appropriate form, scale and massing within the site cognisant on the immediate context. Moreover, given the siting of the proposal and the topography of the existing site, the FPRB considered that it would be suitably screened by existing vegetation. The FPRB determined that the design of the of proposed dwelling would be of a sufficiently high quality with a simple palette materials to be in-keeping with the character of the location. The FPRB ultimately concluded that the proposal would comply with Policies 4 and 14 of NPF4 and Policies 1, 7, 8 and 10 of FIFEplan relating solely to design and visual impact.
- 3.8 The FPRB then assessed the residential amenity impacts of the proposal on the surrounding area, cognisant of NPF Policy 14 (Design, Quality and Place), Policy 16 (Quality Homes), Policy 23 (Health and Safety) which seek to protect the amenity of the local area from unacceptable amenity impacts, including noise, and Policies 1 (Development Principles) and 10 (Amenity) of FIFEPlan which includes criteria requiring development proposals to demonstrate that there would be no significant detrimental impact on residential amenity. Giving consideration to the distance between the site and third-party residential properties, the FPRB determined that the proposed design, orientation and positioning of windows and the distance to the nearest residential dwelling would avoid any unreasonable adverse impacts on the daylight, sunlight or privacy provisions of neighbouring properties. The FPRB also resolved that the proposal would result in a reasonable level of residential amenity for future occupants and would not give rise to any adverse noise concerns. They also considered that there would be sufficient garden ground to accommodate the future needs of residents. The FPRB therefore concluded that the proposal would be acceptable in terms of residential amenity, complying with NPF4 Policies 14, 16 and 23 and Policies 1 and 10 of the Adopted FIFEplan with respect to this matter.
- 3.9 The FPRB assessed the transportation and road safety impacts of the proposal. The FPRB took into consideration the comments provided by the Council's Transportation Development Management Officers (TDM) who objected to the application on road safety grounds associated with the use of sub-standard visibility spays.

- 3.10 The FPRB considered the proposal against NPF4 Policy 13 (Sustainable Transport) and Policies 1 (Development Principles), 3 (Infrastructure Services) of 10 (amenity) the Adopted FIFEplan. This includes a review of Policy 1 which requires individual and cumulative impacts to be addressed, including mitigating against the loss in infrastructure (including road) capacity caused by the development. Moreover, the FPRB noted that Policy 3 required that development must be designed and implemented in a manner that ensures it delivers the required level of infrastructure and functions in a sustainable manner and that proposals must be served by adequate local transport and safe access routes. They also noted the requirements to ensure suitable traffic movements under Policy 10. The FPRB were then directed to Fife Council's Fife Council's Making Fife's Places Supplementary Guidance (2018) Appendix G Transportation Development Guidelines which identified minimum transportation requirements, including visibility splays.
- 3.11 Firstly, the FPRB considered the appropriateness of utilising the existing vehicular access to Lundin Road for vehicles entering/existing the site. The FPRB noted that the existing visibility splays do not meet the requirements within Appendix G above on the northern and southern sides of the existing access. They then assessed whether it was appropriate for traffic movements associated with the proposal to use this existing, non-compliant, access. The FPRB noted that the applicant did not have control over land required to form a 3m x 140m visibility splay to the north and that whilst there was an informal agreement by the owner of land to the south of this access to form and maintain a splay, this land did not form part of the planning application boundary and there would be limitations enforcing any splay in perpetuity. In light of this, the FPRB noted that there was scope for vehicles using Lundin Road to gather speed on the nearby straight and that the existing bend to the north of the existing access could impact driver visibility when travelling from the north. The FPRB considered whether one additional dwelling using the existing non-compliant access would be reasonable given that it was already utilised by three other properties. The FPRB agreed that this could result in additional conflict but quantifying the specific increase would be difficult. On this basis, the FPRB concluded that in this instance they could not support an outcome where additional road users may be subject to road safety risks associated with an access that failed to comply with the Council's visibility splay requirements. The FPRB noted the national guidance on visibility splays but agreed that the Council's guidance was the most appropriate requirement to assess this issue. Accordingly, the FPRB concluded that proposal would be not be acceptable and would not accord with Policies 1, 3 and 10 of FIFEplan and Making Fife's Places Supplementary Guidance with respect to road safety and transportation.
- 3.10 The FPRB considered whether the proposal supported the transition to a low carbon economy assessing the proposal against NPF4 Policy 2 (Climate Mitigation and Adaption), Policies 1 (Development Principles) 11 (Low Carbon Fife) of FIFEPlan and the Low Carbon Fife Supplementary Guidance. For proposals of this nature, the key determining factor in this assessment relates to whether the proposal includes low/zero carbon technologies to create suitable transition towards a reduction in carbon emissions. In this instance, the FPRB considered the Low Carbon Checklist and the applicant's commitment to the provision of Passivhaus low carbon sustainably principles would be acceptable. The FPRB concluded that the proposal would be acceptable in terms of carbon reduction and sustainability, complying with relevant objectives within NPF4 Policy 2, Policies 1 and 11 of the Adopted FIFEplan and the above Supplementary Guidance with respect to this matter.

- 3.11 Turning to drainage and flooding, the FPRB the proposal was assessed against NPF4 Policy 22 (Flood Risk and Water Management), Policies 1 (Development Principles), 12 (Flooding and the Water Environment) of FIFEplan (2017) and Fife Council's Design Criteria Guidance on Flooding and Surface Water Management Plan Requirements (2022). To this extent, the FPRB considered the proposed surface water and private foul drainage arrangements for the proposal cognisant of overland flow risks within part of the site. These were considered to be acceptable, particularly as the site was not identified as being at risk of flooding and that any overland flow risks could be avoided subject to condition. The FPRB therefore concluded that the proposal would be acceptable subject to conditions require approval of detailed drainage design and would comply with NPF4 policy 22, Policies 1 and 12 of the FIFEPlan (2017) and Fife Council's guidance on flooding.
- 3.12 The FPRB also assessed the houses in multiple occupancy under Policy 2 of the Adopted FIFEPlan which advised that the use of a new build house or flat as a house in multiple occupation would not be permitted unless the development is purpose built for that use. The FPRB considered the proposal against this policy and agreed that as the proposal was not intended for HMO use, they had no concerns about potential future HMO use. They determined that a condition would not be required to control this issue given that planning permission would be required for any material change in use from a dwellinghouse to an HMO use.
- 3.13 The FPRB considered the coal mining / ground stability issues related to the potential for past land contamination and/or previous mining activity and corresponding impacts on the proposal against NPF4 Policy 9 (Brownfield, Vacant and Derelict land and Empty Buildings) and Policies 1 (Development Principles and Policy 10(Amenity). As the application site is located within a defined Development High Risk Area for coal mining, the FPRB took into consideration the comments provided by the Coal Authority. The Coal Authority confirmed they had no objections to the development and agreed with the principles of the corresponding Mining remediation report. The FPRB agreed the proposal would be acceptable and not be at risk from coal mining legacy issues. The FPRB also took into consideration the accompanying comments of the Council's Land and Air Quality Officers who requested inclusion of a standard condition on any issued permission on procedures to follow should unexpected contamination be encountered. The FPRB concluded subject to inclusion of this planning condition, the proposal would be acceptable, complying with NPF4 Policy 9 and Policies 1 and 10 of FIFEplan with regard to land contamination and previous mining considerations.
- 3.14 The FPRB also considered the potential impact of the proposal on natural environment (ecology / trees) including existing trees within the site, to understand what trees would be required to be removed and/or protected within the site and what surveys may be required. They noted that there were no specific protected trees within the site but that details of root protection areas, construction exclusion zones and proposed removals could be provided. The FPRB also considered that an ecology report and pre-construction surveys could be provided to ensure protection of bird and other species prior to any works commencing. Overall, with respect to natural heritage, including arboriculture and ecology, the FPRB concluded that the proposed development would address objectives within NPF4 Policy 3 (Biodiversity), Policy 14 of FIFEplan and the requirements within Making Fife's Places Supplementary Guidance subject to a condition requiring approval of the additional documentation outlined above.

Overall, The FPRB concluded that the development would have significant detrimental impact on the countryside, failing to comply with NPF4 Policies 16 and 17 and Policies 1, 7 and 8 of FIFEPlan. They resolved that there would be significant detrimental impacts relating to road safety, failing to comply with Policies 1, 3 and 10 of FIFEplan and Making Fife's Places Supplementary Guidance. They therefore agreed with the Appointed Officer and suggested that the proposal failed to comply with the Development Plan. 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 therefore decided that the application should be refused and varied the Appointed Officer's recommendation to include references to the recently adopted National Planning Policy 4 which had been adopted by the Scottish Government after the Appointed Officer had issued their original decision.

#### **4.0 Decision**

4.1 The FPRB varies the decision of the Appointed Officer and refuses planning permission for the following reason(s):

1. In the interests of safeguarding the countryside from unplanned, sporadic and unjustified residential development; the need for a dwellinghouse in this location is not considered justified as the application site lies outwith any defined settlement boundary or defined dwelling cluster in terms of the adopted FIFEplan Fife Local Development Plan (2017) and the proposal does not meet any of the criteria set out in Policy 8 therein; the development is therefore contrary to Policies 1: Development Principles, 7: Development in the Countryside and 8: Houses in the Countryside of the Adopted FIFEplan - Fife Local Development Plan (2017) and Policies 16: Quality Homes and 17: Rural Development of the adopted National Planning Framework 4 (2023).
2. In the interests of road safety, the formation of a new access for the proposed dwellinghouse would result in a new access with sub-standard visibility splays in both directions to the detriment of road safety. It is therefore considered that the proposal would have a significant detrimental impact on road safety and would therefore be contrary to Policies 1, 3 and 10 of the Adopted FIFEplan - Fife Local Development Plan (2017) and Appendix G (Transportation Development Guidelines) of Making Fife's Places Supplementary Guidance (2018).

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Proper Officer

## **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.

## **COALFIELD STANDING ADVICE AREAS**

The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to The Coal Authority on 0345 762 6848. It should also be noted that this site may lie in an area where a current licence exists for underground coal mining.

Further information is also available on The Coal Authority website at:  
[www.gov.uk/government/organisations/the-coal-authority](http://www.gov.uk/government/organisations/the-coal-authority)

Property specific summary information on past, current and future coal mining activity can be obtained from: [www.groundstability.com](http://www.groundstability.com)