

FPRB Reference: 19/357

Review Decision Notice

Decision by Fife Planning Review Body (the FPRB)

- Site Address: Land To West Of Carswell Wynd, Auchtermuchty, Fife
- Application for review by Gladman Developments Ltd/ Kingdom Housing Association/ Campion Homes against the decision by an appointed officer of Fife Council
- Application 19/03631/PPP for Planning permission in principle for erection of affordable housing, formation of access, landscaping, open space and associated works
- Application Drawings:
01 - Location Plan, 02 - Site Plan, 03 - Design and/or Access Statement, 04 - Planning Statement, 06 - Report, 07 - Transportation Statement, 08 - Noise Report, 09 - Drainage Assessment, 10 - Flood Risk Assessment, 11 - Ecological Statement, 12 - Flood Calculations, 13 - Flood Calculations, 14 - Additional Information, 16 - Drainage Plan, 17 - SUDs and Flood Risk Assessment Certs, 18 - SUDs and Flood Risk Assessment Certs, 19 - SUDs and Flood Risk Assessment Certs, 20 - Additional Information, 22 - Drainage Assessment, 23A - Report, 24 - Site Plan, 25 - Landscape and visual assessment, 26 - Figures and Photomontage, 27 - Figures and Photomontage, 28 - Additional Information,
- A Site Inspection took place on 28 March 2022.

Date of Decision Notice: 13th April, 2022.

Decision

The FPRB varies the determination reviewed by them and refuses Planning Permission in Principle for the reasons 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 in Principle was considered by the FPRB at its meeting on 28th March, 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 proposed development site is an agricultural field of approximately 1.9 hectares situated to the south of Low Road (A91) and west of Carswell Wynd in Auchtermuchty. The site is situated outwith the settlement boundary as designated within the Adopted FIFEplan (2017). To the south and west of the site is further agricultural land. Further to the west is a newly constructed retail unit which replaced a former garage. To the north (on Low Road) are residential properties. To the east (on Carswell Wynd) there are also residential properties along with a health centre and care home which take access from this street. There is a stone wall along the northern boundary of the site which has been recently repaired. The site is within an Archaeological Area of Regional Importance.
- 2.2 The application sought Planning Permission in Principle for a residential development of affordable housing, formation of access, landscaping, open space and associated works. At time of submission, an indicative total of 49 residential units were proposed. This was later amended to 30 residential units. The application includes an indicative layout showing two points of access, one from Low Road and one from Carswell Wynd. A SUDS basin is indicatively shown at the southern extent of the site in an area of open space.

3.0 Reasoning

- 3.1 The determining issues in this review were principle of development, landscape and visual amenity, prime agricultural land, road safety, affordable housing need and housing land supply. The FPRB considered the terms of the Development Plan which comprises the TAYplan (2017) ("Strategic Development Plan") and the Adopted FIFEplan (Fife Local Development Plan 2017) ("Adopted Local Development Plan"). The FPRB also considered the provisions of Making Fife's Places Supplementary Guidance (2018) (including Appendices) and Scottish Planning Policy (SPP)(2014). The FPRB also gave consideration to the Fife Council Planning Customer Guidelines on Daylight and Sunlight (2018); Garden Ground (2016); and Minimum Distance between windows (2011). The FPRB also considered Fife Council's Policy for Development and Noise (2021), Air Quality in Fife Advice for Developers (2020) and the Fife Landscape Character Assessment (1999).
- 3.2 The FPRB considered the principle of development. The FPRB noted that the proposal was not within the settlement boundary and was not allocated for development. The FPRB therefore considered the proposal against Policy 8 of the Adopted FIFEPlan (2018) and noted that the proposal could be considered to comply with Policy 8 criterion 6 with it being small scale affordable housing on the settlement boundary subject to complying with the detailed assessment criteria within Policy 8 and Policy 2. The FPRB noted the requirements of Policy 2 in terms of need for affordable housing, development size and alternative available sites. The FPRB noted that the first reason for refusal outlined that there were other available sites within the settlement boundary which could be used for affordable housing and therefore there was no need for this development to be in the countryside.

- 3.3 The FPRB noted the commentary from the Fife Affordable Housing Team and applicant on the affordable housing need for the settlement and concluded that there was an established need for affordable housing for this area. They also concluded that the development size (30 units) was the appropriate scale for a settlement of the size of Auchtermuchty and this also complied with Policy 2. On the alternative sites, the FPRB noted that, in the time after the application had been refused, the planning context of the potential alternative sites had changed. FIFEplan allocation AUC001 was now subject of a planning application for market housing and there was a minded to grant Planning Permission in Principle for market housing on AUC002 subject to conclusion of legal agreement. The FRPB concluded that this changed the context of the planning decision of this application and that these were material considerations to the proposal. The FPRB noted that the status of those sites was such that they might be considered no longer available for affordable housing. However, the FPRB expressed that there was some uncertainty on this, as the sites were yet to receive planning permission or be built for market housing. The FPRB did reach a conclusion that there was a need for affordable housing and that alternative sites may not be available in the settlement boundary and therefore the proposal may comply with Policy 2 on the affordable housing in the countryside criteria.
- 3.4 The FPRB considered the proposals against the general assessment points of Policy 8 in that a development must be of a scale and nature compatible with surrounding uses; well-located in respect of available infrastructure and contribute to the need for any improved infrastructure; and located and designed to protect the overall landscape and environmental quality of the area. The FRPB concluded that the development would have a detrimental impact on the landscape and environmental quality of the area and therefore would not fully comply with Policy 8 of the Adopted FIFEplan (2017). The assessment of the FPRB on landscape will be set out later in the decision letter. The FPRB concluded that while there was an established need for affordable housing and there may not be suitable sites within the settlement boundary, the application site was not suitable, in principle, as the development was likely to cause a detrimental impact on the landscape. The FPRB concluded that the proposal therefore would not comply with Policy 8 criterion 6.
- 3.5 The FPRB assessed the proposal against the other criteria within Policy 8 and concluded that the only other relevant criterion was 7. The FPRB assessed whether there was a shortfall in the 5-year effective Housing Land Supply taking evidence from the Report on Handling and applicant's statement. The FPRB concurred with both and accepted there was a shortfall. On this basis, the FPRB then assessed the proposal against the four criteria within Policy 2 which are relevant when there is a shortfall in the 5-year effective Housing Land Supply. The FPRB concluded that the proposal could meet the terms of three of the four criteria but considered that the benefits of addressing any shortfall would be outweighed by adverse impacts on the landscape and loss of prime agricultural land. The FPRB therefore concluded that while there was a shortfall in the 5-year effective Housing Land Supply, the proposal was not supported by Policy 2 or 8 within the Adopted FIFEplan (2017) due to the potential adverse impacts associated with the development. The assessment of the potential adverse impacts will be set out later in the decision notice.

- 3.6 The FPRB accepted that there was a shortfall in the 5-year effective Housing Land Supply and noted that the principles of Sustainable Development within SPP (2014) therefore had material weight. The FPRB noted the case law [Gladman Ltd v Scottish Ministers 2020] set out within both the Report on Handling and case presented by the applicant. The FPRB considered this in its assessment of the proposal. While the FPRB noted the proposal did not comply with relevant land use policies of the Adopted FIFEplan (2017), the FPRB acknowledged that the SPP (2014) introduced a tilted balance towards approving the application where a shortfall in the 5-year effective Housing Land Supply exists. The FPRB acknowledged SPP as a significant material consideration which would warrant approving the planning application unless significant material considerations indicated otherwise.
- 3.7 The FPRB assessed the proposal against the principles of Sustainable Development within the SPP (2014) and the determined potential impacts of the development. The FPRB identified the potential adverse impacts of the development and then determined their significance and balanced these against the significant material consideration of addressing the shortfall in 5-year effective Housing Land Supply and economic benefit of house building and the presumption in favour of approval. The FPRB concluded that the development would not fully comply with the principles of Sustainable Development within the SPP. The FPRB determined that the development would have a significant adverse impact on the landscape and setting of the settlement. The FPRB determined that the proposal would not support good design and the six qualities of successful places as the loss of this distinctive area of land would affect the landscape character of the settlement. They also concluded that the development would not protect, enhance or promote access to the landscape due to significant landscape and visual impacts and loss of prime agricultural land. The FPRB also concluded that the loss of prime agricultural land would be contrary to sustainable land use principles. The FPRB therefore concluded that the development would not meet three of the principles of sustainable development set out within SPP. The FPRB did consider that the development would meet the other principles set out.
- 3.8 The FPRB concluded that the adverse effects on the landscape and the loss of prime agricultural land would be demonstrably significant as to outweigh the positive material considerations of the other principles of Sustainable Development that the proposal met. The FPRB recognised the benefits of the proposal in terms of delivery of affordable housing and reducing the 5-year effective Housing Land Supply shortfall, however, they concluded that the development could not be considered to be sustainable development in relation to SPP (2014) and the impacts would be so significant as to outweigh the benefits of the proposal and the tilted balance.
- 3.9 The FPRB therefore concluded that in principle, the development was not supported by the Development Plan and the significant material consideration set out within SPP were outweighed by the demonstrably significant adverse impacts of the development resulting in SPP having insufficient weight to warrant approval of an application which was contrary to the development plan.
- 3.10 In terms of potential impacts of the development, as noted the FPRB considered that the development had the potential to have significant adverse impacts on the local landscape. The FPRB consider that the site is important to the setting of Auchtermuchty by providing unobscured views to the Lomond Hills. They considered that its loss would likely have a significant detrimental impact on the character of this

area and the settlement. The FPRB considered whether these impacts could be mitigated through design or controls on massing and unit heights but concluded that any built form would have an impact on the distinctiveness of the site to the character of the settlement. The FPRB concurred with the Report on Handling and concluded that the development was contrary to Policies 1, 7 and 13 of the Adopted FIFEplan (2017), Making Fife's Places SG (2018), TAYplan (2017) and SPP (2014).

- 3.11 The FPRB considered the impact of the development on Prime Agricultural Land. The FPRB noted that the site comprised fully of Prime Agricultural Land and therefore assessed the loss against policy 7 of the Adopted FIFEplan (2017). The FPRB considered whether the development could be considered necessary to meet an established need given that there is a need for affordable housing in the area. The FPRB however concluded that the loss of Prime Agricultural Land was significant and unjustified as while there was a need for affordable housing, it did not need to be developed on this site. The FPRB therefore did not consider that development on Prime Agricultural Land was essential in this instance and concurred with the conclusions of the Report on Handling that the development would be contrary to Policies 1 and 7 of the Adopted FIFEplan (2017), SPP (2014) and TAYplan (2017).
- 3.12 The FPRB noted that Transportation Development Management (TDM) had objected to the application and assessed the road safety implications of the proposal. The FPRB noted the concerns raised by TDM on an access being created onto Low Road and the requirement for two accesses as set out within Making Fife's Places SG (2018). The FPRB concluded that a vehicular access onto Low Road was not necessary for this development and only one access would be needed for the development in total, if a second vehicular access could not be provided on Carswell Wynd. The FPRB considered that the scale of the development would only warrant one vehicular access with a pedestrian/ cycling access to Low Road sufficient to provide permeability and connectivity. The FPRB did not consider that the increase in traffic from this development would cause any significant detrimental traffic impact for Carswell Wynd when considered alone and cumulatively with existing uses. The FPRB noted that the removal of an access from Low Road negated any concerns with regards to junction spacing or loss of parking to neighbouring properties on Low Road. The FPRB concluded that, while contrary to Making Fife's Places SG (2018), a secondary vehicular access was not required for this development and the delivery of a secondary access by a sustainable link outweighed this requirement. The FPRB concluded that there were no traffic or road safety issues with the development and it complied with policies 1 and 3 of the Adopted FIFEplan (2017).
- 3.13 The FPRB assessed the development in terms of Natural Heritage, residential amenity, design/ scale and finishes, garden ground, water/ drainage and flood risk, contaminated land, air quality, waste management, climate change issues, archaeology, green infrastructure, open space and affordable housing delivery. The FPRB concluded that the development could comply with the respective policies relevant to these topics subject to mitigation, relevant planning conditions or assessment at a detailed planning stage. The FPRB concluded that there were no infrastructure or education constraints that would warrant refusal of the application. The FPRB concluded that while these matters could be addressed they would not raise any positive material considerations which would be of sufficient material weight to warrant approval of the application. The FPRB did not consider there to be any other positive material considerations which would add weight to the balance of assessment towards approval of the application.

3.14 The FPRB concluded that the application should be refused however varied the Appointed Officer's reasons for refusal based on their assessment and removed one of the reasons for refusal.

4.0 Decision

4.1 The FPRB varies the decision of the Appointed Officer and refuses planning permission for the following reasons:

- 1) In the interest of safeguarding the countryside from unjustified sporadic residential development; while there is an established shortfall in the 5-year effective Housing Land Supply for this Housing Market Area and need for affordable housing which would tilt the balance in favour of approving the application, the development would have demonstrably significant impacts which would outweigh the benefits of reducing the shortfall and meeting affordable housing need. The development is not considered the right development for this location as it would lead to significant adverse impacts such as a significant detrimental landscape impact and loss of prime agricultural land. The proposal would not meet the criteria set out within Policy 8 of the Adopted FIFEplan (2017) for housing in the countryside nor the criteria within Policy 2 for addressing the shortfall in 5-year effective Housing Land Supply and affordable housing delivery as a result. The demonstrably significant impacts on the landscape and loss of prime agricultural land would result in the development being contrary to Policies 1, 2, 7 and 8 of the Adopted FIFEplan (2017), Scottish Planning Policy (2014) and TAYplan (2017).
- 2) In the interest of safeguarding the local landscape character of the area; the application site is located on an open area of prime agricultural land which is significantly important in terms of its contribution to the landscape character and distinctiveness of the Auchtermuchty Settlement. This site provides a strong visual connection between the urban environment and the countryside/Lomond Hills which forms a strong and contributing factor to this distinctiveness and landscape character. The proposal would not complement the local landscape features and would cause significant harm to the rural and open sense of identity of this part of the town and would, therefore, have a significant detrimental landscape impact on the distinctiveness and landscape character of this area. The proposal is, therefore, contrary to Policies 1, 7 and 13 of the Adopted FIFEplan (2017), Making Fifes Places Supplementary Guidance (2018), Scottish Planning Policy (2014) and TAYplan (2017).
- 3) In the interests of safeguarding prime agricultural land; the proposal would result in the irreversible unjustified loss of approximately 1.9 hectares of Prime Agricultural Land (Class 2 and 3.1). The proposal would, therefore, be contrary to Policies 1 and 7 of the Adopted FIFEplan (2017), Scottish Planning Policy (2014) and TAYplan (2017).

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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.