

FPRB Reference 22/381

## Review Decision Notice

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Decision by Fife Planning Review Body (the FPRB)

- Site Address: 2 Kilrie Cottages, Kilrie, Auchtertool, Kirkcaldy
- Application for review by Ms Maureen Wilkie against the decision by an appointed officer of Fife Council
- Application 22/03283/PPP for Planning permission in principle for erection of two dwellinghouses (Class 9) and associated development
- Application Drawings:  
01 - Location Plan, 02 - Block Plan, 04 - Planning Statement, 03A - Proposed Block Plan, 05 - Sectional Details,

Date of Decision Notice: 19th June 2023

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### Decision

The FPRB upholds 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 12 June 2023. The Review Body was attended by Councillors David Barratt (Convener), Jane Ann Liston, Fiona Corps, Alycia Hayes and Lynn Mowatt.

#### 2.0 Proposal

- 2.1 The appeal site relates to an approximately 940sqm area of land located between Kirkcaldy and Auchtertool, in an area of countryside per the terms of the adopted FIFEplan Fife Local Development Plan (2017). The site largely comprises a relatively flat, grassed area of private amenity space associated with the applicant's dwellinghouse, a mid-terrace of a terrace of six dwellinghouses to the north of the site. The site incorporates a steeply sloping area of land which leads down to the site from the garden areas of the terraced properties – there is approximately 2m in level difference between the garden grounds of the terraced properties and bottom of the slope. The site currently accommodates a number of domestic outbuildings over part. A private access road off the nearby B9157 passes the site on its south side, with a burn and two semi-detached dwellinghouses beyond. The site and a parking area to the north of the terrace are accessed off this private access road. The site is otherwise surrounded by agricultural land.

- 2.2 The appeal proposal seeks planning permission in principle for the erection of two dwellinghouses with associated infrastructure including parking and drainage. The application is supported by an indicative proposed site plan detailing two detached dwellings with a shared parking court to the west of the site. The site plan and supporting statement advise that the two dwellings would be positioned approximately 18m from each other, with gable ends orientated to face existing properties to the north and south. The supporting statement indicates the dwellings would be of a one-and-a-half storey design with no windows serving habitable rooms to be positioned on the northern gable elevations. No information is presented regarding architectural style and finishing materials for the proposal, nor are the number of proposed bedrooms specified. A retaining wall is proposed along the northern boundary of the site – measuring approximately 1.4m above neighbouring garden level; 3.3m in height when measured within application site.
- 2.3 The recorded planning history for the site includes a 2021 application (21/00416/FULL) for the temporary change of use from open space to storage area (scaffolding) in retrospect for a period of 2 years. This application related to the eastern part of the current appeal site only. This application was approved on 10 November 2021. An application was submitted for the appeal site in 2022 (22/00132/PPP) for planning permission in principle for erection of four dwellinghouses (Class 9), however, this application was later withdrawn following advice from the case officer. The appeal proposal was submitted following the withdrawal.

### **3.0 Reasoning**

- 3.1 The determining issues in this review were the principle of development, design and visual impact, residential amenity, transportation and road safety, drainage and flooding and sustainable buildings.
- 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”) and its associated Making Fife’s Places Supplementary Guidance (2018) and Low Carbon Fife Supplementary Guidance (2019). The FPRB also considered the provisions of Fife Council’s Design Criteria Guidance on Flooding and Surface Water Management Plan Requirements (2022) and Fife Council’s Planning Customer Guidelines on Garden Ground (2016), Daylight and Sunlight (2018) and Minimum Distances Between Window Openings (2016).
- 3.3 The FPRB firstly considered the principle of development, assessing the proposal for residential development in the countryside against Policies 9, 14, 16, 17 and 29 of NPF4 and Policies 1, 7 and 8 of FIFEplan. The FPRB concurred with the Appointed Officer’s assessment that the appeal site forms a clearly defined gap within an existing housing cluster with development on at least two sides, thus complying with the requirements criterion 2 of Policy 8 of FIFEplan and, by extension, could therefore be supported through Policy 7 (criterion 7). Examining the Policy requirements of the relevant NPF4 and FIFEplan Policies further, however, the FPRB concluded that the appeal proposal would not be visually connected through the existing pattern of development, nor be designed to be in-keeping with the character of the area; this is discussed in greater detail below. The FPRB did not accept the appellant’s argument that the application site should be considered brownfield land and development of should be supported in accordance with Policies 9 and 17 of NPF4.

- 3.4 The FPRB considered the design and visual impact of the appeal proposal, giving regard to Policies 14, 16, 17 and 29 of NPF4 and Policies 1, 7, 8, 10 and 13 of FIFEplan and Making Fife's Places Supplementary Guidance. Giving particular regard to the design and appearance of the traditional row of terraced properties, as well as the two semi-detached properties to the south, the FPRB considered that the appeal proposal, through the indicative layout presented, would detract from the value of the traditional terraced properties to the north; with the appeal proposal situated in front of these properties; and the appeal proposal would thus have an adverse impact on the setting on the character of the rural environment. The FPRB considered that whilst part of the appeal site appeared generally unkempt, noting the appearance of outbuildings and use of the site as a (temporary) scaffolding storage area, the site was not considered to constitute brownfield land; the development of which could improve the visual character of the area. The FPRB ultimately concurred with the Appointed Officer's assessment. The proposed development was therefore considered to be contrary to NPF4 Policies 14, 17 and 29, and Policies 1, 10 and 14 of the Adopted FIFEplan. The FPRB thus upheld the third reason for refusal listed on the decision notice.
- 3.5 The FPRB then went on to assess the residential amenity impacts of the appeal proposal, cognisant with Policy 14 of NPF4 and Policies 1 and 10 of FIFEplan. The FPRB also gave consideration to relevant Fife Council Planning Customer Guideline documents. Firstly, considering matters of garden ground, the FPRB were satisfied that the two dwellinghouses of the appeal proposal could be designed to be served by sufficient areas of useable garden ground (each in excess of 100sqm), however, it was considered that the development of the appeal site would result in a significant loss of useable garden ground for the appellant's property; the appellant's property would be left with a garden area of approximately 45sqm which would be contrary to the Fife Council Planning Customer Guideline on Garden Ground. The FPRB took into account the information present by the appellant regarding the differing land titles for the property and appeal site, however, the FPRB ultimately assessed that the appeal site was considered to be garden ground associated with the appellant's property. The FPRB therefore concurred with the Appointed Officer's position on matters of garden ground, with the appeal proposal considered to be contrary to Development Plan policies and the Council Planning Customer Guideline on Garden Ground, upholding the second reason for refusal. Secondly, the FPRB assessed the privacy and overlooking implications of the appeal proposal. The FPRB were satisfied that the proposed development could be designed to ensure it complied with the Council's guidance on window-to-window distances and that the two proposed dwellings would not result in the overlooking of neighbouring amenity spaces. Nevertheless, owing to the significant drop in level from the garden areas of the terraced properties to the north to the appeal site, the FPRB concurred with the Appointed Officer's assessment that the garden areas of the proposed dwellinghouses would be significantly overlooked by residents of the neighbouring residential properties above, to the detriment of the privacy and amenity of residents of the proposed dwellings. The FPRB therefore upheld the first reason for refusal, with the appeal proposal considered to be contrary to Policy 14 of NPF4 and Policies 1 and 10 of FIFEplan and the Council Planning Customer Guideline on Garden Ground.
- 3.6 Turning to matters of transportation and road safety, the FPRB assessed the appeal proposal against Policies 13, 17 and 29 of NPF4, Policies 1 and 3 of FIFEplan and Making Fife's Places Supplementary Guidance (including Appendix G). Notwithstanding the concerns noted by the Council's Transportation Development Management Officers, noting the number of properties and wedding/events venue which take access from the junction with the B9157, the FPRB concurred with the

Appointed Officer's assessment that the proposed development would not give rise to any significant adverse impact in terms of road safety or transportation. The FPRB therefore concluded that the proposal would be acceptable and would comply with relevant NPF4 and FIFEplan Policies.

- 3.7 With regard to drainage and flooding, the FPRB considered the appeal proposal against Policy 22 of NPF4 and Policies 1, 3 and 12 of NPF4, whilst also giving regard to Fife Council's Design Criteria Guidance on Flooding and Surface Water Management Plan Requirements (2022). As with the Appointed Officer, despite the fact that the application had not been supported by any drainage or SuDS details, the FPRB were content to proceed with their assessment of the appeal proposal, giving consideration to the Drainage and SuDS Assessment submitted by the appellant for their recently withdrawn application for four dwellinghouses on the appeal site. The previously submitted assessment concluded that the site could be developed for four dwellinghouses, with options to either attenuate surface water through discharge to ground, or to the existing watercourse, with foul water to be managed with a treatment plant before discharging to ground or the watercourse; this content and conclusions of this assessment was accepted by the Council's Structural Services Officers. The FPRB concurred with the Appointed Officer's assessment that that site could be developed for two dwellinghouses; with a planning condition able to be used to secure relevant drainage and flooding details at the Approval of Matters Specified in Conditions (AMSiC) stage. The FPRB concluded that the proposed development would be acceptable with regard to drainage and flooding considerations, complying with the requirements of the Development Plan.
- 3.8 Lastly, the FPRB considered the low carbon and sustainable building merits of the appeal proposal. Giving regard to Policies 1 and 2 of NPF4, Policies 1 and 11 of FIFEplan and the Low Carbon Fife Supplementary Guidance, the FPRB considered that although the appellant had failed to submit a Low Carbon Sustainable Building Checklist, the FPRB were content that this information could be conditioned to be submitted at the AMSiC stage, with the proposed development capable of being development in accordance with current Policy requirements. The FPRB concluded that the appeal proposal would be acceptable with regard to low carbon considerations, in-keeping with the Appointed Officer's assessment.
- 3.9 Overall, the FPRB concluded that the development would have significant detrimental visual impact on the character of the countryside location, failing to comply with Polices 14, 16, 17 and 29 of NPF4, Policies 1, 7 and 8 of FIFEPlan (2017) and Making Fife's Place Supplementary Guidance. The FPRB resolved that the appellant failed to demonstrate that the amenity of the proposed development would not be significantly impacted as a consequence of the potential for overlooking of garden spaces from neighbouring properties, with the appeal proposal also considered to result in the appellant's property being left with an unacceptable provision of garden space. Thus, the FPRB considered that the proposed development would be contrary to Policy 14 of NPF4 and Policies 1 and 10 of FIFEplan, and the Council's Planning Customer Guidelines on Garden Ground. The FPRB therefore agreed with the Appointed Officer 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 upheld the Appointed Officer's assessment, subject to the addition of relevant NPF4 Policies to the reasons for refusal.

**4.0 Decision**

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

**REFUSE FOR THE FOLLOWING REASON(S):**

1. In the interests of residential amenity; the applicant having failed to demonstrate that the private amenity spaces serving the proposed dwellinghouses would not be significantly overlooked by the front gardens of the existing dwellinghouses to the north of the site, contrary to Fife Council's non-statutory Garden Ground planning customer guidelines, Policy 14 of NPF4: Design, quality and place, and Policies 1: Development Principles and 10: Amenity of the adopted FIFEplan Fife Local Development Plan (2017).
2. In the interests of residential amenity; the development would give rise to the loss of the only significant area of non-sloping/useable private amenity space serving the applicant's dwellinghouse, contrary to Fife Council's non-statutory Garden Ground planning customer guidelines, Policy 14 of NPF4: Design, quality and place, and Policies 1: Development Principles and 10: Amenity of the adopted FIFEplan Fife Local Development Plan (2017).
3. In the interests of visual amenity; the applicant having failed to demonstrate that development of the site for two dwellinghouses would accord with the provisions of policy and guidance in relation to design/visual impact, the indicative scheme for two detached one-and-a-half storey dwellinghouses predicted to appear at odds in relation to and visually disconnected from the existing terrace of traditional single-storey cottages to the north of the application site, including in terms of architectural form and pattern of development, to the detriment of landscape character and qualities; all contrary to NPF4 Policies 14: Design, quality and place, 16: Quality homes, 17: Rural homes and 29: Rural development, and policies 1: Development Principles, 7: Development in the Countryside, 8: Houses in the Countryside, 10: Amenity and 13: Natural Environment and Access of the adopted FIFEplan Fife Local Development Plan (2017) and 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.