

FPRB Reference: 21/362

Review Decision Notice

Decision by Fife Planning Review Body (the FPRB)

- Site Address: 19 Woodland Gait, Cluny, Fife
- Application for review by Fouin and Bell Architects Ltd., on behalf of Mr. and Mrs. Paterson against the decision by an appointed officer of Fife Council
- Application 21/01090/FULL for Full Planning Permission for Change of use from agricultural land to private garden ground and erection of decking and play equipment (all retrospective)
- Application Drawings:
01 Location Plan, 02 Site Plan, 03 Site Plan, 04 Site Plan, 05 Supporting Statement
- No Site Inspection took place.

Date of Decision Notice: 7th September, 2022.

Decision

The Fife Planning Review Body (FPRB) upholds and varies the determination reviewed by them and refuses 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 22nd August 2022. The Review Body was attended by Councillors David Barratt (Convener), Jane Ann Liston, Lynn Mowatt and Fiona Corps.

2.0 Proposal

- 2.1 The application site relates to 685 square metres parcel of land comprising former agricultural land classified as non-prime to the north of 19 Woodland Gait in Cluny. The use of this land has already taken place and now forms an enlargement to the original back garden serving the appellant's detached dwellinghouse.
- 2.2 The original house is at the northern end of the Woodland Gait development, accessed off the north side of the B981. To the south-east of the site lies 16 Woodland Gait, also a detached house. A corner of the site intersects with the rear garden of this property. To the north, west and south of the site, other than the applicant's original garden ground comprises agricultural land.

- 2.3 Retrospective planning permission is sought for the above change of use from agricultural land to private garden ground and for the retrospective erection of a children's climbing frame and swing set, and the formation of decking on which the climbing frame and swing set have been erected.

3.0 Reasoning

- 3.1 The determining issues in this review were the principle of development, residential amenity (including privacy and garden ground) and design and visual impact. The FPRB considered the terms of the Development Plan which comprises the SESplan (2013) ("Strategic Development Plan") and the Adopted FIFEplan (2017) ("Local Development Plan"). The FPRB also considered the provisions of Making Fife's Places Supplementary Guidance (2018) (including Appendices), Scottish Planning Policy (SPP) (2014) and Fife Council's Planning Customer Guidelines on Garden Ground (2016).
- 3.2 Firstly, the FPRB considered whether the principle of development was acceptable, assessing the proposed change of use to private garden ground and provision of a swing set and decking in the countryside against FIFEplan Policies 1 (Development Principles) and 7 (Development in the Countryside). With respect to Policy 1, the FPRB considered that the proposed development would not accord with the Part A(1) as it would be located outwith the defined settlement boundary and was not a use supported in that location by the Development Plan. It was also considered by the FPRB that it would not accord with the Part A (2) requirements relating to housing sites and employment / business uses where shortfalls were relevant.
- 3.3 Turning to Policy 7, the FPRB noted that support for development in the countryside would only be supported where it met one of the 6 impact exceptions criteria within this policy. The FPRB resolved that the proposed development would not fall within any of these criteria primarily as it would not be for agriculture, horticulture, woodland or forestry. Moreover, the FPRB considered that it would not diversify a land-based business for economic development nor would it be for small scale employment land or for facilities for public access to the countryside. Additionally, the FPRB considered that the proposed development would not create facilities for public outdoor recreation, tourism or other development with demonstrated proven need for a countryside location nor would it be for a separate housing development compliant with Policy 8 (Houses in the Countryside). The FPRB also noted that the development was not located with prime agricultural land but that, cognisant of the foregoing considerations, this would not result in any material considerations that would outweigh a decision being made in accordance with the Development Plan.
- 3.4 The FPRB therefore concluded that the proposal would not comply with Policies 1, 7 and 8 of the Adopted FIFEplan, therefore upholding the Appointed Officer's assessment with respect to the reason for refusal.
- 3.5 The FPRB then assessed the residential amenity impacts of the proposed development on the surrounding area cognisant of Policy 1 which seeks to protect the amenity of the local community and Policy 10 which includes criteria requiring development proposals to demonstrate that there would be no significant detrimental impact on residential amenity. In this regard, the FPRB assessed potential overlooking from the site to the adjacent neighbour at 16 Woodland Gait. Giving consideration the proximity of the neighbouring property, and noting the potential for

a 1.8m fence to be constructed along the site's eastern boundary should it be required, the FPRB still concluded that the propped development would result in unacceptable overlooking and privacy impacts to the neighbouring property, particularly given the nature of the proposed use and height of the proposed swing set. Potential impacts relating to daylight and sunlight to the adjacent neighbour were also considered, including their potential impact should the aforementioned fence be erected. The FPRB concluded that the strip of land separating any new fence from the neighbours property would not result in significant overshadowing of their garden ground nor would it result in unacceptable daylight impacts to any habitable room windows. Additionally, the FPRB also considered that the proposal would not give rise to any adverse noise concerns. The potential increase in private garden ground of over 600m² was also assessed by the FPRB, noting that it would result in a garden ground and plot ratio substantially higher than those recommended within the Fife Council's Planning Customer Guidelines on Garden Ground (2016) at 100m² and 1:3 respectively. Accordingly, the FPRB agreed with the Appointed Officer's assessment with respect to garden ground but disagreed with respect to residential amenity. The FPRB therefore concluded that the proposed development would result in unacceptable privacy impacts to the adjacent neighbour, failing to comply with Policies 1 and 10 of the Adopted FIFEplan with respect to overlooking. Accordingly, it was resolved that refusal of retrospective planning permission should include an additional reason for refusal relating to the development's unacceptable impact on privacy / residential amenity.

- 3.6 Turning to design and visual amenity, the FPRB assessed the proposed development against Policy 1 (Development Principles) of the Adopted FIFEplan which requires consideration of potential amenity impacts on the local community, design with respect to the six quality of successful places and safeguarding landscape character/qualities. They also assessed the proposed development against Policy 10 (Amenity) requiring visual impact of proposals to be assessed and Policy 13 (Natural Environment & Access) requiring cognisance of potential impacts on landscape character. Following their assessment, the FPRB concluded that the proposed development would not result in significant detrimental impacts to the wider landscape character. However, they noted that the nature of the proposed use and the scale of the proposed works would result in unacceptable visual impacts to the amenity of the adjacent residential property - including unacceptable visual massing associated with any proposed fencing to screen overlooking. They also noted that the planning system did not consider impacts on private views. Overall, FPRB therefore concluded that the proposed development would result in unacceptable visual impacts, failing to comply with Policy 10 of the Adopted FIFEplan with respect to this matter. It was then resolved to add this as additional reason for refusal, linked to the additional reason for refusal related to privacy.
- 3.7 The FPRB concluded that the development would result in unplanned and unjustified development, failing to comply with Policy 7 of the Adopted FIFEplan with respect to development in the countryside. It was also resolved that the proposed development would result in significant detrimental privacy and visual amenity impacts, failing to accord with Policies 1 and 10 of the Adopted FIFEplan. The FPRB noted the content of the objection received. 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 upheld the Appointed Officer's decision to refuse the application and varied this decision to include an additional reason for refusal related to unacceptable privacy and visual impacts.

4.0 **Decision**

- 4.1 The FPRB upholds and varies 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 safeguarding the countryside from unplanned and unjustified development; the development constitutes an unplanned incursion into open countryside, beyond the established settlement boundary for Cluny, which is not justified in terms of and is therefore contrary to the provisions of Policy 1: Development Principles and Policy 7: Development in the Countryside of the adopted FIFEplan Fife Local Development Plan (2017), which policies presume against development in the countryside other than in specified circumstances. Approval of planning permission would likely set a precedent for other similar development contributing to poor settlement containment and the erosion of rural character next to settlements, contrary to the vision and strategy of FIFEplan.
2. In the interests of safeguarding residential amenity and visual amenity; the development would result in unacceptable overlooking to the neighbouring property and, by virtue of its scale, height, siting and design, would have an overbearing and adverse impact on the immediate visual amenity of the surrounding residential property. The proposal is therefore contrary to Policies 1 and 10 of the adopted FIFEplan (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.

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.

COALFIELD STANDING ADVICE AREAS
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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

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