

Perth and Kinross Council  
Development Management Committee – 18 January 2017  
Report of Handling by Interim Head of Planning

**Deletion of condition 5 of permission 15/01177/FLM to remove the requirement for an equipped area of play on land NE & SE of Westpark, St Ninian's Road, Alyth**

Ref. No: 16/01842/FLM  
Ward No: N2 - Strathmore

**Summary**

This report recommends approval of the application to delete condition 5 of permission 15/01177/FLM which removes the requirement for an equipped area of play on the zoned housing site on land NE & SE of Westpark, St Ninian's Road, Alyth. The proposal is not considered to conflict with the provisions of the Local Development Plan to an extent that would warrant refusal of the application and there are material considerations associated with viability which also justify the deletion of the play equipment condition.

**BACKGROUND AND DESCRIPTION**

- 1 There is a considerable amount of history associated with this site.
- 2 An earlier application for the site was made in 2009. At that point in time the residential development was contrary to the Eastern Area Local Plan, however the Housing Land Supply figures showed that additional housing sites were required within the Eastern Area. The requirement to meet housing supply was considered to be a significant material consideration which justified a departure from the Local Plan and the application was subsequently approved by a meeting of this committee subject to conditional control and the conclusion of a legal agreement in respect of drainage works and flood alleviation.
- 3 Following the implementation of off-site drainage works (previously to be secured by legal agreement) the decision notice was released in 2012. Condition 1 of that consent required reserved matters to be submitted for approval not later than 3 years from the date of the planning permission (i.e. by 26 September 2015).
- 4 A further application was submitted in 2015 which effectively renewed the earlier application, 15/01177/FLL refers. This application took account of the updated policy position as the site was now incorporated into an allocated housing site (H60) of the Perth and Kinross Local Development Plan 2014.
- 5 This application seeks to delete condition 5 of application 15/01177/FLL for the provision of an equipped play area which required the following:-

*Condition 5 - An equipped area for play shall be provided by the developer to cater for the age group 4-8 year olds and integrated within the area of public*

*open space referred to in Condition 2 above.*

- 6 The deletion has been sought on scheme viability grounds. It should be noted that discussions regarding the scheme viability between the developer and the Planning Authority has occurred. This included looking at a potential reduction in developer contributions relating to affordable housing and education. While the Planning Authority's preference would be to retain an equipped area of play it was considered that the loss of play equipment would be preferable in comparison to a loss towards affordable housing and education. The loss of the equipped play is discussed further under the appraisal section of this Report of Handling.

## **PRE-APPLICATION CONSULTATION**

- 7 Due to the size of the application site, which is over 2 hectares, this proposal is classed as a Major Application as defined in the Town and Country Planning (Hierarchy of Development) (Scotland) Regulations 2009. The amended Regulations, which came into force on the 30 June 2013, removes the requirement for Pre-application Consultation for Section 42 applications (which relates to a 'major planning application') made on, or after the 3 February 2013. Accordingly there is not a requirement to carry out a pre-application public consultation on this major application due to the inclusion of Regulation 49(5) in the above Regulations.

## **ENVIRONMENTAL IMPACT ASSESSMENT (EIA)**

- 8 The proposed development, as an urban development project with a site area exceeding 0.5ha, falls under Schedule 2 (10(b)) of the Environmental Impact Assessment (Scotland) Regulations. An assessment of a project's likely significant environmental effects has already been undertaken via a screening process associated with the earlier application.

## **NATIONAL POLICY AND GUIDANCE**

- 9 The Scottish Government expresses its planning policies through The National Planning Framework, the Scottish Planning Policy (SPP), Planning Advice Notes (PAN), Creating Places, Designing Streets, National Roads Development Guide and a series of Circulars.

## **DEVELOPMENT PLAN**

- 10 The Development Plan for the area comprises the TAYplan Strategic Development Plan 2012-2032 and the Perth and Kinross Local Development Plan 2014.

## **TAYplan Strategic Development Plan 2012 – 2032 - Approved June 2012**

- 11 The overall vision of the Tay Plan states *“By 2032 the TAYplan region will be sustainable, more attractive, competitive and vibrant without creating an unacceptable burden on our planet. The quality of life will make it a place of first choice, where more people choose to live, work and visit and where businesses choose to invest and create jobs.”*
- 12 There are no specific policies of strategic importance, relevant to this particular proposal contained in the TayPlan.

## **Perth and Kinross Local Development Plan 2014**

- 13 The Local Development Plan (LDP) was adopted by Perth and Kinross Council on 3 February 2014. It is the most recent statement of Council policy and is augmented by Supplementary Guidance.
- 14 The principal relevant policies are, in summary:

### **Policy PM1A - Placemaking**

- 15 Development must contribute positively to the quality of the surrounding built and natural environment, respecting the character and amenity of the place. All development should be planned and designed with reference to climate change mitigation and adaption.

### **Policy PM3 - Infrastructure Contributions**

- 16 Where new developments (either alone or cumulatively) exacerbate a current or generate a need for additional infrastructure provision or community facilities, planning permission will only be granted where contributions which are reasonably related to the scale and nature of the proposed development are secured.

### **Policy RD1 - Residential Areas**

- 17 In identified areas, residential amenity will be protected and, where possible, improved. Small areas of private open space to be retained changes of use away from ancillary uses such as local shops will be resisted unless supported by market evidence that the existing use is non-viable. Proposals will be encouraged where they satisfy the criteria set out and are compatible with the amenity and character of an area.

### **Policy RD4 - Affordable Housing**

- 18 Residential development consisting of 5 or more units should include provision of an affordable housing contribution amounting to 25% of the total number of units. Off-site provision or a commuted sum is acceptable as an alternative in appropriate circumstances.

### **Policy TA1A - Transport Standards and Accessibility Requirements**

- 19 Encouragement will be given to the retention and improvement of transport infrastructure identified in the Plan.

### **Policy CF1B - Open Space Retention and Provision**

- 20 Appropriate areas of informal and formal open space should be provided as an integral part of any new development where existing provision is not adequate. Where there is an adequate supply of open space a financial contribution towards improved open space may be acceptable. Opportunities should be to create, improve and avoid the fragmentation of green networks.

### **Policy CF2 - Public Access**

- 21 Developments will not be allowed if they have an adverse impact on any core path, disused railway line, asserted right of way or other well used route, unless impacts are addressed and suitable alternative provision is made.

### **Policy HE1B - Scheduled Monuments and Non Designated Archaeology**

- 22 Areas or sites of known archaeological interest and their settings will be protected and there will be a strong presumption in favour of preservation in situ. If not possible provision will be required for survey, excavation, recording and analysis.

### **Policy HE2 - Listed Buildings**

- 23 There is a presumption in favour of the retention and sympathetic restoration, correct maintenance and sensitive management of listed buildings to enable them to remain in active use. The layout, design, materials, scale, siting and use of any development which will affect a listed building or its setting should be appropriate to the building's character, appearance and setting.

### **Policy NE3 - Biodiversity**

- 24 All wildlife and wildlife habitats, whether formally designated or not should be protected and enhanced in accordance with the criteria set out. Planning permission will not be granted for development likely to have an adverse effect on protected species.

### **Policy NE4 - Green Infrastructure**

- 25 Development should contribute to the creation, protection, enhancement and management of green infrastructure, in accordance with the criteria set out.

**Policy ER6 - Managing Future Landscape Change to Conserve and Enhance the Diversity and Quality of the Areas Landscapes**

- 26 Development proposals will be supported where they do not conflict with the aim of maintaining and enhancing the landscape qualities of Perth and Kinross and they meet the tests set out in the 7 criteria.

**Policy EP2 - New Development and Flooding**

- 27 There is a general presumption against proposals for built development or land raising on a functional flood plain and in areas where there is a significant probability of flooding from any source, or where the proposal would increase the probability of flooding elsewhere. Built development should avoid areas at significant risk from landslip, coastal erosion and storm surges. Development should comply with the criteria set out in the policy.

**Policy EP3B - Water, Environment and Drainage**

- 28 Foul drainage from all developments within and close to settlement envelopes that have public sewerage systems will require connection to the public sewer. A private system will only be considered as a temporary measure or where there is little or no public sewerage system and it does not have an adverse effect on the natural and built environment, surrounding uses and the amenity of the area.

**Policy EP3C - Water, Environment and Drainage**

- 29 All new developments will be required to employ Sustainable Urban Drainage Systems (SUDS) measures.

**Policy EP8 - Noise Pollution**

- 30 There is a presumption against the siting of proposals which will generate high levels of noise in the locality of noise sensitive uses, and the location of noise sensitive uses near to sources of noise generation.

**OTHER POLICIES**

- 31 None.

**SITE HISTORY**

- 32 Application 09/00577/IPM for the erection of a residential development (in principle) was approved, subject to conditions on the 26 October 2012.
- 33 Application 15/01177/FLL effectively renewed application 09/00577/IPM for the erection of a residential development (in principle), this was subject to conditional control and the decision was dated 24 September 2015.

## CONSULTATIONS

### EXTERNAL

- 34 **Scottish Environment Protection Agency** – No objection.
- 35 **Alyth Community Council** – No response.
- 36 **Scottish Water** – No response.

### INTERNAL

- 37 **Environmental Health** – No objection.
- 38 **Local Flood Prevention Authority** – No objection. Previous comments on earlier application still stand.
- 39 **Transport Planning** – No objection to the deletion of Condition 5.
- 40 **Community Greenspace** – No response.
- 41 **Perth And Kinross Area Archaeologist** – No objection. Previous comments on earlier application still stand.
- 42 **Contributions Officer** – Extensive discussions have taken place with Guild Homes in relation to the current consent under 15/01177/FLL and it has been agreed that on grounds of viability that there is no requirement for an equipped area of play but an area of informal play is still required. No objection to the proposal.

## REPRESENTATIONS

- 43 A total of four letters of representation were received during the advertisement period for the application.
- 44 The representations have raised the following relevant issues associated with the deletion of condition 5: -
  - Removal of the play equipment may result in children playing on the roads.
  - Provision of equipped play areas has health benefits for children, this will be lost if the play equipment is not secured.
  - Concern that other play provision is too far away.
  - Removal of play equipment conflicts with the Local Development Plan.
- 45 All the relevant planning issues associated with the deletion of condition 5 are covered in the Appraisal section of this report.

- 46 Further concerns have been raised regarding the following issues however these matters are not associated with the deletion of condition 5. However members should be aware that these matters have already been considered under the earlier application for this site that was previously before committee, Application 15/01177/FLL.

- Concerns with flooding and drainage arrangements.
- Access and traffic impacts, including parking implications and the potential for the development to impact on a route to school.
- Concern with housing density, the type of housing and whether there is a need for the housing.

## **ADDITIONAL STATEMENTS**

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Environment Statement	Not required
Screening Opinion	Not required
Environmental Impact Assessment	Not applicable
Appropriate Assessment	Not applicable
Design Statement / Design and Access Statement	Not applicable
Reports on Impact or Potential Impact	Undertaken for previous application

## **APPRAISAL**

### **Policy Appraisal**

- 48 Sections 25 and 37(2) of the Town & Country Planning (Scotland) Act 1997 (as amended) requires the determination of the proposal to be made in accordance with the provisions of the Development Plan, unless material considerations indicate otherwise. The adopted Development Plans that are applicable to this area are the TAYplan Strategic Development Plan 2012 – 2032 as well as Perth and Kinross Local Development Plan 2014.
- 49 Section 42 of the Town and Country Planning (Scotland) Act 1997 enables the determination of applications to develop land without compliance with conditions previously attached. The legislation specifies that on such an application the Planning Authority shall consider only the question of the conditions subject to which planning permission should be granted, and if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly. If they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.

- 50 The determining issues in this case are whether: - the deletion of condition 5 in contention would be consistent with the relevant provisions of the Development Plans; or if an exception to these provisions is justified by other material considerations
- 51 This application is for the deletion of condition 5 as stated above:-
- 52 The developer, Guild Homes, has been in discussion with the Council's Developer Contribution officer regarding this site and the viability of the development and how it relates to the developer contribution policies of the Council.
- 53 I note that there is also an equipped area of play to the south of Alyth Town centre some 500 metres from the site as the crow flies.
- 54 I note from the developer contribution officer's response that they have been involved in extensive negotiations surrounding this site and on the grounds of viability. In this case the developer contribution officer considers that the requirement for an equipped area of play should be removed to assist development viability however an informal area of play is still required.
- 55 In this particular case Policy CF1B: Open Space within New Developments is the main policy in the determination of this application. This policy seeks the provision of appropriate areas of informal and formal open space that is accessible to all users as an integral part of any new development where existing provision is not adequate. While the provision of an equipped area of play would be beneficial, nevertheless, taking account of the response from the developer contributions officer I consider there is sufficient reasoning to delete condition 5 and the requirement for an area of equipped play.
- 56 Notwithstanding this it should be noted that the wording of condition 2 (i) requires certain matters to be assessed at the matters specified by conditions stage and this includes areas of openspace, see below:-
- Condition 2 (i) The siting, design and external appearance of the development, the landscaping of the site, areas of open space, pedestrian links, all means of enclosure, the car parking and means of access to the site.*
- 57 In this case I consider that informal play can be catered for within the areas of open space that require to come forward under other conditional control imposed on the consent.
- 58 I do not consider that the loss of the equipped play area will likely result in children playing on the roads or that the loss will adversely affect the health benefits of children within this housing scheme to a level that would warrant refusal of the application. Accordingly I am of the view that the proposal is not in conflict with the Development Plan to a level that would warrant refusal of the application as informal play can be catered for within the areas of openspace. Therefore condition 5 of application 15/01177/FLL can be deleted.



### **Other Site Circumstances**

- 59 There has been no change to site circumstances since the previous 2015 planning approval. I have taken account of the applicable policies of the LDP which relate to residential amenity, access/traffic/transport, waste collection, developer contributions, listed buildings, bio diversity, landscape as well as flooding. I find that these matters have been satisfactorily addressed or covered via earlier applications and conditions. If this conditional control is reapplied it is considered that the proposal will accord with the Development Plan.

### **Economic Impact**

- 60 The construction of the residential development would provide opportunities for local trades and tradesmen to become involved in the construction phase. Additionally there would likely be a positive economic impact on the local area associated with the increase of population to Alyth which may sustain commercial opportunities within the town centre or lead other economic opportunities.

### **LEGAL AGREEMENTS**

- 61 Not required.

### **DIRECTION BY SCOTTISH MINISTERS**

- 62 Under the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008, regulations 30 – 32 there have been no directions by the Scottish Government in respect of an Environmental Impact Assessment screening opinion, call in or notification relating to this application.

### **CONCLUSION AND REASONS FOR RECOMMENDATION**

- 63 To conclude, the application must be determined in accordance with the adopted Development Plan unless material considerations indicate otherwise. In this respect, I have taken account of the LDP and material considerations and in this case I am content that the deletion of condition 5 can be supported. While the Planning Authority's preference would be to retain an equipped area of play it is considered that the loss of play equipment is preferable to a loss of developer contributions associated with affordable housing and education.
- 64 Accordingly the section 42 application, taking account of the circumstances, should be granted as there are material considerations that support the approval of the application.

## **RECOMMENDATION**

### **A Approve the application**

#### **Conditions:**

- 1 The development shall not commence until the following matters have been approved by the Planning Authority:
  - (i) The siting, design and external appearance of the development, the landscaping of the site, areas of open space, pedestrian links, all means of enclosure, the car parking and means of access to the site.

Reason - This is a Planning Permission in Principle under Section 59 of the Town and Country Planning (Scotland) Act 1997 as amended by Section 21 of the Planning etc. (Scotland) Act 2006.

- 2 No development shall take place within the site until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant agreed by Perth and Kinross Heritage Trust. Thereafter the developer shall ensure that the programme of archaeological works is fully implemented and that all recording and recovery of archaeological resources within the development site is undertaken to the satisfaction of the Planning Authority in agreement with Perth and Kinross Heritage Trust.

Reason - In order to protect archaeological interests.

- 3 The submitted sketch layouts are purely illustrative at this stage and are not approved and no specific number of houses is agreed at this stage and shall be subject to an acceptable scheme being submitted under Condition 1 above, all to the satisfaction of the Council as Planning Authority.

Reason - In order to safeguard the visual and residential amenity of the area; to ensure a satisfactory standard of local environmental quality and to avoid the over intensive development of the site.

- 4 The core paths located on the site must not be obstructed during building works or on completion. Any damage done to the route during the building works must be made good before the house is occupied or first let.

Reason - In order to protect public rights of way.

- 5 The long term maintenance of the public open space and the informal play area must be in accordance with one of the three options in line with Council policy as follows:
- (a) Perth and Kinross Council take title to the land and maintain the ground in perpetuity for a flat rate commuted sum payable by the developer. The sum is set annually per dwelling and is currently £300/unit excluding play areas which are charged as a single sum currently £19,000.
  - (b) The Greenbelt Company can take title to the land and maintain in perpetuity for a charge to the developer with the Council getting sight of the agreement.
  - (c) An approved alternative company maintains the open space in perpetuity for a charge to the developer and a permanent bond is lodged with the Council against default.
  - (d) The Council do not permit developers or their agents to include title of areas of public open space or levy an annual charge to individual residents for any of the options above.

Reason - In order to comply with the Council's Open Space standards and policies.

- 6 A detailed tree survey shall be provided by the developer including topographical survey and any trees retained should be within adequate areas of open space and not affected by service trenches or level changes and protected in accordance with BS 5837:2005 all to the satisfaction of the Council as Planning Authority.

Reason - In the interests of visual and residential amenity.

- 7 The development shall be in accordance with the Council's Affordable Housing Policy approved in August 2005 which requires a 25% allocation of affordable units within the development all to the satisfaction of the Council as Planning Authority.

Reason - To comply with the Council's approved policy on affordable housing.

- 8 No development shall take place until a full drainage strategy for the site has been submitted and approved in writing by the Planning Authority in consultation with SEPA that will be based upon an updated Flood Risk Assessment (FRA). The FRA should take account of the legislative, regulatory and policy position now in place and must inform the finalised design and layout of the site, demonstrating that the proposed development layout will not increase the risk of flooding to the site or elsewhere and that the proposed development levels are appropriate. Following written approval the full drainage strategy shall be carried out prior to the erection of any dwellings connected with this application.

Reason - In order to avoid any potential flood risk.

- 9 The development shall be in accordance with the requirements of the Council's Primary Education and New Housing Development Policy approved in May 2009 all to the satisfaction of the Council as Planning Authority.

Reason - To comply with the Council's approved Education Contributions policy.

- 10 Prior to the occupation and use of the approved development all matters regarding access, car parking, road layout, design and specification (including the disposal of surface water) and facilities for public transport in the form of bus boarders, bus stops and associated shelters within the site and on the public road adjacent to the site shall be in accordance with the standards required by the Council as Roads Authority and to the satisfaction of the Planning Authority.

Reason - In the interests of road and public safety.

- 11 Storm water drainage from all paved surfaces, including the access, shall be disposed of by means of suitable sustainable urban drainage systems to meet the requirements of best management practices

Reason - In the interests of road and public safety.

## **B JUSTIFICATION**

The proposal is not considered to conflict with the Development Plan to a level that would warrant refusal of the application and there are material considerations associated with viability which also justify the deletion of the play equipment condition.

## **C PROCEDURAL NOTES**

Perth and Kinross Council direct that sub-sections (2)(a)(i) and (3) of Section 59 of the Town and Country Planning (Scotland) Act 1997 apply as respects to this application (16/01842/FLM).

## **D INFORMATIVES**

- 1 Under section 27A of the Town and Country Planning (Scotland) Act 1997 (as amended) the person undertaking the development is required to give the planning authority prior written notification of the date on which it is intended to commence the development. A failure to comply with this statutory requirement would constitute a breach of planning control under section 123(1) of that Act, which may result in enforcement action being taken.

- 2 As soon as practicable after the development is complete, the person who completes the development is obliged by section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended) to give the planning authority written notice of that position.
- 3 This development will require the 'Display of notice while development is carried out', under Section 27C(1) of the Town and Country Planning Act 1997, as amended, and Regulation 41 of the Development Management Procedure (Scotland) Regulations 2013. The form of the notice is set out in Schedule 7 of the Regulations and a draft notice is included for your guidance. In accordance with Regulation 41 the notice must be:
  - Displayed in a prominent place at or in the vicinity of the site of the development
  - Readily visible to the public
  - Printed on durable material.
- 4 The applicants are advised that they must apply to the Roads Authority, for construction consent to form a new street. Please contact The Construction and Maintenance Manager, The Environment Service, Perth and Kinross Council, The Atrium, Glover Street, Perth.
- 5 The applicant is advised that in terms of Sections 21 of the Roads (Scotland) Act 1984 he/she/they must obtain from the Council as Roads Authority consent to construct a new road prior to the commencement of roadworks. Advice on the disposal of surface water must be sought at the initial stages of design from Scottish Water and the Scottish Environmental Protection Agency.
- 6 No work shall be commenced until an application for building warrant has been submitted and approved.
- 7 The applicant is advised that the granting of planning consent does not guarantee a connection to Scottish Water's assets. A totally separate drainage system will be required with the surface water discharging to a suitable outlet. Scottish Water requires a sustainable urban drainage system (SUDS) as detailed in Sewers for Scotland 2 if the system is to be considered for adoption

Background Papers: 4 letters of representation  
Contact Officer: John Russell – Ext 75346  
Date: 21 December 2016

**NICK BRIAN  
INTERIM HEAD OF PLANNING**

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