

Perth and Kinross Council  
Planning & Development Management Committee – 11 April 2018  
Report of Handling by Interim Development Quality Manager

**PROPOSAL:** Erection of 26 flats

**LOCATION:** Land at Allison Crescent, Perth

Ref. No: 17/02118/FLL

Ward No: P11- Perth City North

**Summary**

This report recommends approval of the application as the development is considered to comply with the relevant provisions of the Development Plan and there are no material considerations apparent which outweigh the Development Plan.

**BACKGROUND AND DESCRIPTION OF PROPOSAL**

- 1 Full planning consent is sought for the erection of a total of 26 flats, contained with three blocks on an area of vacant land within the Tulloch area of Perth. The land is currently utilised as a storage area for containers and building materials and is surrounded by temporary fencing. There is also a temporary north/south path through the site which provides a pedestrian link between Allison Crescent and Pullar Terrace. Outline consent was previously granted for a wider residential development in the surrounding area in 1997 (PK/0360) but no details were ever submitted for this part of the site. The application site was originally part of a wider allocated housing site (H11) in the Perth Area Local Plan 1995 which identified a capacity for 250 homes. A previous application on the site for 30 flats (07/01951/AML) was refused due to concerns relating to the proposed road layout, footpath links, affordable housing requirements and the lack of landscape details.
- 2 This application is a re-submission following the withdrawal of two previous applications for 27 flats (17/01069/FLL) and 26 flats (17/01357/FLL) which were withdrawn due to concerns identified relating to the scale of development and the road and site layout.
- 3 This proposed application seeks to build three individual, three storey blocks positioned on the northern half of the site. Blocks 2 and 3 are to contain 9 flats each with block 1 containing 8 flats due to a proposed step down to relate to the adjacent properties on Allison Crescent to the east.
- 4 Car parking is proposed to the south of the flat blocks with a strip of open space beyond. Bin stores and cycle parking facilities are proposed within the parking area. A single vehicular access point is proposed from Allison Crescent to the north. A footpath link is proposed within the site to provide a link between the

development and an existing footpath which runs to the rear of properties on Pullar Terrace.

- 5 The application site is surrounded to the east by existing single storey flatted properties, to the north by Allison Crescent, an area of public open space and further housing beyond, to the west by land owned by PKC where the proposed Sustainable Urban Drainage System (SUDS) for the A9/A85 junction is proposed and to the south by an area of open space, existing footpath and two storey residential units beyond.

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

- 6 Directive 2011/92/EU requires the 'competent authority' (in this case Perth and Kinross Council) when giving a planning permission for particular large scale projects to do so in the knowledge of any likely significant effects on the environment. The Directive therefore sets out a procedure that must be followed for certain types of project before 'development consent' can be given.
- 7 This procedure, known as Environmental Impact Assessment (EIA), is a means of drawing together, in a systematic way, an assessment of a project's likely significant environmental effects. This helps to ensure that the importance of the predicted effects, and the scope for reducing any adverse effects, are properly understood by the public and the relevant competent authority before it makes its decision.
- 8 An Environmental Statement was not required to be submitted with the proposal as the scale of development falls below the EIA thresholds.

## **PRE-APPLICATION CONSULTATION**

- 9 The proposed development is not classed as a Major development in terms of the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009. Therefore the applicant was not required to undertake not any formal pre-application consultation with the local community.

## **NATIONAL POLICY AND GUIDANCE**

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

### **National Planning Framework**

- 11 NPF3 is a long-term strategy for Scotland and is a spatial expression of the Government's Economic Strategy and plans for development and investment in infrastructure. Under the Planning etc. (Scotland) Act 2006 this is now a statutory document and material consideration in any planning application. The document provides a national context for development plans and planning decisions as well as informing the on-going programmes of the Scottish Government, public agencies and local authorities.

## **Scottish Planning Policy 2014**

- 12 The Scottish Planning Policy (SPP) was published in June 2014 and sets out national planning policies which reflect Scottish Ministers' priorities for operation of the planning system and for the development and use of land. The SPP promotes consistency in the application of policy across Scotland whilst allowing sufficient flexibility to reflect local circumstances. It directly relates to:
- The preparation of development plans;
  - The design of development, from initial concept through to delivery; and
  - The determination of planning applications and appeals.
- 13 The following sections of the SPP will be of particular importance in the assessment of this proposal:
- Sustainability : paragraphs 24 – 35
  - Placemaking : paragraphs 36 – 57

## **Planning Advice Notes**

- 14 The following Scottish Government Planning Advice Notes (PANs) and Guidance Documents are of relevance to the proposal:
- PAN 40 Development Management
  - PAN 51 Planning, Environmental Protection and Regulation
  - PAN 61 Planning and Sustainable Urban Drainage Systems
  - PAN 68 Design Statements
  - PAN 69 Planning and Building standards Advice on Flooding
  - PAN 75 Planning for Transport
  - PAN 77 Designing Safer Places

## **Creating Places**

- 15 Creating Places is the Scottish Government's policy statement on architecture and place. It sets out the comprehensive value good design can deliver. It notes that successful places can unlock opportunities, build vibrant communities and contribute to a flourishing economy and set out actions that can achieve positive changes in our places.

## **Designing Streets 2010**

- 16 Designing Streets is the first policy statement in Scotland for street design and marks a change in the emphasis of guidance on street design towards place-making and away from a system focused upon the dominance of motor vehicles. It has been created to support the Scottish Government's place-making agenda, alongside Creating Places, which sets out Government aspirations for design and the role of the planning system in delivering these.

## **National Roads Development Guide 2014**

- 17 This document supports Designing Streets and expands on its principles and is considered to be the technical advice that should be followed in designing and approving of all streets including parking provision.

## **DEVELOPMENT PLAN**

- 18 The Development Plan for the area comprises the TAYplan Strategic Development Plan 2016-2036 and the Perth and Kinross Local Development Plan 2014.

## **TAYPlan Strategic Development Plan 2016-2036**

- 19 TAYPlan sets out a vision for how the region will be in 2036 and what must occur to bring about change to achieve this vision. The vision for the area as set out in the plans states that:
- 20 *“By 2036 the TAYplan area 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, study and visit, and where businesses choose to invest and create jobs.”*

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

- 21 The Local Development Plan (LDP) was adopted by Perth and Kinross Council on 3 February 2014. The LDP sets out a vision statement for the area and states that, *“Our vision is of a Perth and Kinross which is dynamic, attractive and effective which protects its assets whilst welcoming population and economic growth.”* It is the most recent statement of Council policy and is augmented by Supplementary Guidance.
- 22 The principal relevant policies are, in summary

## **Policy RD1 - Residential Areas**

- 23 In identified areas, residential amenity will be protected and, where possible, improved. Small areas of private and public open space will be retained where they are of recreational or amenity value. 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 PM1A - Placemaking**

- 24 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 PM1B - Placemaking**

- 25 All proposals should meet all eight of the placemaking criteria.

### **Policy PM2 - Design Statements**

- 26 Design Statements should normally accompany a planning application if the development comprises 5 or more dwellings, is a non-residential use which exceeds 0.5 ha or if the development affects the character or appearance of a Conservation Area, Historic Garden, Designed Landscape or the setting of a Listed Building or Scheduled Monument.

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

- 27 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 RD4 - Affordable Housing**

- 28 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**

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

### **Policy TA1B - Transport Standards and Accessibility Requirements**

- 30 Development proposals that involve significant travel generation should be well served by all modes of transport (in particular walking, cycling and public transport), provide safe access and appropriate car parking. Supplementary Guidance will set out when a travel plan and transport assessment is required.

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

- 31 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 pursued to create, improve and avoid the fragmentation of green networks.

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

- 32 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 EP2 - New Development and Flooding**

- 33 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**

- 34 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**

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

### **Policy EP12 - Contaminated Land**

- 36 The creation of new contamination will be prevented. Consideration will be given to proposals for the development of contaminated land where it can be demonstrated that remediation measures will ensure the site / land is suitable for the proposed use.

### **Proposed Perth and Kinross Local Development Plan 2 (LDP2)**

- 37 Perth & Kinross Council is progressing with preparation of a new Local Development Plan to provide up-to-date Development Plan coverage for Perth & Kinross. When adopted, the Perth & Kinross Local Development Plan 2 (LDP2) will replace the current adopted Perth & Kinross Local Development Plan (LDP). The Proposed Local Development Plan 2 was approved at the Special Council meeting on 22 November 2017. The Proposed LDP2 sets out a clear, long-term vision and planning policies for Perth & Kinross to meet the development needs of the area up to 2028 and beyond. The Proposed LDP2 is considered consistent with the Strategic Development Plan (TAYplan) and Scottish Planning Policy (SPP) 2014.

- 38 The Proposed LDP2, as approved by Perth & Kinross Council, was subject of a 9 week period of representation, which ended on 2 February 2018. Any unresolved representation to the Proposed Plan after this period is likely to be considered at an Examination by independent Reporter(s) appointed by the Scottish Ministers. The Reporter(s) will thereafter present their conclusions and recommendations on the plan, which the Council must accept prior to adoption. It is only in exceptional circumstances that the Council can elect not to do this.
- 39 The Proposed Plan represents Perth & Kinross Council's settled view in relation to land use planning and as such it is a material consideration in the determination of planning applications. The Proposed Plan is, however, at a stage in the statutory preparation process where it may be subject to modification. As such limited weight can therefore currently be given to its content and the policies and proposals of the plan are only referred to where they would materially alter the recommendation or decision. The weight of the Proposed Plan may change following consideration of representation received during consultation, at which time the level of significance of any objection to strategy, policies or proposals within the plan will be known.

## **SITE HISTORY**

- 40 PK/97/0360 Erection of approximately 250 houses (in outline) Approved at Committee February 1998
- 41 07/01951/AML Erection of 30 dwelling flats and associated infrastructure Application refused under delegated powers 19 April 2011
- 42 17/01069/FLL Erection of 27no. flats 28 July 2017 Application withdrawn
- 43 17/01357/FLL Erection of 26 no. flats and associated works Application withdrawn 14 September 2017

## **OTHER POLICIES**

- 44 Flood Risk and Flood Risk Assessments – Developer Guidance June 2014 and Developer Contributions and Affordable Housing Supplementary Guidance April 2016

## **CONSULTATIONS**

- 45 As part of the planning application process the following bodies were consulted:

### **External**

- 46 Scottish Environment Protection Agency – initial objection relating to flood risk, location of Newton Burn culvert and surface water drainage. Objection now withdrawn following receipt of additional information.
- 47 Scottish Water – no objection

## **Internal**

- 48 Transport Planning – no objection
- 49 Environmental Health – no concerns relating to proximity of flats to A9/A85 exchange link road.
- 50 Community Waste Advisor – content with proposals for waste provision
- 51 Community Greenspace – content with landscaping proposals which will be adopted by the Council. The links to the wider public open space to the west of the flats is particularly important and have been adequately addressed. The Council will adopt the public open space subject to it reaching adoptable standard. The current policy for the adoption of public open space requires payment of a commuted sum of £370 per house and transfer of title to the Council.
- 52 Contributions Officer – no contribution required as the site benefits from extant planning consent in principle under PK/97/0360. Whilst this is a new planning application it falls within the boundary of this consent and is for the consented land use. Paragraph 3.2 of the Supplementary Guidance states that the guidance will not apply retrospectively to a site with full or “in principle” planning consent. As the “in principle” consent predates the adoption of the relevant sections of the guidance, in relation to affordable housing, primary education and transport infrastructure, these will not be applied to this proposal.
- 53 Perth And Kinross Heritage Trust – archaeological investigation required
- 54 Structures and Flooding – requested further information relating to Newton Burn culvert to south of the site and proposals relating to surface water drainage. Further information has been submitted which identifies that no development will take place over Newton Burn and that surface water drainage will be connected to Scottish Water surface water sewer. Detailed design can be secured by condition.

## **REPRESENTATIONS**

- 55 The following points were raised in the 19 letters of objection received:
- Excessive height
  - Design
  - Loss of daylight or sunlight
  - Noise Pollution
  - Over development/ Inappropriate density
  - Overlooking
  - Traffic congestion/road safety/lack of parking
  - Visual impact
  - Use of open space and its current poor condition



- Lack of green space
- Flood risk/impact on watercourse
- Loss of trees
- Loss of open space to north
- Construction noise
- Previous refusal
- Affordable housing requirement
- Alternative proposals for 2 storey housing preferred
- Contaminated land
- Drainage – existing surface water flooding concerns
- Impact on Human Rights
- Maintenance of trees and potential for falling on property
- Concern regarding withdrawal of previous applications
- Accuracy of plans
- Potential for development to include revised vehicular access into rear of Pullar Terrace (not part of proposal).
- Contaminated Land
- Loss of view
- Impact on property values
- Timing of submission over Christmas break
- Other flats for sale in immediate vicinity

56 These issues are addressed in the appraisal section of the appraisal. The loss of a view, impact on value of property, timing of the submission and the presence of other flats for sale in the area are not material planning considerations.

## **ADDITIONAL STATEMENTS**

57

Environment Statement	Not Required
Screening Opinion	Not Required
Environmental Impact Assessment	Not Required
Appropriate Assessment	Not Required
Design Statement / Design and Access Statement	Submitted
Reports on Impact or Potential Impact	Submitted

## **APPRAISAL**

58 Sections 25 and 37(2) of the Town & Country Planning (Scotland) Act 1997 (as amended) require 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 Plan comprises the TAYplan

Strategic Development Plan 2016–2036 and the Perth and Kinross Local Development Plan 2014. The relevant policy considerations are outlined in the policy section above and are considered in more detail below. In terms of other material considerations, this involves considerations of the Council's other approved policies and supplementary guidance which are identified in the policy section above.

### **Principle**

- 59 The site is located within an established residential area where policy RD1 of the Perth and Kinross Local Development Plan (LDP) applies. This states that infill residential development will be accepted where the density makes the most efficient use of the site and where existing residential amenity will be retained and respected. As such the general principle of residential development on this site is considered to be acceptable. A detailed assessment of the proposal in relation to design, residential amenity and other relevant matters are outlined in the paragraphs below.

### **Design and Scale**

- 60 This area of Tulloch is characterised by a number of differing design styles and scales and includes detached dwelling houses of two storeys, single storey flats and three storey flats located to the north east. The properties in the surrounding area are finished in a mixture of finishing materials including harling, brick and concrete tiles. The proposed flats are to be finished in white roughcast and facing brick and timber cladding. The windows are proposed to be anthracite grey upvc. Given the mixture of finishes in the surrounding area I consider the proposed finishes to be appropriate in this context. I also consider the overall character of the area to be relatively mixed and as such there is scope for a set of three storey blocks to be acceptable on this site. A step down is proposed on block one to allow the scale and height to better relate to the adjacent properties to the east and a street elevation has been provided to demonstrate the relationship of the proposed development with the adjacent properties at 69-75 Allison Crescent. There are a similar set of three storey flats located to the north east on Allison Crescent and the design, form and scale of these proposed flats relates to the consented and constructed flats to the east. Given the overall mix of scale and design types in this part of Tulloch I consider the design and height of the proposed development to be acceptable in this context. The site slopes down from Allison Crescent which will help to reduce the bulk and scale of the dwellings when viewed from Allison Crescent. The full height of each flat block will be clearly visible from the rear of properties on Pullar Terrace to the south but given the distance between these properties and the proposed blocks (45 metres) this is considered to be acceptable. This will be considered in more detail within the residential amenity paragraph below.
- 61 Overall the design and scale of the units is considered to be acceptable given the site context and topography and the step down to the east helps to provide an improved relationship to the scale of the neighbouring buildings on Allison Crescent. As such the design and scale of the development is considered to

comply with the criteria outlined in policies PM1A and B and RD1 where they relate to design and scale.

## **Layout**

- 62 As described above the individual flat blocks are proposed on the northern half of the site following the building line of the properties to the east. A single access road is proposed into the site between the blocks 2 and 3 which will provide vehicular access to a car parking area to the south of the flats which will accommodate 52 spaces, together with cycle parking and bin stores. Transport Planning have been consulted on the layout and have advised that the proposed revised layout is now acceptable. They had previously been consulted on the earlier applications and raised concerns regarding the road design and layout and that was the main reason why the previous applications were withdrawn. Following discussions during the previous applications between Transport Planning and the applicant the layout was to be amended to ensure that it has been designed to an adoptable standard. This is to allow it to be brought forward for adoption in the future. In this most recent layout there are now footpaths proposed along the access into the site to cater for pedestrians and to allow pedestrians to safely enter and leave the parking area to the rear without using the same carriageway as vehicles. Furthermore vehicles are now able to turn within the site. Transport Planning have advised that the amended layout is now considered to be acceptable and accords with the National Roads Development Guide and Policy TA1B of the LDP. The detail of the access arrangements and approval are secured through the Roads Construction Consent (RCC).

## **Residential Amenity**

- 63 A number of letters of representation have raised concerns regarding the potential impact which the development will have on the amenity of nearby residents. There are three key areas which may be affected by the proposal and these will be addressed in turn below. These are Pullar Terrace, Allison Crescent and Greig Place.

### Pullar Terrace

- 64 Located to the south of the application site there is potential for the scale of development to impact on the amenity of the residents of Pullar Terrace. The rear of the properties on Pullar Terrace, together with their rear garden grounds are clearly visible from the application site and letters of representation from the residents of Pullar Terrace have identified concerns with overlooking and overshadowing associated with the proposed development. It is noted that the site is currently undeveloped but occupied by building materials and temporary buildings and the proposal will result in the removal of these materials and temporary buildings. Given the site is located within a residential area and is currently vacant there should, in my view, be an expectation that this site would eventually be developed at some point. It is fully accepted that the erection of 3 storey flat blocks will alter the outlook from the rear of properties in Pullar Terrace, however the loss of a view is not a material consideration in planning

terms. Furthermore the proposed blocks are located 45 metres from the rear elevations of the properties on Pullar Terrace and whilst the blocks will have windows which face towards Pullar Terrace, I consider the 45m distance to be sufficient to mitigate overlooking. Recognised guidance on this matter which is based upon the Building Research Establishment's (BRE) guide on site layout planning which is applied throughout Perth and Kinross seeks a minimum of 18m from window to window and the distance apparent here is more than double that and is therefore considered acceptable.

- 65 In terms of daylight and sunlight reduction, again there is guidance in place which allows an assessment of impact to be made. The 25 degree approach applies. This requires suitable daylight for habitable rooms to be achieved when a 25 degree vertical angle is taken from the centre of the lowest window on an existing property. The line from this window at a 25 degree angle determines what the maximum ridge height of the adjacent building. In this instance given the distance between the existing properties and the proposed development the proposal would not result in loss of daylight and sunlight to the properties on Pullar Terrace. It is appreciated that the proposed car parking area and public open space may be overshadowed by the proposal but the proposal is considered to meet the requirements of the guidance in terms of daylight and sunlight. Furthermore given the orientation of the buildings the likelihood of overshadowing to the south is minimal due to the position of the sun throughout the day.

#### Greig Place

- 66 Greig Place is located to the north west of the application site and is occupied by detached dwellings where the rear elevations and gardens face toward the application site and letters of representation have identified concerns relating to overlooking and overshadowing from the proposed 3 storey blocks into both the garden ground and rear windows. There is a large area of open space annotated as 'public open space' on the submitted site plan between the proposed flatted blocks and the rear gardens of these properties. Block 3 is the closest block to the properties on Greig Place and sits at a lower level than Greig Place. A sectional drawing has been submitted to demonstrate the difference in levels between the proposed development and Greig Place. Block 3 is proposed at an angle from Greig Place and the distance from the windows within the block to the rear windows on the nearest houses on Greig Place (nos 2-6) is between 25 and 36 metres. Furthermore the distance from windows of the proposed block to the rear boundaries of nos 2-6 is between 14 metres and 27 metres. The submitted sectional drawings indicate that the 2nd floor FFL of the flats of 28.6 m AOD is similar to the GFL of 5 Greig Place given the drop in topography. As such the first floor and ground floor flats will look towards the area of open space rather than directly into the neighbouring properties. The FFL of the second floor flat will be at a similar level to the ground floor level of the properties on Greig Place and the garden ground of the properties slopes down towards the application site. As such there is some scope for the second floor flats to overlook the properties on Greig Place. However, as mentioned above, the Council's guidance seeks a minimum of 18m window to window and 9m window to boundary in order to mitigate overlooking. In this instance those

distances are achieved and therefore this is considered sufficient to mitigate concerns regarding overlooking.

- 67 In terms of overshadowing the same 25 degree rule referred to above applies and having applied this the majority of overshadowing which would occur is to the open space area and not into the gardens or windows of the existing houses and as such this is considered to be acceptable in planning terms.

#### Allison Crescent

- 68 There are flats located to the immediate east of the application site which front onto Allison Crescent and there is potential for block 1 to overshadow these properties. On that basis the scale of block 1 has been reduced with its eastern end reduced to two stories. There are no windows proposed on the eastern gable elevation.
- 69 Environmental Health have identified the new A9/A85 exchange link road as have the potential to disturb the amenity of occupiers of the proposed flats, however having reviewed the plans they have confirmed that they are satisfied that the proposed barrier along the route is sufficient to protect the amenity of all of the flats.

#### **Traffic and Transport**

- 70 As outlined above there is a single access proposed to serve the site with car parking, bin stores and cycle parking proposed to the south (rear) of the flat blocks. The level of car parking proposed is considered to be sufficient. Following submission of the previous application there was discussion with the Council's Transport Planners regarding the overall layout, the lack of footpaths to serve the proposed roads and the lack of any detail to demonstrate that the roads within the site will be developed to an adoptable standard. There was also no provision within the site for turning to allow vehicles to leave the site in a forward gear. As such, the previously proposed layout of the site was not considered to be appropriate. The layout has now been revised with the access into the site designed to an adoptable standard and Transport Planning have confirmed that the layout is now considered to be acceptable. This includes footpath provision within the site and allows vehicles to enter and leave the site in a forward gear. As outlined elsewhere the detailed design will be assessed further through the Roads Construction Consent (RCC) process. The proposal therefore accords with Policy TA1B of the LDP.

#### **Footpath Link**

- 71 The vacant site currently has a footpath link through the middle of the site which provides access from Allison Crescent to Pullar Terrace to the south and then subsequent access to the nearest bus stops on Primrose Crescent. It is evident from letters of representation that this is a well-used link and therefore discussions were undertaken regarding incorporating this link into the proposed development. A footpath link is proposed centrally within the site. This link extends from the proposed roadway within the site to connect with the existing

public footpath to the rear of properties on Pullar Terrace. There is an existing path between nos 20 and 21 Pullar Terrace. This provides a shortcut for pedestrians to reach the bus stops on Primrose Crescent and allows the existing route to be maintained as part of the development. Condition 4 ensures that this footpath link is completed prior to the occupation of the first unit on site. Given that this is an existing footpath link I do not consider provision of this proposed footpath to result in any increased impact on residential amenity.

## **Landscaping and Open Space**

- 72 There is a small narrow strip of land identified as open space on the plans which is located to the south of the proposed car parking area. Following discussions with Community Greenspace they have indicated that there may be scope for this area to be adopted by the Council (subject to an appropriate financial agreement) and for its maintenance to be secured as part of the wider area of open space which extends to the south and west of the site. On that basis discussions were undertaken with the developer to provide a detailed planting and design for the area of open space with appropriate planting species. A simple planting scheme is proposed to ensure the area between the proposed car parking spaces and the footpath along Pullar Terrace is provided with a planting scheme to provide a buffer between the site and the adjacent properties. This will be a significant improvement over the existing situation given the currently unkempt condition of this piece of land. Community Greenspace have indicated that they would only be willing to adopt this area should it form part of a wider useable green network which provides multi-function and an integrated design. The proposed layout ensures that the land will be integrated into the wider network of open space around the site including the landscaped SUDS pond to the west and the open space to the north of the site. This is to ensure that the open space within the site is prepared to an adoptable standard and is useable. Policy CF1B of the LDP indicates that fragmentation of green networks is not appropriate. The detail of the planting proposed within this area is acceptable and will ensure this strip of land contributes to the wider open space network within the area. Condition 10 of the recommendation ensures that the maintenance and upkeep of the open space is maintained in perpetuity.

## **Waste Collection**

- 73 The Council's Waste Services Department raised concerns with the layout proposed in the previous application and the design for the bin stores. In their formal consultation response they were working on the basis that the roads within the site would be adopted but if they are not to be adopted their vehicles could not enter the site to collect the bins (as they can't be held liable for any damage) and instead residents would have to wheel their bins up to the public road for collection. The revised layout proposes part of the road to be constructed to an adoptable standard which will allow Council waste vehicles to enter and leave the site and collect waste. Waste Services have now confirmed that the layout of the site is acceptable.

## **Contaminated Land**

- 74 Policy EP12 of the LDP applies. This states that consideration will be given to proposals for the development of contaminated land, as defined under Part IIA, Section 78A(2) of the Environmental Protection Act 1990, where it can be demonstrated to the satisfaction of the Council that appropriate remediation measures can be incorporated in order to ensure the site/land is suitable for the proposed use. It goes on to state that the Council may wish to attach conditions to the granting of planning consent to ensure remediation measures have been completed prior to the commencement of any works. It then states that the Council will adopt the "suitable for use" approach as advocated by Scottish Government Statutory Guidance when dealing with proposals for the development of contaminated land.
- 75 The potential for contaminated land on the site was indicated on one of the submitted plans and attracted concern from the local community through letters of representation. The issue was discussed with the Council's Contaminated Land Officer. A site investigation has been carried out for the site and has identified made ground containing elevated levels of contaminants. As such it is appropriate for a detailed evaluation of the site to be undertaken to identify the level of contaminated and propose suitable mitigation measures to ensure the contaminants dealt with appropriately to allow the site to be developed and to protect adjacent properties.
- 76 Furthermore the applicant has advised that there will be no need to excavate or disturb the contaminated material on the site with the exception of the installation and laying of the new sewer/drainage connections. This will be carried out in accordance with the preliminary Construction Method Statement (doc ref:17/02118/8) (i.e in dry weather, in lined / capped trenches and back filled the same day).
- 77 This small amount of contaminated soil, removed for this purpose, will be kept in a covered skip and disposed of in accordance with the Waste Management Licensing regulations and at a suitably authorised site. This non-disturbance of the contaminated area will prevent in becoming exposed to rainfall and run-off and as such should protect the wider water environment.
- 78 The above can be covered by a suitably worded condition (condition 2).
- 79 This accords with the requirements of policy EP12 of the LDP.

## **Flood Risk and Drainage**

- 80 Having considered SEPA's 2015 flood maps, the application site is not located within an area considered to be at risk from flooding. Letters of representation have raised concern relating to surface water flooding on the footpath to the south of the site. Introducing hard surfaces within the site has potential to exacerbate surface water run-off from the site and this requires to be addressed through a detailed Sustainable Urban Drainage System (SUDS) as required by policy EP3C of the LDP. The application indicates that a SUDS

system will be utilised and the submission states that this will connect to a Scottish Water surface water sewer.

- 81 Concerns were initially identified by SEPA and the Flood Officer regarding the presence of the Newton Burn which runs within a culvert to the south of the site and the potential impact which the development may have on it. Further information has been submitted by the applicant and as a result the Flood Officer and SEPA have now withdrawn their objection relating to flood risk and drainage.
- 82 This additional information advises that no development will take place over the Newton Burn culvert, that the overland flow path of the Newton Burn will not impact on the development, overland flow from the development site will be reduced through the proposed new drainage system and that surface water drainage will connect to a Scottish Water surface water sewer with run off attenuated/stored on site. The information also indicates that the culvert is at a sufficiently lower level than the development that it will not pose a flood risk to the development should it collapse or surcharge. Furthermore no discharge from the site to the culvert is proposed and as such there is no increase in fluvial flood risk downstream as a result of the development. The Flood Officer has advised that the detailed design of the surface water system requires to be agreed but has confirmed that this can be agreed by condition (condition 6). SEPA have advised that they have no objection in relation to the proposed final phase SUDS approach.
- 83 SEPA also sought more information regarding the relationship between the contaminated land on the site and the water environment. The applicant has submitted a set of additional drainage plans which helps to explain how the site will be constructed to ensure that the contaminated land will not impact on the water environment. This includes additional sectional drawings together with a Construction Sustainable Urban Drainage System. Furthermore a detailed Construction Management Plan has been submitted to explain how the works will be undertaken. SEPA have indicated that the level of information is sufficient to allow them to withdraw their objection and have concluded that the information allows them to understand how the development will be constructed whilst ensuring the protection of the water environment. This is referred to further in the Contaminated Land section above. Conditions 1, 2, 7 and 9 are recommended to ensure the development adheres to these documents.
- 84 The proposal therefore accords with policies EP3B and C of the LDP.

### **Land Ownership**

- 85 Letters have raised concern regarding a disputed area of land at the southern end of the site adjacent to the footpath which runs alongside the rear of the properties on Pullar Terrace. There have been ongoing concerns regarding the maintenance of this area for a number of years. This area was not included in the previous applications for the site. Ownership of the area is still disputed, nevertheless the area in question has now been included within the application site to enable matters to move forward and to ensure it can be included as part



of a wider landscaped area around the development site. It also allows the footpath link between the site and the footpath along the rear of Pullar Terrace to be installed. As such the proposal includes planting in this area and condition 5 of the recommendation will ensure the ongoing upkeep and maintenance of the open space areas.

### **Trees**

- 86 There are a number of trees located within the large area of open space annotated as 'public open space' on the submitted site plan to the north west of the proposed flatted blocks. These are unlikely to be affected by the development, nevertheless their protection, in accordance with BS 5837:2012 Trees in Relation to Design, Development and Construction can be secured by condition 8.

### **Overall Maintenance and Upkeep**

- 87 Concerns are expressed in letters of representation regarding the upkeep and ongoing maintenance of the site. Should an application be approved, the maintenance of the open space can be ensured through three options, either through the Greenbelt Company, the provision of a financial bond to the Council or through Council adoption (which requires a financial payment by the developer per unit towards the overall maintenance). The upkeep and maintenance of the open space areas can be secured by condition (10).
- 88 Furthermore as outlined elsewhere in this report the roads and footpaths within the site would normally be adopted by the Council. The exact details of this are subject to further consideration through the Roads Construction Consent (RCC) process.

### **Developer Contributions**

- 89 As the site is part of a wider consented housing development site, the provision for affordable housing as part of the wider area has been implemented on site and these currently exist within the Tulloch area. As such the provision for affordable housing has been undertaken. The Council's Developer Contributions Officer has commented on the application and indicated that this site benefits from extant planning consent under PK/97/0360. While this is a new planning application it falls within the boundary of this consent and is for the consented land use.
- 90 Paragraph 3.2 of the Guidance states:
- The Guidance will not apply retrospectively to sites with full or 'In Principle' planning consent prior to each relevant section of the Guidance coming into effect;
  - Affordable Housing - August 2005
  - Primary Education - May 2009
  - Transport Infrastructure - April 2014

- 91 As the 'In Principle' consent predates the adoption of the relevant sections of the Guidance these will not be applied to this proposal. There is therefore no requirement for a developer contribution or for affordable housing to be provided for this site.

### **Alternatives**

- 92 Letters of representation have identified alternatives solutions for the site including an alternative layout. Whilst these are noted the Planning Authority requires to consider the development as submitted and determine the application on that basis. It would be for the developer to consider any alternatives for the site. In any case, in this instance it is considered that the proposed development as submitted is acceptable.

### **Accuracy of Plans**

- 93 The plans are considered to be accurate and represent the proposal in relation to the surrounding context and allow an assessment of material planning considerations to be made.

### **Loss of Value/View**

- 94 The loss of value to a property and loss of a view is not a material planning consideration and therefore has no bearing on the assessment of this application.

### **Construction Noise**

- 95 Construction noise is controlled through separate legislation and not through the Planning Act. This legislation will ensure that the amenity of neighbours is taken into account as a result of construction operations.

### **Archaeology**

- 96 Perth and Kinross Heritage Trust have advised in their consultation response that the site is not archaeologically sensitive and therefore no archaeological investigation is required.

### **Human Rights Act**

- 97 Article 8 of the European Convention of Human Rights is referred to within letters of representation. A recommendation of approval, has potential implications for neighbours in terms of the Human Rights Act 1998, the alleged interference with privacy, home or family life (Article 8) and peaceful enjoyment of their possessions (First Protocol, Article 1). For the reasons referred to elsewhere in this report relating to residential amenity, it is considered that any actual or apprehended infringement of such Convention Rights, is justified. The impact on residential amenity of this proposal is considered to be appropriate and should the application be recommended for approval this would constitute a justified and proportional control of the use of the property in accordance with

the general interest and have regard to the necessary balance of the applicant's freedom to enjoy its property against the public interest and the freedom of others to enjoy neighbouring property/home life/privacy without undue interference.

## **LEGAL AGREEMENTS**

- 98 Not required.

## **DIRECTION BY SCOTTISH MINISTERS**

- 99 Under the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, regulations 30 – 33 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**

- 100 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 Local Development Plan and material considerations and in this case I am content that the development proposed does not conflict with the Development Plan.
- 101 Accordingly the proposal is recommended for approval subject to the following conditions.

## **RECOMMENDATION**

### **Approve the application**

### **Conditions and Reasons for Recommendation**

- 1 The development hereby approved must be carried out in accordance with the approved drawings and documents, unless otherwise provided for by conditions imposed by this decision notice.

Reason - To ensure the development is carried out in accordance with the approved drawings and documents.

- 2 Development shall not commence on site until an evaluation for the potential of the site to be affected by contamination by a previous use has been undertaken and, as a minimum, a Preliminary Risk Assessment (Phase 1 Desk Study) has been submitted for consideration and accepted by the Council as Planning Authority. If the preliminary risk assessment identifies the need for further assessment, an intrusive investigation shall be undertaken to identify;

- I. the nature, extent and type(s) of contamination on the site
- II. measures to treat/remove contamination to ensure the site is fit for the use proposed

- III. measures to deal with contamination during construction works
- IV. condition of the site on completion of decontamination measures.

- 3 Prior to the completion or bringing into use of any part of the development the measures to decontaminate the site shall be fully implemented in accordance with the scheme subsequently agreed by the Council as Planning Authority. Verification that the scheme has been fully implemented must also be submitted to the Council as Planning Authority.

Reason - In order to deal with any potential contamination of the site as a result of its former use.

- 4 The footpath link to the south of the site shall be completed prior to the occupation of the first unit on site. The footpath shall maintained thereafter to the satisfaction of the Council as Planning Authority.

Reason - To ensure adequate provision for pedestrian links through the site.

- 5 The detailed landscaping and planting scheme which is hereby approved shall be completed within the first available planting season (October to March) after the completion or bringing into use of the development, whichever is the earlier. The approved scheme shall thereafter be maintained, with any planting which fails to become established within five years being replaced in the following planting season with others of a size and species as previously approved.

Reason - In the interests of visual amenity; to ensure a satisfactory standard of local environmental quality.

- 6 Development shall not commence on site until a detailed sustainable urban drainage system (SUDS) has been submitted for the further written agreement of the Council as Planning Authority, in consultation with SEPA where necessary. The scheme shall be developed in accordance with the technical guidance contained in The SUDS Manual (C753) and the Council's Flood Risk and Flood Risk Assessments Developer Guidance, and shall incorporate source control. All works shall be carried out in accordance with the agreed scheme and be operational prior to the occupation of any unit on site on site. The SUDS system shall accord with the details outlined in approved documents 17/02118/10, 14, 16, 17 and 18.

Reason - To ensure the provision of effective drainage for the site.

- 7 Concurrent with the initiation of the development hereby approved and for the duration of construction, a temporary surface water treatment facility which accords with SUDS principles shall be implemented on site and maintained for the duration of the approved development works. The temporary surface water treatment facility shall remain in place until the permanent surface water drainage scheme is implemented. The treatment facility shall accord with the details outlined in approved documents: 17/02118/12, 13 and 15 and shall also include a sampling and observation point at the post treatment/prior to discharge to the surface water sewer point. Prior to development commencing

on site, the applicants shall provide written confirmation from Scottish Water that they will accept drainage from the construction phase SUDS directly into their surface water network. If this confirmation cannot be provided, the applicants must provide an alternative means of draining the construction phase SUDS which shall be submitted to and agreed in writing by the Council, in consultation with SEPA, prior the commencement of any development on site. The system shall adhere to these approved details.

Reason - To ensure the appropriate management of construction surface water run-off to minimise flooding and avoid discharge of sediment/pollution to the local water environment or neighbouring property, in the interests of residential and environmental amenity.

- 8 Prior to the commencement of any works on site, all trees on site (other than those marked for felling on the approved plans) and those which have Root Protection Areas which fall within the site shall be retained and protected. Protection methods shall be strictly in accordance with BS 5837 2012: Trees in Relation to Design, Demolition and Construction. Protection measures, once in place, shall remain in place for the duration of construction.

Reason - In the interests of visual and residential amenity; to ensure a satisfactory standard of local environmental quality; to reserve the rights of the Planning Authority.

- 9 All construction operations on site shall strictly adhere to the Construction Method Statement hereby approved (doc ref:17/02118/11) to the satisfaction of the Council as Planning Authority.

Reason: In the interests of residential amenity and to protect the environment.

- 10 The landscaped open space within the site shall be retained and maintained in perpetuity to the satisfaction of the Council as Planning Authority.

Reason: In the interests of visual amenity to ensure a satisfactory standard of local environmental quality.

## **B JUSTIFICATION**

The proposal is in accordance with the Development Plan and there are no material reasons which justify departing from the Development Plan.

## **C PROCEDURAL NOTES**

None

## **D INFORMATIVES**

- 1 This planning permission will last only for three years from the date of this decision notice, unless the development has been started within that period

(see section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).

- 2 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.
- 3 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.
- 4 No work shall be commenced until an application for building warrant has been submitted and approved.
- 5 The developer should be aware of the regulatory requirements outlined within SEPA's consultation response dated 13 March 2018.

Background Papers: 19 letters of representation  
Contact Officer: John Williamson 01738 475360  
Date: 29 March 2018

**ANNE CONDLIFFE**  
**INTERIM DEVELOPMENT QUALITY MANAGER**

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