

Perth and Kinross Council
Development Management Committee – 2 August 2017
Report of Handling by Interim Head of Planning

Formation of access road, turning head, soakaway, installation of LPG tanks and associated works on land SE of Beaufield, Balado

Ref. No: 17/00295/FLL
Ward No: N8 – Kinross - shire

Summary

This report recommends refusal of the application for the formation of access road, turning head, soakaway, installation of LPG tanks and associated works on land south east of Beaufield, Balado as the development is not considered to comply with the Development Plan.

BACKGROUND AND DESCRIPTION

- 1 This application site is located within the settlement of Balado on an area of ground most recently used as a paddock.
- 2 The proposal is for the formation of access road, turning head, soakaway, installation of LPG tanks and associated works. A related application on this site for the erection of 8 houses was considered at a meeting of the Development Management Committee on 14 September 2016. This proposal was approved subject to completion of a section 75 legal agreement with regard to the payment of developer contributions. At the time of writing this report the section 75 has been signed by the applicant and Council and was to be sent for registration.
- 3 This application proposes minor changes to the access road. The changes were proposed by the applicant so that the development would have less impact in terms of land take on the four properties that currently front the access road. The proposal also includes the installation of LPG tanks and shows the foul soakaway located around 30 metres to the west of its location in the previous application.

NATIONAL POLICY AND GUIDANCE

- 4 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.

Scottish Planning Policy 2014

- 5 Of relevance to this application are:
 - Paragraphs 109 – 134: Enabling Delivery of New Homes

Designing Streets: A Policy Statement for Scotland 2010

- 6 Streets have to fulfil a complex variety of functions in order to meet people's needs as places in which to live, to work and to move around.

DEVELOPMENT PLAN

- 7 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

- 8 The overall vision of Tay Plan should be noted. The vision 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.”*
- 9 The principal policy, in summary is:

Policy 5: Housing

- 10 Ensure that the mix of housing type, size and tenure meets the needs and aspirations of a range of different households throughout their lives, including the provision of an appropriate level of affordable housing based on defined local needs. Local Development Plans (where applicable) will need to set affordable housing requirements for or within each housing market area.

Perth and Kinross Local Development Plan 2014

- 11 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.
- 12 The principal relevant policies are, in summary:

Policy PM1A - Placemaking

- 13 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 adaptation.

Policy PM1B - Placemaking

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

Policy PM3 - Infrastructure Contributions

- 15 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

- 16 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 EP3B - Water, Environment and Drainage

- 17 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 EP7A: Drainage within the Loch Leven Catchment

- 18 Total phosphorus from development must not exceed the current level permitted by the discharge consents for Kinross and Milnathort waste water treatment works together with the current contribution from built development within the rural area of the catchment.

Policy EP7B: Drainage within the Loch Leven Catchment

- 19 Developments within the Loch Leven Catchment Area will be required to connect to a publicly maintained drainage system incorporating phosphorus reduction measures. Exceptions will only be permitted where they are in accordance with criteria set out.

Policy EP7C: Drainage within the Loch Leven Catchment

- 20 Where EP7A and EP7B cannot be satisfied, proposals will be refused unless they are capable of removing 125% of the phosphorus likely to be generated by the development from the catchment.

OTHER POLICIES

Development Contributions

- 21 Sets out the Council's Policy for securing contributions from developers of new homes towards the cost of meeting appropriate infrastructure improvements necessary as a consequence of development.

SITE HISTORY

- 22 13/01379/FLL Erection of 8 dwellings with associated access road, parking bays, turning areas and drainage arrangements. This application was refused at Development Management Committee on 14th October 2015 (Decision Notice dated 26 October 2015). An appeal to the DPEA (PPA-340-2099) was dismissed on 23rd March 2016.
- 23 16/00996/FLL Erection of 8 dwellinghouses and associated works. This application was approved by the Development Management Committee on 14 September 2016. The application is currently pending decision awaiting registration of Section 75 legal agreement.

CONSULTATIONS

EXTERNAL

- 24 **Scottish Environment Protection Agency** – object to proposals on grounds of lack of information on potential impacts to potable (drinking and cooking) water supplied by a local private water supply.
- 25 **Kinross Community Council** – no comments to make on this application.

INTERNAL

- 26 **Local Flood Prevention Authority** - no objection.
- 27 **Developer Contributions Officer** – Developer contributions have been applied to the overarching planning application (16/00996/FLL) which seeks approval for the erection of 8 dwellinghouses on the wider site.
- 28 **Transport Planning** – no objections.

REPRESENTATIONS

- 29 A total of eight letters of objection were received during the advertisement period for the application.

30 The objections have raised the following issues: -

- **Procedure** – cannot accept application as a variation to planning permission 16/00996/FLL. Red line boundary should include Beaufield as services will go through there.
- **Roads matters** – issues with regard to whether the applicant has the legal right to carry out the required works to the road. The applicant does not own the road. Objectors do not want the existing road to be adopted.
- **Waste collection** - permission will be needed from owners for vehicles servicing the development and this will not be given. Service vehicles will not be able to use the road. Each new property would require servitude rights that will not be given by the existing owners.
- **Design detail** – The proximity of LPG cylinders to sewage soakaway is a concern. Possible flooding of LPG tanks. Potential smell. Road layout at junction.

31 The above matters are addressed in the Appraisal section of this report.

32 **ADDITIONAL STATEMENTS**

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

APPRAISAL

Policy Appraisal

- 33 Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 as amended by the 2006 Act require that planning decisions be made in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for the area comprises the approved TAYplan 2012 and the adopted Perth and Kinross Local Development Plan 2014.
- 34 The determining issues in this case are whether; the proposal complies with development plan policy; or if there are any other material considerations which justify a departure from policy.

Principle

- 35 The site is located within the Balado settlement boundary as defined in the Perth and Kinross Local Development Plan 2014. A related application (16/00996/FLL) was recommended for approval by the Development Management Committee on 14 September 2016 and is currently pending the conclusion of the section 75 agreement which is now signed and awaiting registration. The principle of the access road and associated works to serve the associated housing development is acceptable and was established through the consideration of the 2016 permission which was approved by the Development Management Committee subject to the completion of the associated section 75 agreement with regard to developer contributions.
- 36 The site is within the Loch Leven Catchment area and as such must satisfy the requirements of the policy with regard to phosphorus mitigation.
- 37 Policy EP3B Water, Environment and Drainage seeks to ensure that any private drainage proposal does not have an adverse impact on the amenity of the area. In this case there are concerns that the foul soakaway may impact on a private water supply. For reasons set out elsewhere in this report the proposal is considered to be contrary to this policy.

Procedure

- 38 Objectors are concerned that as 16/00996/FLL has not been approved this application could not be a variation of this application. I would comment that this application has not been accepted as a variation but as a standalone application. The issue of whether or not Beaufield should be in the red line boundary was raised as part of the previous application and I would note that this land has never been included in the site boundary. No services are shown on the site plans as coming through Beaufield.

Design and Layout

- 39 The proposal is for the formation of an access road, turning head, soakaway, installation of LPG tanks and associated works. The access road proposed will measure 4.8 metres wide from the junction with the public road to the bend by the house, Villa Conde. It will then be 4.1 metres in front of the four existing houses. The section within the new development will be 4.8 metres wide. This is a change to the earlier application which showed the whole length of road to be 5 metres wide. The change has been proposed to address concerns of neighbours who had not wished to see any reduction in the extent of the existing grassed areas to the front of their properties.
- 40 There have however still been objections from neighbours with regard to the proposal for the road and there is an ongoing legal dispute between the householders and applicant with regard to the servitude rights of access that exist over this land. This is primarily a legal matter that will be addressed separately from this application. There are also objections to the detail of the proposal particularly at

the entrance. With regard to this I would note that changes at the entrance appear minimal and that the Roads Construction Consent drawings show the existing entrance walls as being retained.

- 41 The proposal also includes the installation of LPG tanks not shown in the original application and the formation of a foul soakaway. The position of this soakaway has moved around 30 metres to the west from the position shown in the earlier application.

Landscape

- 42 The associated permission, once issued, includes a condition to agree a detailed landscaping plan for the wider site. There will be no adverse landscape impact from this change to the road and associated works.

Residential Amenity

- 43 Letters of representation highlight concern that there will be odour issues from the treatment plant. As set out in the previous committee report the applicant will require a CAR licence for the proposed development and any operational issues arising from the treatment plant will be dealt with through SEPA's CAR licencing regulations to ensure there are no amenity issues to neighbouring residential properties. A noise condition was previously recommended to protect neighbouring residential amenity from any noise generated by the private waste water treatment plant.

Roads and Access

- 44 The proposal includes formation of an access road that will be used to service the development of the eight houses approved as part of 16/00996/FLL. The previous application proposed alterations to the road that would widen the existing access road to 5 metres and showed a 5 metre road within the proposed new housing development area. This application is for a reduced road width throughout the site with the majority of the existing road and the new road being proposed to be 4.8 metres. A short section in front of the existing houses will be 4.1 metres to minimise the impact of the proposals on existing residents. The proposals have been discussed with Transport Planning who do not object. The site is within a rural area where traffic numbers are expected to be low and the reduced road width to that originally proposed is considered to be acceptable to Transport Planning. Full details will require be agreed as part of the Roads Construction Consent (RCC) application.
- 45 There have been objections as to whether the applicant has a legal right to undertake the required works to alter the existing access road. This issue was addressed as part of the previous application and it is noted that any issue over a right of access or any right to carry out works is a private civil matter for the parties involved. It is also a consideration as part of the related Roads Construction Consent (RCC) application. The legal issues in relation to this have also been considered by the Council's solicitor and it is noted that the situation with the RCC is similar to what happens with planning applications. There is no restriction under Section 21 (Roads

(Scotland) Act 1984, as to who can apply for RCC. The duty on the applicant is to notify the owners of all land which would affront, abut or comprehend in the (new or extension of existing) road. Anyone can apply for RCC irrespective of whether they have ownership or a right of access to get on land. Any dispute over whether there is a right to enter land to commence construction is therefore a private matter for the parties.

- 46 The objectors also do not wish to see the currently private road adopted. However even if this road is not adopted, a road, whether public or private, is regarded as a public right of way under the Roads (Scotland) Act 1984 and therefore all users have a public right of access over the road.

Drainage and Flooding

- 47 The site will be served by a private waste water treatment plant. The position of the foul soakaway for this has been moved by around 30 metres since the previous application. Scottish Environment Protection Agency (SEPA) was consulted and initially objected (letter dated 12th April 2017) on the grounds of lack of information. SEPA noted that the information provided in support of the application did not provide detail of a foul water discharge which SEPA considered could be consented under the terms of the Controlled Activities Regulations (CAR). More specifically SEPA did not consider that the foul water discharge to soakaway, as proposed in this application, is feasible in this location due to ground conditions and the site's proximity to drinking water sources. The applicant provided further information however this still failed to address SEPA's concerns (SEPA letter 24th April) and did not provide the required evidence that drinking water will not be contaminated by the foul soakaway.
- 48 The applicant provided further information in response to SEPA's concerns. SEPA responded to this information on 19th June 2017. Following consideration of this information SEPA maintain their objection to the proposal on the grounds of lack of information that gives the necessary certainty about risk to the Private Water Supply (PWS) (supported by borehole information). SEPA notes that in their responses to earlier applications, SEPA focused on the potential to issue a CAR licence. SEPA has re-focused on the potential contamination of potable (drinking and cooking water/water consumed by people) and note that this is too significant an issue to leave in any possible doubt now and at the CAR stage.
- 49 SEPA further note that a planning permission which sets the framework for a proposal which could not receive consent under the Controlled Activities Regulations (CAR) would be invalidated as it would not comply with other legal and regulatory requirements.
- 50 In addition it is noted by SEPA that there is a public sewerage system within a kilometre of the development at the Balado cross roads. Upgrading of this would provide a solution to the foul drainage issues that the applicant is trying to address. This application is one of four planning applications currently being made to the Council in Balado. All applications propose private and individual solutions for the discharge of foul effluent. Whilst connection to a public sewer would be of benefit to

all four development proposals in this area I would note that it is not possible to force developers to connect to this.

- 51 As SEPA maintains its objection to the planning application it should be noted that should the Planning Authority wish to recommend approval of the application, against the recommendation of SEPA, the application would need to be referred to the Scottish Ministers for a decision.

Waste and recycling

- 52 There has been an objection to the application with regard to the future use of the road by bin lorries. Currently the four existing houses waste and recycling bins are collected from the road end. If the road were to be adopted the bin lorry would enter the site and serve all houses (4 original and 8 new). If the road is not adopted the collection of waste bins along the road would require co-operation from the owners of the road who would need to agree to indemnify the Council (through a signed waiver) against any damage caused from reasonable use of the road by a refuse collection vehicle.

Developer Contributions

- 53 Developer contributions have been applied to the associated planning application (16/00996/FLL) which seeks approval for the erection of 8 dwellinghouses on the wider site.
- 54 Payment of the appropriate contribution is the subject of a Section 75 legal agreement.

Economic Impact

- 55 The economic impact of the proposal is likely to be minimal and limited to the construction phase of the development.

LEGAL AGREEMENTS

- 56 None required if contributions paid upfront to release consent.

DIRECTION BY SCOTTISH MINISTERS

- 57 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

58 In conclusion, the application must be determined in accordance with the adopted Development Plan unless material considerations indicate otherwise. In this respect, it is considered the proposal does not comply with the relevant provisions of the adopted plan. There are no material considerations that would justify departing from the LDP. On that basis the application is recommend for refusal.

RECOMMENDATION

A REFUSE

The proposal is contrary to policy EP3B, water environment and drainage, of the Perth and Kinross Local Development Plan 2014. There has been insufficient information submitted to demonstrate that the proposal would not have an adverse impact on a private water supply which provides local homes with potable water.

B Justification

The proposal is not 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

None.

Background Papers: 8 letters of representation.
Contact Officer: Persephone Beer – Ext 75354
Date: 06 July 2017

NICK BRIAN
Interim Head of Planning

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