

Perth and Kinross Council
Development Management Committee – 19 June 2013
Report of Handling by Development Quality Manager

Legacy Applications

Summary

This report recommends a change in recommendation to refusal of a number of planning applications which were previously minded to approve by the Development Management Committee but subject to either the signing of a Section 75 Agreement or an upfront payment for Developer Contributions. This upfront payment or progress in signing the Section 75 Agreement has failed to materialise and we now wish to bring the matter to a conclusion.

BACKGROUND AND DESCRIPTION

- 1 We are presently sitting with a substantial number of planning applications dating back as early as 2006 which are currently sitting in limbo. The applications were either determined at a previous Development Management/Control Committee or under Delegated Powers when it was minded to approve the application but subject to either an upfront payment for Developer Contribution or the signing of a Section 75 Legal Agreement. The Section 75 Agreement is generally in regard to affordable housing provision, deferred payment of Developer Contribution or Phosphate mitigation within the Loch Leven catchment area.

NATIONAL POLICY AND GUIDANCE

- 2 Scottish Government is keen that these “Legacy Applications” are brought to a conclusion and are urging Local Councils to determine those applications. As well as affecting the Performance Indicators for Planning Authorities, applications languishing in Council offices with no formal consents in place do nothing to boost the economy which is a particular problem in the current economic climate.

APPRAISAL

- 3 We have gone through all the outstanding applications and would advise that there are approx 90 applications awaiting either an upfront payment or the signing of a Section 75 Agreement. Over the years we have made efforts on many of the applications to resolve the situation but this is the first time that we have made a concerted effort across all applications to address the issue. Consequently, we have established a list of applications dividing them into the two categories of Sec 75 or Upfront payment and have written individually to every agent advising that we can no longer hold the application. In all we have sent out 63 letters giving the applicant a period of 28 days to pay upfront, sign the Section 75 or withdraw the application failing which they were advised that we would progress to a refusal based on the non-compliance with Council policy and guidance.

- 4 Clearly not all applications were previously determined at Development Management Committee and in fact the vast majority were Delegated decisions. Therefore, in recent weeks, we have determined a number of applications which were previously minded to approve under Delegated powers and refused these applications. Additionally approximately 10 applications have been withdrawn. For those applications previously determined at Committee the following pages give a summary of each application, the reason for the Section 75 / Upfront payment and the proposed reason for refusal. A short report has been prepared for each and a separate decision will require to be taken for each application.

FUTURE ACTION

- 5 To ensure a similar situation does not arise in the future I have now set in motion a series of measures
- A paragraph is now included in all Reports of Handling advising that if a Section 75 is not concluded within a period of 4 months then the application will be refused and setting out the reasons for refusal. Members will recall that this paragraph has been in Committee Reports for the last two Development Management Committees i.e. 24 April and 22 May 2013 and although we previously thought 6 months on reflection we consider 4 months to still be a realistic timescale and are therefore suggesting 4 months..
 - Advise applicants in the initial letter regarding the details for the Section 75 Agreement of the 4 month timescale.
 - A procedure has been put in place to alert officers when the 4 month period lapses and we will now progress to a refusal unless there are special circumstances to delay issuing a refusal.
 - Advise applicants when requesting the upfront payment that the payment should be made as soon as possible and if not the application will be refused. If the money is not paid within one month then there will be a follow up letter giving a final 14 day period before which the application will be refused on non compliance with Council policy.
 - Again a procedure has been put in place to alert officers of the two time periods.

CONCLUSION AND REASONS FOR RECOMMENDATION

- 6 It is hoped that with these procedures in place, in future we will not end up with such a large volume of legacy applications. Members are requested to note my comments on these legacy applications and support the recommendation to now refuse the attached planning applications. (Appendices I-V)

Background Papers: None
Contact Officer: Anne Condliffe – 475352
Date: 04 June 2013

NICK BRIAN
DEVELOPMENT QUALITY MANAGER

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Perth and Kinross Council
Development Management Committee – 19 June 2013
Report of Handling by Development Quality Manager

**Erection of 7 dwellinghouses at Vacant Land West Of, Station Road, Errol
PH2 7SN for YM-PDC**

Ref: No: 06/00266/FUL
Ward No: 1 – Carse of Gowrie

Summary

Change of Recommendation

This report recommends refusal of the application as a result of non compliance with the Council's Approved Policy on Affordable Housing (2005) which seeks 25% affordable housing on all housing developments of 5 or more houses.

DESCRIPTION, REASONING & RECOMMENDATION

- 1 A decision was taken by the Development Control Committee on 15 November 2007 to approve the proposal for 7 dwelling houses at vacant land, west of Station Road at Errol Station. This decision was based on a financial contribution to affordable housing (£43, 750) in lieu of a commuted sum, in line with the Council's adopted policy for developer contributions to Affordable Housing. Initially the applicant had indicated that they were willing to sign a Section 75 Agreement for the affordable housing contribution but to date no agreement has been drafted.
- 2 Some correspondence exists on file in relation to queries and interest regarding the site, most recently in December 2012, with an officer reply in January 2013. During this time however, there has been no positive progress in relation to a legal agreement. The applicant was again contacted in April 2013 to advise that that application could not be held any longer and they were given 28 days to conclude the Section 75 Agreement. No further response has been forthcoming in this matter. It is therefore clear that the applicant will not be able to resolve matters within a reasonable timescale.
- 3 I therefore now recommend that my initial recommendation be reversed, and that the planning application is refused on the grounds that;
- 4 ***As the applicant has failed to progress the signing of the Section 75 Agreement for the compliance to the Council's policy on Affordable Housing the proposal is contrary to the Councils Approved Policy on Affordable Housing (2005) which seeks 25% affordable housing on all housing developments of 5 or more houses.***

Background Papers: Nil

Contact Officer: Callum Petrie – Ext (4)75353

Date: 04 June 2013

Nick Brian
Development Quality Manager

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Perth and Kinross Council
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**Conversion of former school building into 12 dwellinghouses, land at
Croftinloan, Pitlochry**

Ref: No: 06/02243/FLL

Ward No: 4 – Highland

Summary

Change of Recommendation

This report recommends refusal of the application as a result of non compliance with the Councils Approved Policy on Affordable Housing (2005) which seeks 25% affordable housing on all housing developments of 5 or more houses

DESCRIPTION, REASONING & RECOMMENDATION

- 1 A decision was taken by the Development Control Committee on 25 April 2007 to approve the proposal for the conversion of the former Croftinloan School building into 12 dwellinghouses. This decision was based on a financial contribution to affordable housing (£75 000) in lieu of on site provision in line with the Council's adopted policy for developer contributions to Affordable Housing. Initially the applicant had indicated an upfront payment would be made but this was then changed (June 2008) when it was intimated that the applicant wished to sign a Section 75 Agreement for the affordable housing contribution.
- 2 The applicant Langvale Homes went into receivership towards the end of 2008 prior to any conclusion of the Section 75. Discussion took place in March 2009 with the administrators and it was agreed that we would not proceed to refuse as being contrary to the Council's Affordable Housing policy until a reasonable opportunity was afforded to the administrators to ensure the Section 75 was signed and the consent could then be issued. Further correspondence took place in early 2011 but the Section 75 was never signed and indeed a more recent planning consent has been granted for residential development of the site which requires the demolition of the school building thus rendering the current application redundant.
- 3 I therefore now recommend that my initial recommendation be reversed, and that the planning application is refused on the grounds that;
- 4 ***As the applicant has failed to progress the signing of the Section 75 Agreement for the compliance to the Council's policy on Affordable Housing the proposal is contrary to the Councils Approved Policy on Affordable Housing (2005) which seeks 25% affordable housing on all housing developments of 5 or more houses***

Background Papers: Nil

Contact Officer: Anne Condliffe – Ext (4)75352

Date: 04 June 2013

Nick Brian
Development Quality Manager

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Perth and Kinross Council
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**Erection of 27 flatted dwellings and associated parking in lieu of existing hall,
at The Meeting Room, Goodlyburn Terrace, Perth**

Ref: No: 07/00934/FLL
Ward No: 11 – Perth City North

Summary

Change of Recommendation:

This report recommends refusal of the application as a result of non compliance with the Councils Approved Policy on Affordable Housing (2005) which seeks 25% affordable housing on all housing developments of 5 or more houses

DESCRIPTION, REASONING & RECOMMENDATION

- 1 A decision was taken by the Development Control Committee on 27 February 2008 to approve the proposal for the demolition of the existing hall and the erection of 27 flats within the site. This decision was subject to the requirement that the applicant entered into a Section 75 Agreement to secure the provision of 25% affordable housing in accordance with the Council's affordable housing policy. Initially the applicant had indicated that they were willing to sign a Section 75 Agreement for the affordable housing contribution but to date no agreement has been drafted.
- 2 The applicant was contacted in 2010 and they requested that the preparation of the Section 75 was delayed due to the economic climate and financial constraints. The applicant was again contacted in April 2013 to advise that that application could not be held any longer and they were given 28 days to conclude the Section 75 Agreement. In response they have confirmed that to date no progress has been made on drafting an agreement and they are still not presently in a position to instruct a solicitor to act on their behalf due to financial constraints. It is therefore clear that the applicant will not be able to resolve matters within a reasonable timescale.
- 3 I therefore now recommend that the initial recommendation be reversed, and that the planning application is refused on the grounds that;
- 4 ***As the applicant has failed to progress the signing of the Section 75 Agreement for the compliance to the Council's policy on Affordable Housing the proposal is contrary to the Councils Approved Policy on Affordable Housing (2005) which seeks 25% affordable housing on all housing developments of 5 or more houses***

Background Papers: Nil

Contact Officer: David Niven – Ext (4)75345

Date: 04 June 2013

Nick Brian
Development Quality Manager

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Perth and Kinross Council
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Demolition of existing buildings and redevelopment to form Class 1 retail development and associated ancillary uses, extension to multi-storey car park, incorporating the formation of new retail street/court/pend and associated hard landscaping/shared managed service areas on land at Mill Street Perth

Ref: No: 07/02156/FLM
 Ward No: 12 – Perth City Centre

Summary

Change of Recommendation

This report recommends refusal of the application as a result of a failure to enter in to a Section 69 Agreement with the Council to secure the financial contribution towards car parking or sustainable transport measures.

DESCRIPTION, REASONING & RECOMMENDATION

- 1 A decision was taken by the Full Council on 25 June 2007 to approve the proposal for the demolition of existing buildings and redevelopment to form Class 1 retail development and associated ancillary uses, extension to multi-storey car park, incorporating the formation of new retail street/court/pend and associated hard landscaping/shared managed service areas on land at Mill Street Perth. Following the decision, the applicants were requested to enter into and complete the appropriate Section 69 Agreement with the Council to ensure that the appropriate financial contribution towards car parking or sustainable transport measures was made.
- 2 In the interim period, the applicants have gone into receivership and as a result, there has been no progress towards to the completion of the Section 69 Agreement. Correspondence has been sent to the agents but no response has been forthcoming.
- 3 I therefore now recommend that my initial recommendation be reversed, and that the planning application is refused on the grounds that;
- 4 ***As the applicant has failed to progress the signing of the Section 69 Agreement to secure the financial contribution towards car parking or sustainable transport measures then the development would place an unreasonable pressure on existing parking provision transportation provision generally in Perth City Centre***

Background Papers: Nil

Contact Officer: Nick Brian – Ext (4)75351
 Date: 05 June 2013

**Nick Brian
Development Quality Manager**

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Perth and Kinross Council
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Erection of 3 dwelling houses at Land to the North West of Bearn Larach Clathy

Ref: No: 10/02049/AML
 Ward No: 9 – Almond and Earn

Summary

Change of Recommendation

This report recommends refusal of the application as a result of non compliance with the Councils Approved Policy on Education Contributions, which in this case was calculated at £6395 (x3) where there is an identified capacity issue within the primary school catchment.

DESCRIPTION, REASONING & RECOMMENDATION

- 1 A decision was taken by the Development Control Committee on 22 June 2011 to approve the proposal for 3 dwelling houses within the Hamlet of Clathy on the Gask Ridge, south – west of Perth, which was considered to comply with the Housing in the Countryside Policy (2009). This decision was based on a financial contribution to education contributions (£19,185) in lieu of a commuted sum, in line with the Council's adopted policy for developer contributions to Education.
- 2 The applicant was contacted on 6 July 2011, confirming that the Council was minded to approve the application, subject to securing the financial contribution towards education provision at Auchterarder Primary School (either by upfront payment or legal agreement. There is no further correspondence on file until the applicant was again contacted in April 2013 to advise that that application could not be held any longer and they were given 28 days to conclude. The applicant contacted the department on 22 April 2013 to seek to progress the consent through a legal agreement. It was considered that sufficient time had already passed for the applicant to indicate the intention to or have pursued the decision through a legal agreement.
- 3 I therefore now recommend that my initial recommendation be reversed, and that the planning application is refused on the grounds that;
- 4 ***As the applicant has failed to secure the upfront payment for the associated compliance to the Council's policy on Education Contributions, the proposal is contrary to the Councils Approved Policy on Education contributions, which seeks £6395 towards each mainstream dwelling constructed where there is an identified capacity issue within the catchment of the associated local primary school.***

Background Papers: Nil

Contact Officer: Callum Petrie – Ext (4)75353

Date: 04 June 2013

Nick Brian
Development Quality Manager

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