

Review Decision Notice

Decision by Fife Planning Review Body (the FPRB)

- Site Address: Scout Hall, Cardenden Road, Cardenden, Lochgelly
- Application for review by Mr & Mrs Jim & Pauline Smith against the decision by an appointed officer of Fife Council
- Application 23/00873/FULL for Full Planning Permission for Erection of dwellinghouse (Class 9) and associated development, including raised deck and access ramp
- Application Drawings:
01 - Location Plan, 02 - Site Plan, 03 - Proposed various - elevation, floor etc, 04 - Proposed Elevations, 05 - Design and/or Access Statement, 06 - Flood Risk Assessment, 07 - Low Carbon Sustainability Checklist, 08 - Shadow Impact Diagram -sunlight/daylight, 09 - Photographs, 10 - Specifications, 11 - Solar Panel Info, 12- Noise Impact Assessment, 13- Statement Response – Flood Risk
- No Site Inspection took place.

Date of Decision Notice: 19 December 2023

Decision

The Fife Planning Review Body (FPRB) reverses the determination reviewed by them and approves Planning Permission subject to the conditions and reasons outlined below in section 4.0.

1.0 Preliminary

- 1.1 This Notice constitutes the formal decision notice of the Local Review Body as required by the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.
- 1.2 The above application for Planning Permission was considered by the FPRB at its meeting on 11 December 2023. The FPRB was attended by Councillors David Barratt (Convener), Robin Lawson, Jane Ann Liston, Altany Craik and Lynn Mowatt.

2.0 Proposal

- 2.1 The application site comprises a c.476 square metres parcel of land containing a fire-damaged single-storey former scout hall and grounds. It is located on the northern side of Cardenden Road, with direct vehicular access, and within the Cardenden settlement boundary in FIFEplan. To the east of the site lies the Den Burn, with woodland and agricultural fields beyond. Adjoining on the other sides, including across Cardenden Road, are single-storey dwellinghouses and their gardens.
- 2.2 Full planning permission is sought for the erection of a one and a half storey dwellinghouse in lieu of the existing building. Its decked garden extension, access ramps and canopy aside, the dwellinghouse would be positioned within the footprint of the existing building. Provision for two parking spaces is shown, with vehicular access as existing. It is explained that the dwellinghouse is intended for the applicants, one of whom has limited mobility.

3.0 Reasoning

3.1 Firstly, the FPRB considered the principle of development, assessing the proposal for housing development within the Cardenden settlement boundary - to consider whether it was compliant with strategic objectives for the area cognisant of National Planning Framework 4 (NPF4) Policy 9 (Brownfield, Vacant & Derelict Land), Policy 14 (Design, Quality and Place), 16 (Quality Homes), Policy 26 (Business and Industry) and FIFEplan Policies 1 (Development Principles) and Policy 5 (Employment Land and Property). The FPRB contended that:

- The proposal would comply with FIFEplan Policy 1 as it would result in housing delivery within the Cardenden settlement boundary, which is supported by this policy, subject to compliance with the wider policy framework for the site.
- Would result in the beneficial reuse of a previously developed site in line with NPF4 Policy 9 and the replacement of the fire-damaged scout hall which would improve the visual amenity of the surrounding area in line with Policies FIFEplan Policy 1 and NPF4 Policy 14.
- Housing within the site would create an improvement to the water environment and ecological habitat sought by the (partial) employment land allocation, maintaining the future delivery of the employment ambitions within the wider employment land allocation to the east, complying with FIFEplan Policy 5.
- There would be no unacceptable flood risk within the site or beyond due to flood mitigation that would create a net positive benefit to the existing flood environment and that sufficient material considerations would allow for a mitigation-based approach that would outweigh 'avoidance' principles set out within NPF4 Policy 22.
- The FPRB therefore concluded that the principle of development would be acceptable and that the proposal would comply with NPF4 Policies 9, 14, 16 and 26 and FIFEplan policies 1 and 5 with respect to this matter and that there were sufficient material considerations to set aside NPF4 Policy 22 flood-risk avoidance policy principles (see below).

3.2 The FPRB then considered the Flood Risk and Water Management, assessing the proposal against NPF4 Policy 22 (Flood Risk & Water Management), Policies 1 (Development Principles) and 12 (Flooding & the Water Environment) of FIFEplan (2017) and Fife Council's Design Criteria Guidance on Flooding (2022). In this regard, the FPRB:

- Noted the potential risk of flooding within the site based on the 1 in 200-year flooding event plus climate change and potential blockage.
- Assessed the accompanying flooding documentation and the applicant's strategy to deliver flood risk mitigation by raising the finished floor levels of the proposed dwelling by 600mm above the maximum flood level and reducing the new building footprint. They noted an objection from Flooding and concerns from both Flooding and SEPA that a scout hall should be classed as a 'more vulnerable' use than a dwelling per SEPA's Vulnerability Guidance.
- Following this review, the FPRB also noted the applicant's position that the scout hall should be best classified as having lower vulnerability as the existing use is most comparable to a nursery or educational facility. However, they did not accept that this would be the best fit for a scout hall and agreed with Flooding and SEPA on their interpretation - that a dwelling would be a more vulnerable use. They therefore accepted that the proposal would not form an allowable 'exemption' under NPF4 Policy 22.

- However, the FPRB contended that the final assessment on suitability should be based on technical flooding documentation and whether the proposed flooding mitigation would be effective in preventing unreasonable flooding to the site and beyond.
- In this regard, they noted that any flood depth would generally be low within the site (c250mm) and would dissipate in a reasonable time to allow for suitable access/egress. They contended that the proposed mitigation would be acceptable and - combined with a reduced building footprint - would avoid any unacceptable flood risk to create a betterment in terms of flood management resilience/capacity compared to the existing situation.
- Accordingly, the FPRB agreed to accept that the proposed mitigation could be acceptable in preventing unreasonable flood risk within/beyond the site and that by doing so, this would go against the 'avoidance' policy principles within NPF4 Policy 22. However, they accepted that there were material considerations that should be afforded significant weight to outweigh a decision being made in accordance with NPF4 Policy 22 in this instance (see below).
- The FPRB therefore found that the proposal would not comply with NPF4 Policy 22, (albeit would comply with Policy 12 of the Adopted FIFEplan 2017) but that the following material considerations would set aside a decision in accordance with NPF4 Policy 22:
 - Bringing the site into re-use and removal of the fire-damaged building which would introduce substantial improvements to the visual amenity of the area.
 - The proposal would result in the re-development of brownfield, previously developed land, where reuse of the land is encouraged and would provide wider benefits to the area.
 - The proposed flood mitigation measures would result in a positive benefit to flood management resilience within the area and betterment to the existing flooding environment within this location.
 - Combined, these material considerations were afforded sufficient weight in this decision and the FPRB contended that they provided sufficient justification to set aside the policy context within NPF4 Policy 22 in this instance.

3.3 The FPRB also agreed with the Appointed Officer's position in relation to the other planning considerations that did not form part of the original refusal reasons. They contended that these matters did not have any material impact in changing their position on this application and concluded that relevant conditions should be included on any issued planning permission, where relevant, in line with the Appointed Officer's recommendation.

3.4 Overall, the FPRB concluded that the principle of development would be acceptable as it would allow for housing within the Cardenden settlement boundary; would allow for the reuse of brownfield, previously developed land and, on balance, would generally comply with policies for the area. They resolved that there would be no unreasonable design or visual amenity impacts, no residential amenity impacts nor any transportation impacts. The FPRB contended that the proposal would comply with the thrust of the Development Plan policies for the site. However, they accepted that it would not comply with the 'avoidance' policy principles within NPF4 Policy 22 as the site would be located within an area of flood risk that required mitigation to prevent unreasonable flood risk. Despite this, the FPRB considered that there were several material considerations that should be afforded significant weight in outweighing a decision being made in accordance with the Development Plan position with respect to flood risk 'avoidance'. This included redevelopment of brownfield land (and the realisation of development on previously developed land); improvements to visual amenity introduced by the removal of the fire-damaged building; and a net positive benefit to the water environment brought by the proposed mitigation, reduced building footprint and smaller impermeable surfaces. The FPRB therefore decided that the planning permission should be granted, subject to conditions, reversing the Appointed Officer's decision.

4.0 Decision

- 4.1 The FPRB reverses the determination reviewed by them and approves Planning Permission subject to the conditions and reasons as follows:

APPROVE SUBJECT TO THE FOLLOWING CONDITIONS & REASON(S):

1. The development to which this permission relates must be commenced no later than 3 years from the date of this permission.

Reason: In order to comply with the provisions of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by Section 32 of The Planning (Scotland) Act 2019.

2. PRIOR TO OCCUPATION OF THE DWELLING HERBY PERMITTED, details of the west facing elevation within the approved elevations (Drawing – 03) shall be submitted to and approved by the planning authority nominating the first floor west-facing windows of the ensuite bathroom as ‘obscure glazing’. Thereafter, these details shall be retained for the lifetime of the development.

Reason: To maintain privacy and prevent unreasonable overlooking into the primary private open space of the adjoining property.

3. The approved flood mitigation and drainage infrastructure shall be constructed / installed contemporaneously with the build out of the dwellinghouse hereby approved and shall be fully operational prior to occupation of the dwellinghouse, unless otherwise agreed in writing with the Planning Authority. Thereafter, these details shall be retained and maintained for the lifetime of the development.

Reason: To ensure that adequate measures are put in place to deal with flood risk mitigation, foul and surface water drainage.

4. IN THE EVENT THAT CONTAMINATION NOT PREVIOUSLY IDENTIFIED by the developer prior to the grant of this planning permission is encountered during the development, all development works surrounding the contaminated area (save for site investigation works) shall cease immediately and the planning authority shall be notified in writing within 2 working days.

Unless otherwise agreed in writing with the local planning authority, development work on site shall not recommence until either (a) a Remedial Action Statement has been submitted by the developer to and approved in writing by the planning authority or (b) the planning authority has confirmed in writing that remedial measures are not required. The Remedial Action Statement shall include a timetable for the implementation and completion of the approved remedial measures. Thereafter, remedial action at the site shall be completed in accordance with the approved Remedial Action Statement. Following completion of any measures identified in the approved Remedial Action Statement, a Verification Report shall be submitted to the local planning authority. Unless otherwise agreed in writing with the planning authority, no part of the site shall be brought into use until such time as the remedial measures for the whole site have been completed in accordance with the approved Remedial Action Statement and a Verification Report in respect of those remedial measures has been submitted by the developer to and approved in writing by the local planning authority.

Reason: To ensure all contamination within the site is dealt with

5. The total noise from all plant, machinery or equipment shall be such that any associated noise complies with NR 25 in bedrooms, during the night; and NR 30 during the day in all habitable rooms, when measured within any relevant noise sensitive property, with windows open for ventilation. For the avoidance of doubt, day time shall be 0700-2300hrs and night time shall be 2300-0700hrs.

Reason: In the interests of residential amenity; to ensure adjacent residential dwellings are not subjected to adverse noise from the air source heat pump.

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Proper Officer

Advisory notes

1. Notice of the start of development: The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).
3. Notice of the completion of the development: As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended))

NOTICE TO ACCOMPANY REFUSAL ETC.

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Notification to be sent to applicant on refusal of planning permission or on the grant of permission subject to conditions

NOTICE TO ACCOMPANY REFUSAL ETC. TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Notification to be sent to applicant on determination by the planning authority of an application following a review conducted under section 43A(8).

1. If the applicant is aggrieved by the decision of the planning authority -
 - (a) to refuse permission for the proposed development;
 - (b) to refuse approval, consent or agreement required by a condition imposed on a grant of planning permission; or
 - (c) to grant permission or approval, consent or agreement subject to conditions,

the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.

2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.