Julie Seidel

Falkirk Council (Planning Authority)

Abbotsford House

 Date: 29 December 2020

Our Ref: 010/04/MR

Davids Loan
Falkirk FK2 7YZ

**By email (julie.seidel@falkirk.gov.uk)**

Dear Ms Seidel

**Avonbridge & Standburn Community Council; Brightons Community Council; Maddiston Community Council; Reddingmuirhead & Wallacestone Community Council; Shieldhill and California Community Council (the “CCS”)**

**Objection to Application P/17/0504/FUL (Hillcrest) (the “Application”)**

We refer to your letters of 21 August and 19 October 2020, notifying my clients (the above mentioned 5 Community Councils) that the above planning application has been referred back to the Planning Committee for fresh consideration and public consultation, and our subsequent correspondence including confirmation that you would accept objections to the planning application beyond the 28 day period referred to in your letter of 19 October.

My clients, the CCS, object to the Application for the reasons set out in this letter.

1. **Determination of Planning Applications**

The determination of planning applications is to be made in accordance with the Falkirk Development Plan unless material considerations indicate otherwise (s25 Town & Country Planning (Scotland) Act 1997 as amended). For the purposes of the above application, the Development Plan comprises the Falkirk Local Development Plan 2 (adopted 7 August 2020) and Supplementary Guidance (“**Development Plan**”).

The Application does not accord with the Development Plan. There are also material considerations that, taken together, are of sufficient weight to lead to the rejection of this application. Reasons on both limbs are set out below.

1. **Not in accordance with the Development Plan**

*Contrary to PE13 (Green & Blue Network)*

The development of Falkirk’s Green & Blue Network, supported by Policy PE13, should be considered within the context of the development of the Central Scotland Green Network (“**CSGN**”), a key national development within National Planning Framework 3 (“**NPF3**”). The Development Plan asserts that the “the development of the green and blue network is integral to LDP2’s vision and growth strategy, and is supported by Policy PE13.” (para 3.10, my underlining). The clarification in LDP2 that Policy PE13 “supports” the local plan’s vision of a green and blue network makes clear that the development of such a network pervades and is integral to LDP2 rather than that it is comprised solely within Policy PE13.

Map 3.2 sets out the overarching vision of the Green & Blue Network as a series of 14 interconnected green network components. GN14/the Lower Braes Green Network is relevant to this Application. It should also be noted that GN14 fulfils 4 out of 6 key network priorities, including that of supporting disadvantaged communities.

The Application is contrary to PE13 because it adversely impacts on the delivery of the CSGN and the green and blue network through GN14.

*Contrary to PE 16 (Protection of Open Space)*

Place-making is central to LDP2, and Open Space is seen as “vital to the quality of places” (para 4.16). There is no equivalent of Policy PE16 in LDP1, reflecting the increased weight given to the protection of green and open space and habitat networks in national and local policy. Therefore this matter should be considered as of new and, as the Planning Statement from the applicant has not been updated, the Application is inadequate and therefore should be rejected on this basis.

If the Council decides to consider the matter without the applicant having provided any evidence itself on this matter, then we submit that the application is not in accordance with PE16 and should be rejected on that basis. Reasons are given below.

Although the application site is not audited open space, para 4.16 of LDP2 states that Policy PE16 will apply not only to audited open spaces, it will also apply to “other smaller, incidental areas of open space”. The Application site is incidental open space allocated for housing purposes. It falls within the description of open space at paragraph 10 of PAN 65 (Planning & Open Space) and also within the definition under s336 of the Town & Country Planning Act 1990 (“any land [...] used for the purposes of public recreation [...]”). Therefore Policy PE16 must be considered in determining this Application.

PE16 states that development will only be permitted where it falls within the 4 criteria set out as part of PE16. Therefore, if the proposed development fails to fall within any one of those 4 criteria, the development falls outside PE16. This application fails to fall within one of those categories, namely:

* There will be no significant adverse effect on the overall recreational provision in the local area.

*Significant adverse effect on the overall recreational provision in the local area*

The Application site is described in the applicant’s Planning Statement as “semi improved grassland and scrub” with “the southern, western and northern edges of the site … largely devoid of physical boundaries […]”. At the same time as being land allocated for housing purposes, it is also incidental open space that is used by residents of the local communities for recreational purposes (Shieldhill & California to the west and Reddingmuirhead to the east). The locality of Reddingmuirhead has no other open space (audited or incidental) in its immediate vicinity for recreational use other than the Application site. The quantity of open space for Shieldhill & California remains at below 5ha per 1000 people as confirmed in the Open Space Strategy for LDP2, a quantity set as the minimum viable amount to achieve its aims and was first set (we understand) in the 2010 local development plan (see below).

Therefore there will be significant adverse effect on the recreational provision in the local area and the application does not accord with the Development Plan in this regard.

1. **Material Considerations**

*3.1 Public Health considerations from Covid19*

The full implications of Covid 19 for public health and planning matters has not yet been integrated into the plan-making cycle. However, it should be taken into account as a material consideration as it relates to public health.

Public Health Scotland have published an October 2020 Report looking into the use of Green Space during lockdown[[1]](#footnote-1). It states:

“Evidence shows that living in a greener environment can promote and protect good health, and aid in recovery from illness and help with managing poor health. People who have greater exposure to greenspace have a range of more favourable physiological outcomes. Greener environments are also associated with better mental health and wellbeing outcomes including reduced levels of depression, anxiety, and fatigue, and enhanced quality of life for both children and adults. Greenspace can help to bind communities together, reduce loneliness, and mitigate the negative effects of air pollution, excessive noise, heat and flooding. Disadvantaged groups appear to gain a larger health benefit and have reduced socioeconomic-related inequalities in health when living in greener communities, so greenspace and a greener urban environment can also be used as an important tool in the drive to build a fairer society.” (my underlining)

This application would remove the use of the only greenspace for the residents of Reddingmuirhead and a significant open space used for recreational purposes by residents of Shieldhill, both which will suffer increased deprivation from the loss of green space for mental health and wellbeing and will increase socio-economic disparities.

*3.2 Previous positions on Green Space/History of Site*

Although LDP2 is the relevant current planning policy, a material consideration is the history to this site and the green space allocated to it since its inception.

We understand that the minimum viable target of 5 ha per 1000 people was set in the 2010 local development plan to meet the Council’s then aims. Since that time, the ambitions of national and local plan-making have centred on “place-making” which is reflected in LDP2, which increases the weight that should be attached to any open space whether audited or incidental to achieve such place-making targets. However, there has been no meaningful change in the provision of open space since the 2010 local development plan in the localities of Reddingmuirhead and Shieldhill and California, as confirmed in the Open Space Strategy for LDP2.

If targets set are to have any meaningful impact, then this target in LDP2 must be understood within the context of the target set in the 2010 local development plan, and it must also be a material consideration that there has been no meaningful change in the provision of open space for these communities since this target was set in 2010.

Braes Greenspace – Shieldhill Hillcrest

Residents of Shieldhill and Hillcrest have been successful in forming a Part 5 Community Body under the Land Reform (Scotland) Act 2016, named Braes Greenspace – Shieldhill Hillcrest (“**BGSH**”). This means that Scottish Ministers are satisfied that the main purpose of BGSH is consistent with the aims of furthering sustainable development, under s49(7) of the 2016 Act. BGSH intends to create a community woodland in the Belmont Avenue open space site adjacent to the Application. We note and welcome the support of the Council for BGSH in creating the community woodland on the Belmont Avenue site, which will contribute to (and thereby support the Council in) meeting its open space provision target for Shieldhill communities. However, as pointed out above, the community of Reddingmuirhead currently have no audited open space in their locality and the incidental open space of the application site is the only open space that they enjoy for amenity and health reasons outlined above, which must be given even greater weight in the context of Covid19.

All 5 Community Councils support BGSH’s alternative development proposal for the site, namely for it to support the expansion of the community woodland on the Belmont Avenue site by linking it with the Lower Braes Green Network/GN14 (which will help meet rising mental ill health and adverse well-being conditions of local residents in the face of Covid19 restrictions and future long term economic and ecological uncertainties as a consequence).

We note that the Examiners’ Report for LDP2 (dated 27 March 2020) states, as part of their reasoning for why “it would not be justified to consider the de-allocation of this site for this reason [community’s aspiration for a woodland]”, that “there is no indication of how such a project [community woodland] could be delivered.”[[2]](#footnote-2) With the establishment of BGSH as a Part 5 Community Body under the Land Reform (Scotland) Act 2016 that Scottish Ministers are satisfied has been established consistent with the aims of furthering sustainable development, that reasoning no longer stands.

*3.3 Scottish Planning Policy (“SPP”, Revised December 2020) – Maximising the benefit of Green Infrastructure*

Scottish national planning policy is a material consideration. At para 219 of SPP it affirms that an aim of NPF3 is to “significantly enhance green infrastructure networks, particularly in and around our cities and towns.” (my underlining). This undergirds the reasoning behind LDP2 for strengthening local policy around the Green and Blue Network specifically through PE13 and PE16.

As stated above the Application will degrade, and fragment, the use of green infrastructure by local communities in the Braes area for recreational, health and wellbeing purposes. Para 221 of SPP specifically states that the planning system should consider green infrastructure as an integral element of places from the outset of the planning process and facilitate the provision and long-term, integrated management of green infrastructure and prevent fragmentation. In accordance with this objective, LDP2 provides local policy mechanisms (specifically PE13 and PE16) to meet these aims. The above mentioned paragraphs of the SPP provide an indication of the weight the planning authority should give to its policies on protecting green infrastructure when assessing whether a planning application is in accordance with its development plan.

1. **Need for Site Visit**

We note that a site visit was carried previously for this Application but that it was determined not to be relevant to view the adjacent land on which BGSH intends to create a community woodland. With respect to the strengthened policy position since that site visit in relation to the green and blue network through LDP2 as outlined above, we consider it relevant for the Council to view the Belmont Avenue/community woodland site to properly assess the application as against LDP2.

1. **Submission to the Ethical Standards Commission**

Further to our letter of 19 March 2019[[3]](#footnote-3) addressed to Colin Moodie with regards to, amongst other matters, the criminal charges against Councillors John McLuckie and James Kerr, we received correspondence from the Crown Office & Procurator Fiscal Service (“COPFS”) confirming that the reasons why the charges could not proceed were because of the requirement for “corroboration” under Scottish law (i.e. evidence from at least two separate sources to establish the essential facts of the case).

Civil offences do not need to meet the requirement of corroboration for criminal offences. We have written to the Ethical Standards Commission on behalf of the CCS[[4]](#footnote-4) setting out our submission that Cllr McLuckie’s conduct with regards to this application was in breach of the relevant code of conduct for Councillors (enclosed).

We submit that in the interests of fairness and the public interest, a decision on this application should not be made until a determination has been reached by the ESC on this complaint.

1. **Delegated Authority for Determining the Application & Site Visit**

We note that the Council considers a decision can be made on this Application under delegated powers to its Planning Committee. However, Circular 5/2013 (Schemes of Delegation and Local Reviews) makes clear that powers for delegating authority under the Local Government (Scotland) Act 1973 (as amended) do not apply for “major developments”[[5]](#footnote-5) that are significantly contrary to the Development Plan. This Application is above the threshold of 50 dwellings for “major development”. In addition, whilst the application site has been allocated for housing purposes, the Application is significantly contrary to the Development Plan (for the reasons outlined above linked to LDP2’s strengthened policy position in relation to the green and blue network) and therefore the Application cannot be determined under delegated powers and must be determined by full Council[[6]](#footnote-6).

For all the reasons outlined above, we respectfully submit the application should be refused. Should the application be granted then the CCS will be advised on its options including judicial review.

We look forward to hearing from you in due course.

Yours sincerely

**Mothiur Rahman**

**New Economy Law**

Enc.

Letter from COPFS to NEL (9 September 2020)

Letter from NEL to Ethical Standards Commission (22 December 2020)

1. “Change in Use of Green & Open Space following COVID19 Lockdown” (Oct 2020) [↑](#footnote-ref-1)
2. See pg. 149-150 of the Examiners’ Report [↑](#footnote-ref-2)
3. Brightons Community Council were not a party to such letter. [↑](#footnote-ref-3)
4. Excluding Brightons Community Council which is not party to such letter. [↑](#footnote-ref-4)
5. As defined under the Town and Country Planning (Hierarchy of Development) (Scotland) Regulations 2009. [↑](#footnote-ref-5)
6. Without prejudice to the above point, a request for a deputation for my clients at the January 2020 Planning Committee meeting will be made, in accordance with Falkirk Council’s Standing Orders. [↑](#footnote-ref-6)