
Report to: Planning Committee

Date of Meeting: 8th October 2015

Subject: Application for Planning Permission Ref No 15/00154/FULL - Change Of Use Of Public Open Space, Including Footpath, To Private Garden Ground, And Erection of Boundary Wall And Fence at 8 Kirkton Gardens, Tillicoultry

Report by: Keith Johnstone, Principal Planner

1.0 Purpose

- 1.1. This report comprises the Report of Handling on the above application for planning permission. It summarises the proposal, consultation responses, representations against the proposal, key planning policy issues and a recommended decision.
- 1.2. The proposal is for a Local Development, which would normally be determined by Appointed Officers. However, in accordance with the Council's Scheme of Delegation for such applications, this application requires to be determined by the Planning Committee, as the presence of a section of adopted footpath within the site means that the Council has an interest and there have been representations against the proposal.

2.0 Recommendations

- 2.1. It is recommended that this application is APPROVED subject to the undernoted conditions and reasons.
- 2.2. Conditions and Reasons

Conditions

1. Before any work starts on site to implement this permission, a specification or samples of the location, design, heights, materials and finishes of the means of enclosure annotated on the approved Proposed Layout Plan, shall have been submitted to and approved in writing by the Council, as planning authority. This shall include the provision of a splay on the corner of the wall and fence where it returns at the south east corner of the site. Thereafter, the development shall be completed in accordance with the approved details, unless otherwise agreed in writing by the Council.

2. Any hard surface or driveway within the site shall be designed and constructed so that no water or loose material is discharged onto the public road.

3. The proposed footway annotated on the approved Proposed Layout Drawing (AA/SK/03/A) between Points A and B shall be constructed and completed to a standard adoptable by the Council as Roads Authority prior to the alteration of any part of the existing footpath within the site, unless otherwise agreed in writing by the Council.

Reasons for Conditions

1. In the interests of visual amenity and road safety.
2. In the interests of road safety.
3. In the interests of pedestrian and road safety.

Approved Plans

1. AA/SK/04 - Location Plan
2. Image Showing Design of Proposed Section of Wall and Fence
3. Image Showing Design of Proposes Section of Wall and Wrought Iron Railing
4. AA/SK/01A - Cross Section of Existing and Proposed Footpath Specification
5. AA/SK/02A - Existing Layout
6. AA/SK/03A - Proposed Layout
7. AA/SK/05 - Existing Elevations
8. AA/SK/06 - Proposed Elevations

2.3. Reasons for Decision

1. The proposal accords with the provisions of the adopted Clackmannanshire Local Development Plan, and in particular, the requirements of Policies SC8, SC14 and EA4.

2. The change of use of this area of open space would not result in any unacceptable adverse impact on road and pedestrian safety, visual or residential amenity or pedestrian accessibility within Kirkton Gardens.

3. There are no other material considerations, including the objections and consultation responses, which would outweigh the development plan position or justify withholding planning permission.

3.0 Considerations

- 3.1. No 8 Kirkton Gardens is a one and a half storey high detached house located within a cul-de-sac development which serves 26 houses in Tillicoultry. The house is located close to an approximate right angled turn in the road. Between the east boundary of the house and the road, there is a section of adopted footpath maintained by the Council and an area of public open space. The footpath runs along the side of the garden boundaries of Nos 8 and 10. The area of public open space next to the footpath extends to approximately 120m² and of this, approximately 110m² is owned by the applicant, which together with the section of footpath, is the subject of this application. The public open space was maintained by the Council until June 2015 when responsibility was returned to the respective landowners. Since then, the trees which were growing at either end of the area have been removed by the owners.
- 3.2. The applicant proposes to change the use of the public open space and footpath to private garden ground and realign the footpath. The means of enclosure around the boundary of the extended garden would reduce in height from the back to the front comprising three sections; a 850mm brick wall with 940mm high timber fence above, then a 850mm wall with 600mm wrought iron railing above, and then an approximate 260mm wall with 250mm wrought iron railing above. A 2m wide footway would be constructed to an adoptable standard around the outside of the extended garden between the enclosures and the carriageway to maintain a continuous pedestrian route to the rest of Kirkton Gardens.
- 3.3. The drawings submitted by the applicant include an annotation for a car port structure on part of the site adjacent to the side wall of the garage building, however, it does not form part of the planning application. The planning merits of these works would have to be considered through the submission of a further planning application if the current application is approved.
- 3.4. An application for planning permission to change the use of the application site to private garden ground was previously submitted in 2014 (Ref No 14/00222/FULL) but the application was withdrawn by the applicant before the application had been determined. The application site area has not changed but the current application contains the following differences:
- The provision of an adoptable footway within the site to maintain a continuous pedestrian link on the west side of Kirkton Gardens. The original application removed the section of existing footpath only.
 - The means of enclosure would be set back 2m from the edge of the carriageway to accommodate the new section of adoptable footway and maintain an adequate standard of forward visibility.
 - The height and design of the enclosure next to Kirkton Gardens has been altered to reduce the height and incorporate sections with railings towards the front of the site.
 - The enclosure would return around the front of the proposed extended garden ground.

- The existing trees that existed within the open space have been removed by the owners.

4.0 Consultations

- 4.1. Roads & Transportation do not object to the proposed development. They are satisfied that the proposed layout and design would not result in any unacceptable adverse impact on road or pedestrian safety. The proposed height, design and location of the means of enclosure would maintain an adequate standard of visibility for drivers using the carriageway and on-street parking spaces at Kirkton Gardens. Roads have also considered the road safety concerns raised by objectors and their advice is also referred to in Section 5.0 below. The proposed works to realign the pedestrian route would require a Minor Roadworks Consent (MRC) from Roads. *Comment: The applicant has submitted a layout which Roads advise has satisfactorily addressed concerns they raised in relation to the previous application (Ref No 14/00222/FULL) in relation to pedestrian safety, visibility and vehicle access arrangements.*
- 4.2. Land Services advise that they have no objections to the proposal.
- 4.3. Tillicoultry Community Council object to the application unless the level of safety and sight lines for drivers and pedestrians is no worse than exists at present and/or this level of safety can be guaranteed over time. They highlight that Kirkton Gardens is characterised by its open aspect and that the proposed means of enclosure may compromise safety at the road bend next to the site. *Comment: The issues raised are discussed in 4.1 above and Section 5 below. Roads & Transportation has advised that the development would not increase road or pedestrian safety risk and the standard of visibility would be adequate. The footpath would be adopted by the Council. These factors would satisfy the road safety issues raised by the Community Council.*
- 4.4. Police Scotland do not object to the application subject to the development not adversely affecting the sight lines for drivers on Kirkton Gardens. *Comment: Roads & Transportation has advised that the development would not increase road or pedestrian safety risk and the standard of visibility would be adequate. This would address their comments.*

5.0 Representations

- 5.1 Sixteen neighbours were notified of the planning application. It was also published in the Alloa Advertiser for neighbour notification reasons. As a result of this publicity, one or more objections have been received from 16 individual parties as follows:
- Gordon Gunn, 11 Kirkton Gardens
 - Graham Drysdale, 10 Kirkton Gardens
 - Brian and Irene McKeand, 15 Kirkton Gardens
 - Frederick and Irene Clark, 19 Kirkton Gardens

- Duncan Watson, 17 Kirkton Gardens
- Julie Watson, 17 Kirkton Gardens
- Dr David Greenwood, 29 Kirkton Gardens
- Dr Robert and Margaret Salmond, 27 Kirkton Gardens
- John Dick, 18 Kirkton Gardens
- John Gillanders, 23 Kirkton Gardens
- Robert Cook, 31 Kirkton Gardens
- Robert Crawford, 13 Kirkton Gardens
- Ralph Maxwell, 25 Kirkton Gardens
- Mrs Zubida Manzoor, 21 Kirkton Gardens
- Barry Yorwerth, 9 Kirkton Gardens
- Councillor Archie Drummond, Clackmannanshire North Ward

5.2 The objections raised a number of issues mainly relating to road and pedestrian safety and visual amenity. These have been summarised below:

- The proposed enclosures around the garden would have an adverse impact on the standard of visibility for drivers driving round the corner to the east of No 8 or if reversing out from the visitor parking spaces to the south of the site, to the detriment of road and pedestrian safety. *Comment: The concerns relate to two main issues; the impact of the 1.79 metre high wall and fence which would enclose the southern part of the extended garden, on the standard of visibility of drivers who may be reversing out of the on-street parking bays, located some 4 metres to the south, onto Kirkton Gardens; and the impact of the enclosures, or any vehicles parked on the hardstanding area, at the front end of the extended garden ground on the forward visibility of drivers travelling around the bend on the road. Roads advise that the proposed boundary walls/fencing and revised alignment of the pedestrian route would not pose any increased road or pedestrian safety risk for the use of the on-street parking bays, and an adequate standard of visibility would be available from the bays. They also highlighted that until their recent removal, the two mature trees and shrubs to the south of the application site also affected visibility. Similarly, Roads advise that the proposed design and layout at the northern end of the site adjacent to the corner would not result in any increased road safety risk at this location. The forward visibility envelope that would be available at this location would be adequate and would not be adversely affected by the proposed boundary enclosure or use of the garden ground.*
- If the existing driveway is extended to the east it would result in vehicles exiting close to the corner. *Comment: There is no proposal to*

extend the footway crossing. Any subsequent change would be regulated under an MRC.

- The proposed footway alignment would adversely affect pedestrian safety, particularly for children, due to the incorporation of the right angled bends where it follows the garden boundary and by being closer to the carriageway edge. The footway should be moved further from the carriageway edge. Comment: *The proposed alignment is considered to be comparable with other sections of footway serving Kirkton Gardens and not untypical of the layout found in many residential areas. Roads are satisfied that the proposed footway alignment would not pose an increased or unacceptable pedestrian or road safety risk in the area. Consequently, there would not be reasonable grounds in relation to road safety to require any change to the alignment of the footway.*
- The proposed footway alignment, including two right angled bends would introduce personal safety issues due to the blind corner and the inadequacy of the lighting. Comment: *Police Scotland have not objected to the application. It is proposed to include a small splay on the outside corner of the boundary wall fence to reduce the "blind corner" effect. This would be regulated using a planning condition. Roads advise that the pedestrian safety risk associated with the current street lighting system would not be any greater than the current layout.*
- Who would ensure that the new section of footway would be maintained? Comment: *Condition No 3 would ensure that the footway would be constructed to a standard suitable for adoption by the Council as Roads Authority. Following adoption, the Council would be responsible for the future maintenance of the footway as it is with the existing footpath.*
- The proposed additional parking space within the enlarged garden area would be unnecessary as there is adequate provision at present. Comment: *The need for the parking space is not material to the determination of the planning merits of the proposals.*
- The realignment of the existing footpath may conflict with the provisions of the Roads (Scotland) Act 1984 as it relates to Interference and Damage and Obstruction of View. Comment: *Roads have not raised any objections to the proposed development and they are satisfied with the adequacy of the proposed development in relation to visibility and pedestrian safety.*
- The proposals would adversely effect the amenity of the area. The open space is an integral part of the original estate design and enhances the amenity for all residents. The recent removal of trees within the open space has already diminished its value. Comment: *Having regard to;*

(a) The size, appearance and function of the site and the appearance of the existing screen fencing enclosing part of the eastern boundaries of Nos 8 and 10 Kirkton Gardens,

(b) *The intervening distance between the development and the frontages of the nearest neighbouring houses and the carriageway,*

(c) *The standard of the design and appearance of the proposed means of enclosure around the curtilage,*

(d) *The scale of any change on the established character of the cul-de-sac*

It is considered that the development would not result in an unacceptable adverse impact on the standard of amenity; the character of the area or the quality of open space provision within the locality, to an extent that would conflict with policy and justify refusal of planning permission.

- The development would have an adverse impact on the standards of privacy, daylight and comfort of neighbouring properties. *Comment: It is considered that the proposed change of use and means of enclosure of the land would not result in any unacceptable adverse impact on such standards of residential amenity enjoyed by neighbours.*
- The development would not accord with national and local planning guidance in relation to the provision of public open space, its adequacy and its contribution to creating attractive places to live. *Comment: Our assessment of the value of the existing area of open space in respect of its potential social, environmental, visual amenity, road safety and recreational role has concluded that its loss would not result in any unacceptable adverse impact having regard to the guidance in LDP Policy EA4 and PAN No 65 (Planning and Open Space). The land is not identified as part of the Clackmannanshire Green Network in the LDP.*
- Why should one individual benefit by enclosing the land to the detriment of others. *Comment: We have concluded that the change of use and enclosure of the land would not result in an unacceptable impact on the amenity of the area.*
- The proposals would result in over development of the plot. *Comment: The proposed development would enlarge the curtilage of the house and would not therefore result in over development.*
- The proposed variation in the design and materials of the means of enclosure would not meet adequate standards. *Comment: The proposed materials would reflect these already present at the property and elsewhere within the estate, and would be commensurate with design standards elsewhere within the estate.*
- The original feu details indicate that the area should remain as public open space irrespective of land ownership. There may be a right of way over the existing section of footpath. *Comment: The application must be determined on its planning merits and the existence of any legal restrictions on the use of the land would not provide grounds to withhold planning permission. The proposal would comprise the*

realignment of an existing footpath to an adoptable standard thereby maintaining any asserted right of way.

- The construction phase could impact on residential amenity or impede access to neighbouring houses. Comment: *The scale and nature of the development would not justify regulating construction hours or activity. If access to properties was impeded, this would be a police matter to regulate.*
- The drawings are not accurate. Comment: *The standard and content of the drawings and supporting information are considered to be sufficient to determine the planning merits of the proposals.*
- The development would have an adverse impact on property values. Comment: *This issue is not a material planning consideration.*
- The future use of this land has dragged on long enough. Comment: *The planning authority is obliged to register and determine the application. A previous application relating to the site was withdrawn in 2014.*

6.0 Development Plan Position

- 6.1 The application must be determined in accordance with the Development Plan unless material considerations indicate otherwise.
- 6.2 Policy SC8 (Domestic Developments) sets out criteria against which proposals will be assessed, including; whether the development would adversely affect the residential amenity of neighbours, whether it would detrimentally affect the character of the site and area, or would result in over-development of the plot. As discussed in Section 5.0 above, it is considered that the development would not result in any unacceptable adverse impact on the residential amenity of neighbours, the overall character of the area or result in over development of the house. It is concluded that the proposal would accord with this policy.
- 6.3 Policy SC14 (Development Proposals - Access and Transport Requirements) sets out to ensure that new development meets sustainable transport objectives. The development would not adversely affect the level of accessibility within Kirktoon Gardens, pedestrian or road safety or increase conflict between motor vehicles and pedestrian or cyclist traffic. Roads have no objections. The development would accord with this policy.
- 6.5 Policy EA4 (Landscape Quality) states that all development proposals should be informed by and be sympathetic to the distinctive landscape character of the area. The proposed development would not result in the loss of any significant landscape features and would not have an unacceptable impact on the visual amenity or character of the area having regard to the modest size of the site, its appearance and contribution to the overall visual amenity and character of the site and surrounding area. On balance, the development would not be contrary to this policy.

6.6 The proposals are not considered to be contrary to the relevant policy guidance contained in the LDP.

7.0 Other Material Considerations

7.1 The advice from consultees is summarised in Section 4.0 above. Notably, Roads and Transportation have no objections to the proposals and they are satisfied that the layout and design now proposed by the applicant would not have a detrimental impact or result in an increase in risk to road and pedestrian safety at this location. The proposed footpath and access arrangements to the plot would satisfy the relevant development standards. This advice would satisfactorily address the comments raised by objectors, Tillicoultry Community Council and Police Scotland in relation to road safety issues.

7.2 The objections to the application have been carefully examined and these have been summarised and discussed in Section 5.0 above. The application has attracted a significant number of objections, including one from the local Councillor. However, the weight to be attached to the number of objections would not, on its own, be sufficient or reasonable grounds to withhold planning permission. Our assessment has concluded that in terms of the concerns relating to potential impacts of the development on:

- Road and pedestrian safety
- Visual and residential amenity and
- Pedestrian accessibility

the development would not result in any adverse impacts of a scale or nature that would justify, either individually or collectively, withholding planning permission.

7.3 The development would not be contrary to the guidance contained in the Council's Supplementary Guidance No 6 - Green Infrastructure or the objectives of the Council's Open Space Strategy given the size, function and nature of the site. The site is not identified in the LDP or part of the Clackmannanshire Green Network.

7.4 In conclusion, there would not be other material considerations which would outweigh the Development Plan support for the development.

8.0 Resource Implications

8.1 Financial Details

8.2 The full financial implications of the recommendations are set out in the report. This includes a reference to full life cycle costs where appropriate. Yes

8.3 Finance have been consulted and have agreed the financial implications as set out in the report. Yes

9.0 Exempt Reports

9.1 Is this report exempt? Yes (please detail the reasons for exemption below) No

10.0 Declarations

The recommendations contained within this report support or implement our Corporate Priorities and Council Policies.

(1) **Our Priorities** (Please double click on the check box)

- | | |
|--|-------------------------------------|
| The area has a positive image and attracts people and businesses | <input checked="" type="checkbox"/> |
| Our communities are more cohesive and inclusive | <input type="checkbox"/> |
| People are better skilled, trained and ready for learning and employment | <input type="checkbox"/> |
| Our communities are safer | <input checked="" type="checkbox"/> |
| Vulnerable people and families are supported | <input type="checkbox"/> |
| Substance misuse and its effects are reduced | <input type="checkbox"/> |
| Health is improving and health inequalities are reducing | <input type="checkbox"/> |
| The environment is protected and enhanced for all | <input checked="" type="checkbox"/> |
| The Council is effective, efficient and recognised for excellence | <input type="checkbox"/> |

(2) **Council Policies** (Please detail)

11.0 Equalities Impact

11.1 Have you undertaken the required equalities impact assessment to ensure that no groups are adversely affected by the recommendations?
Yes No

12.0 Legality

12.1 It has been confirmed that in adopting the recommendations contained in this report, the Council is acting within its legal powers. Yes

13.0 Appendices

13.1 Please list any appendices attached to this report. If there are no appendices, please state "none".

Location Plan

14.0 Background Papers

14.1 Have you used other documents to compile your report? (All documents must be kept available by the author for public inspection for four years from the date of meeting at which the report is considered)
Yes (please list the documents below) No

Clackmannanshire Local Development Plan

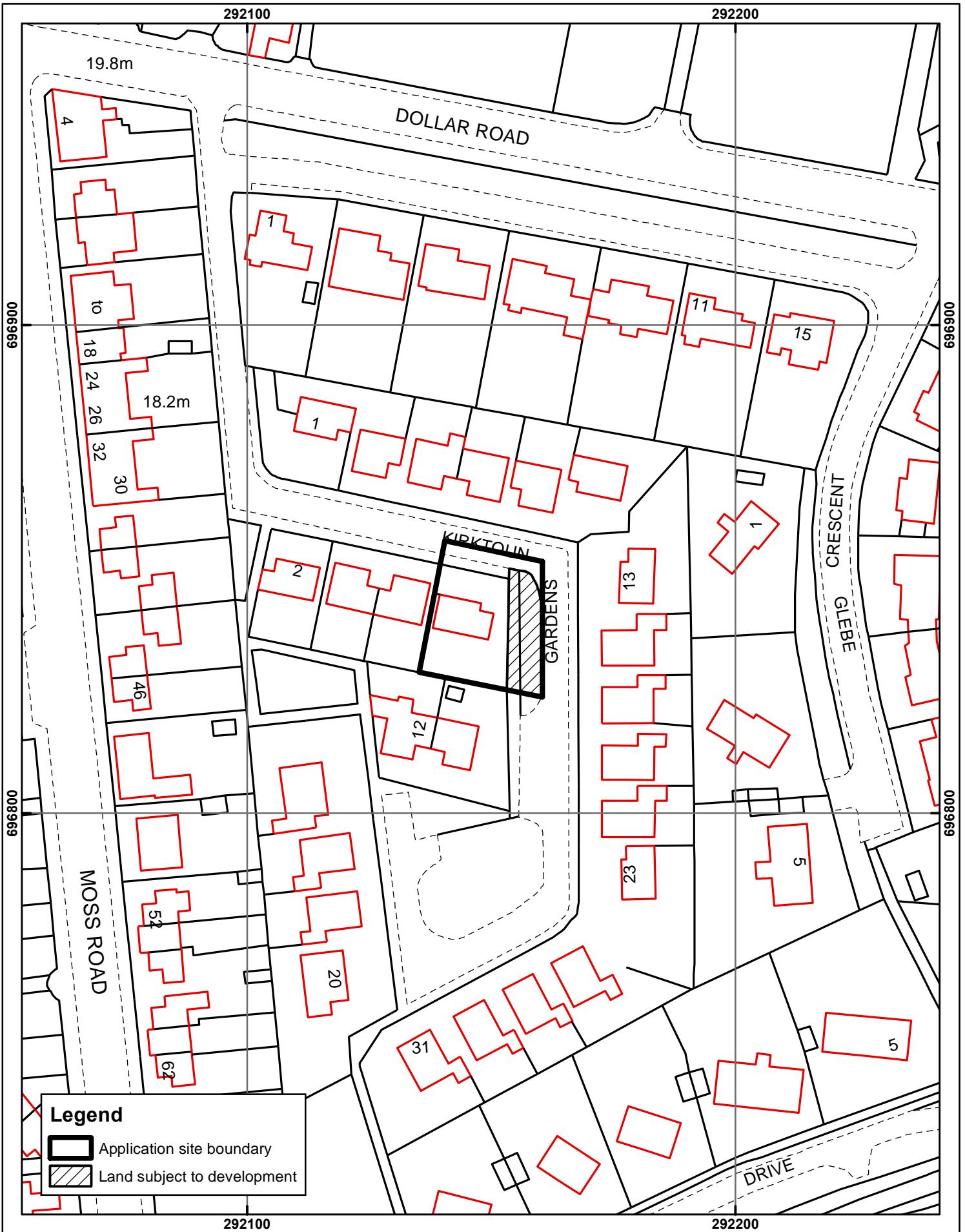
PAN 65 - Planning and Open Space
 Clackmannanshire Open Space Strategy 2014
 Supplementary Guidance No 6 - Green Infrastructure

Author(s)



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Approved by

NAME	DESIGNATION	SIGNATURE
Julie Hamilton	Development Services Manager	Signed: J Hamilton
Gordon McNeil	Head of Development and Environment Services	Signed: G McNeil



Legend


-  Application site boundary
-  Land subject to development

N

 Date:
 29-Sep-2015

15/00154/FULL – 8 Kirkton Gardens, Tillicoultry
Change Of Use Of Public Open Space, Including Footpath, To Private
Garden Ground, And Erection of Boundary Wall And Fence

Ward: Clackmannanshire North **OS Grid Ref: NS 92 96 NW**

0 10 20 30 40
 Meters

Scale: 1:1,000

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