
Report to: PLANNING COMMITTEE

Date of Meeting: 11 July 2013

Subject: Planning Application Ref: 13/00082/PPP - Development Of Land For Housing, Cemetery, Playing Field And Ancillary Facilities With Associated Car Parking, Road Improvements And Landscaping - Variation Of Condition 1 of Planning Permission 07/00460/OUT to Delete "Before Any Development Starts on Site" and Replace With "Prior to Commencement of Development of Each Use/Phase, i.e. Cemetery, Playing Field Or Residential"

on Land Adjoining Kellyburn, Lovers Loan, Dollar, Clackmannanshire

Report by: Grant Baxter, Principal Planner, Development Quality

1.0 Purpose

- 1.1. This is a report of handling on the above planning application. It seeks to vary one condition of the planning permission, and in effect allow work on the "enabling" housing development to proceed in advance of an approved scheme of ground water management for the cemetery. The report summarises the application, examines key planning issues, relevant Development Plan policies, addresses representations and makes a recommendation to Members.
- 1.2. The application comprises a local development, however, the Council has an interest in the application as part-owner of the planning application site.

2.0 Recommendations

- 2.1. It is recommended that the application for planning permission is REFUSED, for the following reasons:
- 2.2. Reason 1: The approved housing development is only acceptable as an enabling development in relation to the community infrastructure

elements approved with the housing development under Planning Permission 07/00460/PPP, the related Section 75 Agreement, and as identified as Policy H64 of the Clackmannanshire Local Plan First Alteration (Housing Land), Adopted 2011. The proposed variation of the condition, if approved, would prejudice the delivery of the community infrastructure elements, specifically the cemetery, without which the housing development would be unacceptable, and mean that the housing development could be implemented without clarity and certainty on the ability to provide the cemetery in accordance with the previously approved masterplan.

3.0 Background to the Proposals

- 3.1. The application seeks to vary a condition of an existing Outline Planning Permission (now known as Planning Permission in Principle - PPP), approved on 11 October 2010, subject to conditions and a Section 75 Legal Agreement, which together seek to deal with the site infrastructure, transfer of land, phasing of development, off-site works and developer contributions, to ensure delivery of the cemetery, playing field, ancillary facilities and access road, as these elements are to be enabled by the proposed housing.
- 3.2. Since the approval of the PPP, two separate applications, dealing with Matters Specified in Conditions (MSC) have been submitted and approved.
- 3.3. Two separate planning applications have also been submitted and approved, dealing with an increase in the number of houses from 20 to 22 and a temporary haul road, respectively.
- 3.4. The Report of Handling on the PPP application states that *"SEPA note that the burial of corpses can cause pollution of groundwater. Any applicant should be expected to assess the hazard associated with this land use and the implications for groundwater quality, water supply and any nearby water course. As this assessment has not been carried out, SEPA objects to the grant of outline planning permission. It also recommends that an assessment of flood risk on the site be carried out, although it does not object for this reason."*
- 3.5. In response to this, the Service commented as follows: *Insofar as a cemetery development has previously been granted planning permission, has previously been allocated in the Local Plan and is incorporated in the current Cemetery Strategy for Clackmannanshire, the current application again seeking the Council's permission in principle for such a use, need not have relied upon this detailed assessment. Nevertheless, a preliminary geotechnical assessment of ground conditions was requested and this has been submitted. It indicates that leachate from the cemetery could enter groundwater and migrate towards the Kelly Burn.*

- 3.6. As the issue of ground water contamination was not fully resolved at the time of the Council approving the PPP, a clause was added to Condition 1 of the PPP, which sets out a number of details that require to be submitted and approved before any works could commence on the approved development. The specific clause (vi) requires; *a scheme for the management of groundwater (with any necessary measures to safeguard the Kelly Burn), and disposal of surface water, in accordance with the Sustainable Urban Drainage System Design Manual for Scotland and Northern Ireland.*
- 3.7. A scheme for the management of ground water has not yet been approved. The applicant now seeks approval to start the housing development in advance of an agreed groundwater management plan for the cemetery. As things stand, the terms of Condition 1 do not permit this. The applicant's reasoning for this, as set out in a supporting letter to the application, is that the ground water issue relates specifically to the cemetery element of the approved development, and not the housing. In addition, the applicant argues that SEPA have approved the surface water management arrangements in relation to the housing and that their outstanding objection relates to ground water issues arising from the proposed cemetery.
- 3.8. The applicant has been working directly with the Council in preparing the detailed scheme for the management of ground water in relation to the cemetery, in order to address Clause (vi) of Condition 1. As a result of this work, detailed proposals have now been prepared to inform a decision on the condition of planning permission and have been issued to SEPA for their agreement.
- 3.9. It is worth noting that, notwithstanding SEPA's objection in relation to ground water, it is for the Council, as planning authority to determine if the condition can be discharged. It is also worth noting that, however that since approval of the PPP new regulations ensuring the protection of ground water, under the Water Environment (Controlled Activities) (Scotland) Regulations 2011, which affect cemeteries, have come into force. These regulations are administered by SEPA.

4.0 Consultations

- 4.1. There are no consultees to this application.

5.0 Representations

- 5.1. A total of 13No. neighbours were notified of the application and a Neighbour Notification Advertisement was placed in the local press on 17th April 2013. In response, 2No. representations were received from (a) Dollar Community Council and (b) Mr/Mrs Dalgety of 12AKellyburn Park, Dollar, on the following grounds:

- 5.2. Consideration should be given to relocation of the cemetery to be adjacent to the A91, as previously proposed by Dollar Community Council. **Comments:** *Possible relocation of the cemetery is not a matter that is material to the determination of this planning application.*
- 5.3. Comments on surfacing and possible permanence of a proposed temporary haul road. **Comments:** *Comments on the approved haul road, which is covered by a separate planning permission, are not material to the determination of this planning application.*
- 5.4. Works on the housing development should not be allowed to commence in advance of the conditions relating to the cemetery being discharged. Anything else would risk the development going ahead without the community benefits. **Comments:** *These key matters are fully considered in Sections 6.0 and 7.0 of this report, and it is concluded that works on the housing development should not be allowed to commence until Condition 1 is fully discharged.*
- 5.5. Ground investigations works should be clearly defined from works to commence the development. **Comments:** *On site ground investigation works have been carried out in relation to assessment of ground conditions on the site. These have not been deemed to be material commencement of the approved development by the Council, and indeed have not been preceded by a Notice of Commencement of Development from the developer to the Council.*

6.0 Development Plan Position

- 6.1. The application must be determined in accordance with the Development Plan unless material considerations indicate otherwise. In this case, the Local Plan development guidelines for this site indicate that the "Development forms part of a larger site which includes provision of land for a cemetery, playing field and ancillary facilities with associated car parking, road improvements and landscaping" These guidelines reflect the approved development and Section 75 Agreement that are now in place.
- 6.2. If the current application were to be approved, the housing element of the development could commence, and indeed be completed in advance of any other elements being commenced. Although our judgement is that this could jeopardise implementation of the approved plan, this would not however be considered as contrary to the Local Plan allocation, and to this end, the application is deemed not to be contrary to the development plan.

7.0 Other Material Considerations

- 7.1. The key material consideration to this application is the fact that the housing is an "enabling development" to the other "enabled" elements

of the approved development, principally the cemetery and playing field. The effect of approving the application would be to allow the enabling development to commence in advance of Condition 1 being fully discharged, whilst the enabled development would still be prevented from being implemented by the terms of Condition 1.

- 7.2. Whilst both the Council and developer are working closely to address the issues required to discharge the relevant clause of Condition 1, and there is every reason to expect that these efforts will come to fruition, there is no certainty on the outcome. In a worst case scenario, a satisfactory ground water management scheme could not be achieved in relation to the proposed cemetery. In which case, the entire proposal may require to be revised.
- 7.3. In this regard it is also worth noting that the site was in an area of countryside as shown in the adopted Local Plan of 2004 and with no development proposals identified on it. The change to this designation in the 2011 Alteration was prompted by the current planning approval which was deemed to be a Departure from the Development Plan, but was approved solely on the basis that it involved a housing development that would deliver much needed community infrastructure. A stand alone housing development would not have been supported.
- 7.4. Taking account of the above circumstances, having regard to due diligence, and in the knowledge of the work already well advanced to address Condition 1 (vi), it is recommended that this application, to allow housing development to commence ahead of the full discharge of Condition 1 of the PPP should be refused. While we continue to support the delivery of this project, any flexible approach should not extend to allowing implementation of the enabling development and no certainty on the delivery of the cemetery.
- 7.5. The full reason for refusal is set out in Section 2.0 of this report.

8.0 Sustainability Implications

- 8.1. None

9.0 Resource Implications

- 9.1. Financial Details

- 9.2. 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

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

Yes

9.4. Staffing. No implications for staffing.

10.0 Exempt Reports

10.1. Is this report exempt?

Yes (please detail the reasons for exemption below) No

11.0 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

Our communities are more cohesive and inclusive

People are better skilled, trained and ready for learning and employment

Our communities are safer

Vulnerable people and families are supported

Substance misuse and its effects are reduced

Health is improving and health inequalities are reducing

The environment is protected and enhanced for all

The Council is effective, efficient and recognised for excellence

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

Clackmannanshire Local Plan

12.0 Equalities Impact

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

Yes No

13.0 Legality

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

Yes

14.0 Appendices

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

None

15.0 Background Papers

15.1 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)


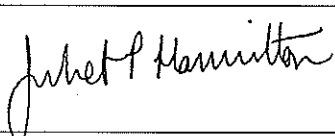
Yes (please list the documents below) No

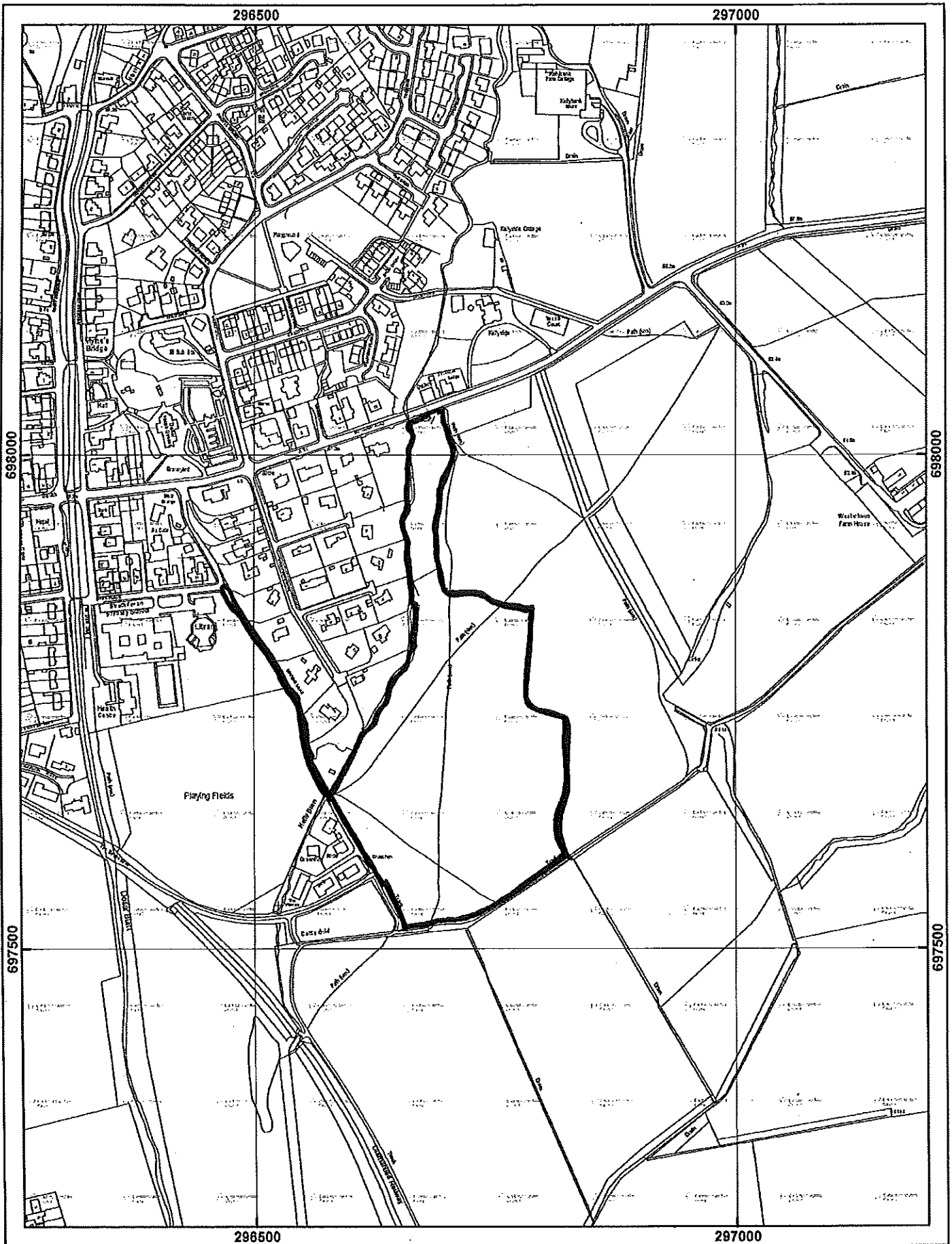
Clackmannanshire Local Plan




Author(s)

NAME	DESIGNATION	TEL NO / EXTENSION
Grant Baxter	Principal Planner, Development Quality	2615

Approved by

NAME	DESIGNATION	SIGNATURE
Ian Duguid	Development Quality Team Leader	
Julie Hamilton	Development Services Manager	



 <p>Date: 01-Jul-2013</p>	<p>13/00082/PPP - Land Adjoining Kellyburn, Lovers Loan, Dollar Variation Of Condition 1 of Planning Permission 07/00460/OUT</p> <p>Ward: Clackmannanshire East OS Grid Ref: NS 96 97</p> <p>0 50 100 150 200  Meters</p> <p>Reproduced by permission of Ordnance Survey on behalf of HMSO. © Crown copyright and database right 2013. All rights reserved. Ordnance Survey Licence number 100020783.</p>	 <p>Clackmannanshire Council www.clacksweb.org.uk Services to Communities Kinross Grainside Street Alloa FK10 1EB</p> <p>Tel: 01259 450 000 Fax: 01259 727 452 development_services@clacks.gov.uk</p>
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