
Report to: **Planning Committee**

Date of Meeting: **13 September 2018**

Subject: **Planning Application Ref: 18/00140/PPP - Erection Of 1
No. House – at Play Park, Rowan Crescent, Menstrie**

Report by: **Grant Baxter, Principal Planner**

1.0 Purpose

- 1.1. To provide an assessment of the above noted planning application against the provisions of the Local Development Plan and other material considerations, and provide a recommendation on the application.

2.0 Recommendations

- 2.1. It is recommended that the application is refused for the following reasons:
1. The proposals would replace a valuable amenity space and play area serving local residents with a development which would not positively enhance the site or its surrounding townscape. The proposal would unacceptably increase development density of a planned open space and overall would reduce amenity and townscape quality in the street and surrounding area. The application does not therefore comply with the provisions of Policy SC5 of the Clackmannanshire Local Development Plan, adopted 2015.
 2. The proposals would detrimentally affect the value and function of open spaces and recreational facilities in this community. No suitable alternative provision exists or is proposed, with the nearest alternative facility on the opposite side of a distributor road. The proposals would therefore result in a deficit in provision of safe and accessible open space and play area provision serving the local community. The application does not therefore comply with Policy SC10 of the Clackmannanshire Local Development Plan, adopted 2015, the aims and objectives of the Clackmannanshire Open Space Strategy, 2014 nor the provisions of the Scottish Planning Policy, 2014.

Refused Plans

Drawing No.1 – Location Plan

Drawing No.2 – Site Plan

3.0 Considerations

3.1. Background

- 3.2. This is an application for planning permission in principle for residential development (1 No. house) on the site of an existing children's play area within a residential cul-de-sac in a modern housing development in Menstrie.
- 3.3. The site is 720m² and located within Rowan Crescent, a cul-de-sac of 38 No. houses in the Menstrie Mains housing development which contains just over 300 houses in total. Permission for the development was granted on appeal in 2002 and was subject to a Section 75 legal agreement which inter alia secured contributions to off-site open space and play improvements. The masterplan for the site also contained provision of 3 No. new equipped play areas, each located within one of the housing phases. The application site is comprised of one of these equipped play areas.
- 3.4. This particular play area is mainly laid out in grass and also includes a rubber surfaced area containing play equipment. It contains trees and shrubs and is enclosed by railings on its two road frontages and boundary walls and hedges where it adjoins house plots. Lay-by visitor parking bays lie on both road frontages adjacent to the play area.
- 3.5. This current application follows a previous application to build 2 No. houses on the site, which was withdrawn by the then applicant prior to it being reported to the Planning Committee in November 2017. The recommendation then was for refusal.
- 3.6. The application is made by a private individual who is understood to have acquired the site from the previous applicant who themselves had purchased the site from Greenbelt, the company that own and until recently, maintained the other communal areas in this development.
- 3.7. The land maintenance arrangements for the development changed following a Lands Tribunal case in 2015. A resident of the development applied to the Lands Tribunal of Scotland for a determination of a question as to the validity, applicability or enforceability of a title condition under which Greenbelt were able to charge residents for maintenance of communal areas in the development, the land having been transferred to them by the original developer. The particular arrangement, where Greenbelt both own the communal land and charge residents for its upkeep is known as "the land-owning maintenance model".
- 3.8. The Opinion of the Lands Tribunal, given on 2nd December 2015, was that the title condition was invalid, albeit on the basis of what is described as a "*relatively narrow and technical issue*". In reporting the decision, the Clerk to the Tribunal noted "*How the difficulties caused by the failure of the burden in the present case are to be resolved is another matter and is for the respondents and those who own homes on the estate to take forward*".
- 3.9. Subsequent to the Lands Tribunal giving its Opinion, Greenbelt advised all residents that the pre-existing arrangements for land maintenance and charging would cease and it then put portions of communal space, including this play area, up for sale by auction.

- 3.10. It is understood that more recently a Residents Association has been formed, and voluntary contributions are being collected from residents to fund basic land maintenance of communal areas in the development, with Greenbelt's consent.
- 3.11. Whilst the above circumstances give a context to the current application, it must be assessed on its own individual merits and in accordance with the development plan unless material considerations indicate otherwise.
- 3.12. Consultations
- 3.13. Roads: No objections in principle, however an additional visitor's parking space would require to be formed. *Comment: There is likely to be scope to enlarge one of the existing parking bays to accommodate an additional space.*
- 3.14. Scottish Water: No objections. Capacity exists in water and foul networks but cannot be reserved. Surface water will not normally be accepted into combined sewers.
- 3.15. Menstrie Community Council: No comments received
- 3.16. Publicity and Representations
- 3.17. A total of 24 No. neighbouring proprietors were notified of the application.
- 3.18. A total of 38 No. objections have been received, including one from Menstrie Mains Residents Association. The names and addresses of those who have made representations are contained in Appendix 1 to this report. The concerns raised by objectors largely reflect those expressed for the previous two house proposal and are summarised as follows:
- 3.18.1. The site is not a "former" play area as suggested by the applicant but is actively used by the community. The site contains trees, contrary to what is stated on the forms. *Comment: The site is still in use as a play area, however the Council has no control over the maintenance of the play area or provision of play equipment. It is noted that the site contains small trees.*
- 3.18.2. The application is contrary to the original designation of the site as a play area in the overall masterplan for the site. *Comment: This is one of three existing play areas identified in the original masterplan for the Menstrie Mains development.*
- 3.18.3. The application is contrary to the Local Development Plan which seeks to protect play areas and open space from development. *Comment: Policy SC10 makes a presumption against the loss or change of use of open spaces, including privately run facilities, unless specific criteria can be met. These criteria would not be met in this proposal.*
- 3.18.4. The application will reduce residential amenity and increase housing density in this cul-de-sac. *Comment: The application would infill the only green space in this housing phase with additional development, thereby increasing housing density.*
- 3.18.5. Child safety will be put at risk. This is the only play area on the south side of Hazel Avenue (the main development access road). Children will be

- forced to cross this road to reach the next nearest play area. *Comment: Both the other equipped play areas in the nearest development lie on the opposite side of Hazel Avenue. The nearest is 125m away at Holly Grove.*
- 3.18.6. Approval will set a precedent for Greenbelt to sell off other play areas and open spaces in the development. *Comment: Whilst the planning application must be determined on its own individual merits, the Service is aware that other areas of communal land in the development have been put up for auction, and that approval of this application may give rise to future disposal of communal land and further such planning applications.*
- 3.18.7. There are insufficient details of the proposals in the application. *Comment: The application is for Planning Permission in Principle only, and the level of detail submitted is therefore adequate.*
- 3.18.8. There is a lack of visitor parking in the cul-de-sac. The application will require loss of existing parking to access the house plot. *Comment: Visitor parking bays lie on the two roadside frontages of the play area. It appears to be possible to provide access to a house on the site and provide an additional visitor's parking space as requested by the Roads Service.*
- 3.18.9. The Council should have notified more residents of the application, not just the surrounding houses. *Comment: The neighbour notification procedures for the application were satisfactorily carried out in accordance with procedure regulations.*
- 3.18.10. The development will create an unacceptable density in the cul-de-sac by building on planned open space. *Comment: The indicative layout appears does not appear to be at odds with the density of houses around the site, however the result of infilling this open space within the development would be to increase overall density at the expense of a planned amenity space which would reduce residential amenity and townscape quality in the street.*
- 3.18.11. The proposed house will affect residential amenity and privacy of adjoining households. *Comment: It is likely that a single house could be located on the site in a manner that did not directly overlook or overshadow neighbouring houses to an unacceptable degree.*
- 3.18.12. Construction traffic will be a risk to safety in the cul-de-sac due to the number of houses and narrow road. *Comment: Whilst construction traffic may well cause disruption in the cul-de-sac, this would not be a reason to withhold planning permission.*
- 3.18.13. Transfer of this land by the original developer to Greenbelt is part of a land banking scheme to allow future development. *Comment: The Service cannot comment on this point as it is not a material planning consideration.*
- 3.18.14. The application is contrary to Scottish Government. planning policies and Early Years Framework in respect of providing spaces for children to be more active. *Comment: The Scottish Planning Policy (SPP) does not support the loss of open spaces that would result in a deficit of that particular type of provision in a local area. The proposals are not supported by a justification based on any audit or strategy, and have not demonstrated that a deficit in play provision wouldn't result from the*

development. The current situation in respect of land maintenance in the development and indeed the sale of the play area by Greenbelt are not material considerations that would justify approval of this application.

- 3.18.15. The proposed house will overshadow and overlook adjacent houses. *Comment: The application is made in principle only, and details of house design is indicative only, however it is likely that the site could be developed in a manner that would not detrimentally affect privacy and sunlight/daylight enjoyed by adjacent houses.*
- 3.18.16. The play area provides a small wildlife habitat which would be lost if development goes ahead. *Comment: The site is not identified for natural habitat value, but is an open space in this development that provides a degree of wildlife habitat.*

3.19. Planning Assessment

- 3.20. The application must be determined in accordance with the development plan unless material considerations indicate otherwise. The Clackmannanshire Local Development Plan (LDP) adopted 2015 comprises the development plan.
- 3.21. The relevant policy provisions of the LDP are as follows:
- 3.21.1. Policy SC5 – Layout and Design Principles
- 3.21.2. Policy SC10 - Education, Community Facilities and Open Spaces
- 3.22. Policy SC5 requires new developments to contribute positively to their setting, including surrounding townscape and landscape and integrate well with existing streets. The policy also seeks to ensure new developments protect and enhance green networks and ensure development density reflects the character and quality of the surrounding townscape.
- 3.23. Taking account of these provisions, the proposals would entail the loss of a planned play area and open space within this residential area. The area sits on a corner within a cul-de-sac and is the only area of greenspace within this residential area. Replacing this area with built development would not be considered to positively enhance the site, or its surrounding townscape. In respect of development density, whilst it could be argued that construction of a single house, as proposed and indicatively shown, would not be at odds with the density of houses around the site, however, the result of infilling this open space would be to increase overall density at the expense of a planned green space and this would reduce the recreation provision and townscape quality in this residential area.
- 3.24. The application is not therefore considered to comply with the provisions of Policy SC5.
- 3.25. Policy SC10 seeks (inter alia) to retain and enhance the provision of community facilities and open spaces. It makes a presumption against development that would result in the loss or change of use of community facilities and open spaces, including privately run facilities unless specific criteria can be met. In assessing the criteria set out in the policy, the following conclusions can be reached:

- 3.25.1 The application site currently provides a community facility in the form of a play area and its development would adversely affect the value and function of open spaces in this community as a result of the loss of recreational facilities and open space.
- 3.25.2 No suitable alternative provision exists or is proposed;
- 3.25.3 The Council's Open Space Strategy recommends a quantity of play areas of 0.2Ha per 1000 population. The current provision in Menstrie is 0.12Ha per 1000 population. There are currently only 4No. accessible play areas in Menstrie, and this proposal would reduce that to three. Therefore, rather than there being an excess of provision, the loss of this play area would further compound the deficit in play area provision in Menstrie. In addition, the loss of this area would mean children having to cross the development distributor road (Hazel Avenue) to reach the next nearest play area.
- 3.26. The application is not therefore considered to comply with Policy SC10.
- 3.27. Other Material Considerations
- 3.28. The Council prepared an Open Space Strategy (OSS) in June 2014. This provides an audit of the quality, quantity and accessibility of open spaces, including play areas, in Clackmannanshire. As noted above, the OSS recommends the provision of 0.2Ha of play area per 1000 population. The existing play area currently contributes to open space provision in Menstrie.
- 3.29. Both the OSS and LDP take account of open spaces and play areas that may be privately owned as through their provision, these contribute to the overall provision of such facilities within communities. The decision by Greenbelt (already a private owner) and the previous owner to sell play areas does not change the fact that these areas were planned and are used as community facilities for nearby residents. The change in ownership does not change the planning status of the play area as part of publicly available open space.
- 3.30. The SPP notes that *“development of land allocated as green infrastructure for an unrelated purpose should have a strong justification.....based on evidence from relevant audits and strategies that the proposal will not result in a deficit of that type of provision within the local area and that alternative sites have been considered. Poor maintenance and neglect should not be used as a justification for development for other purposes. Development proposals that would result in or exacerbate a deficit of green infrastructure should include provision to remedy that deficit with accessible infrastructure of an appropriate type, quantity and quality.”* The proposals are not supported by a justification based on any audit or strategy, and have not demonstrated that a deficit in play provision wouldn't result from the development. The application does not therefore comply with the SPP
- 3.31. The Council has received 38 No. individual objections to the planning application expressing a strong local view that this is an important local community facility used by residents and should therefore be retained.
- 3.32. The material considerations before the Service do not therefore support the application.

3.33. Taking account of these collective considerations, the Service considers the application to be contrary to the development plan and that the key material considerations also do not support the proposal.

4.0 Sustainability Implications

4.1. The application, if approved would result in the loss of a valuable open space within a residential area of Menstrie.

5.0 Resource Implications

5.1. *Financial Details*

5.2. 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

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

5.4. *Staffing*

6.0 Exempt Reports

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

7.0 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)

8.0 Equalities Impact

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

Yes No

9.0 Legality

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

10.0 Appendices

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

1. Names and Addresses of Those Making Representation

11.0 Background Papers



11.1 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)

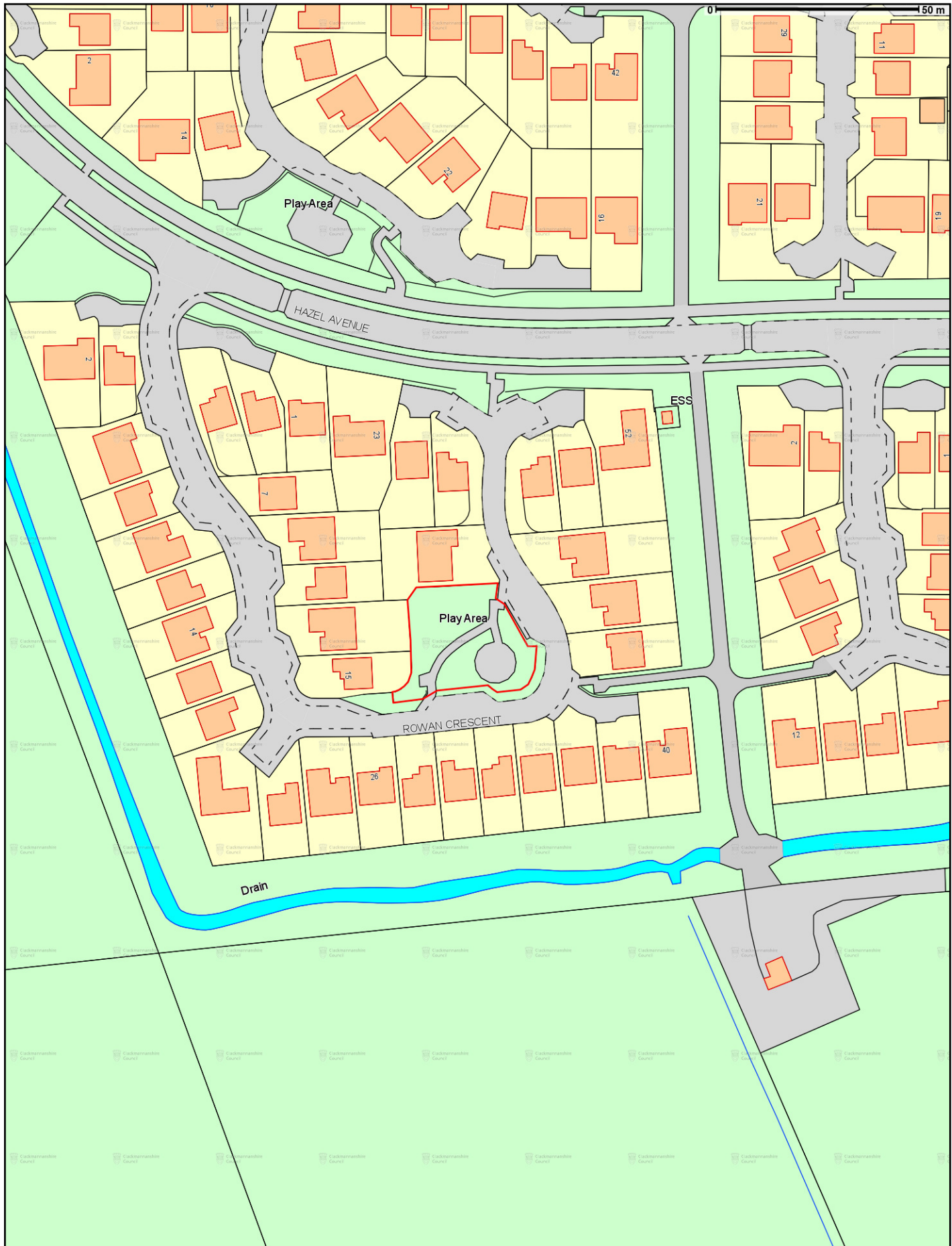
Yes (please list the documents below) No

Author(s)

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Approved by

NAME	DESIGNATION	SIGNATURE
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**Play Park At Rowan Crescent -
18/00140/PPP**



APPENDIX 1 – NAMES AND ADDRESSES OF THOSE MAKING REPRESENTATIONS

REPRESENTTEE
NAME AND ADDRESS: Tony Shillam
54 Birch Grove
Menstrie
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FK11 7DW

COMMENT TYPE: 0

REPRESENTTEE
NAME AND ADDRESS: Mr John Simpson
1 Cedar Grove
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COMMENT TYPE: 0

REPRESENTTEE
NAME AND ADDRESS: Ms Yvonne Syme
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REPRESENTTEE
NAME AND ADDRESS: Ms Claire Smith
9 Birch Grove
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REPRESENTTEE
NAME AND ADDRESS: Mrs Mary Rawding
28 Alder Crescent
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REPRESENTTEE
NAME AND ADDRESS: Mr Scott Macdonald
18 Pine Crescent
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FK11 7DT

COMMENT TYPE: 0

REPRESENTTEE
NAME AND ADDRESS: Mr James Bull
56 Blackthorn Grove
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FK11 7DX

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REPRESENTTEE
NAME AND ADDRESS: Mr David Edes
44 Brudes Hill
Inverness
IV3 8AG

COMMENT TYPE: 0

REPRESENTTEE
NAME AND ADDRESS: Mrs Helen Lennox
71 Blackthorn Grove
Menstrie
Clackmannanshire
FK11 7DX

COMMENT TYPE: 0

REPRESENTTEE
NAME AND ADDRESS: Mrs Aileen Littlejohn
On behalf of Menstrie mains Residents Assoc.
16 Willow Grove
Menstrie
Clackmannanshire
FK11 7DQ

COMMENT TYPE: 0

REPRESENTTEE
NAME AND ADDRESS: Mr Peter Moulding
30 Birch Grove
Menstrie
Clackmannanshire
FK11 7DW

COMMENT TYPE: 0

REPRESENTTEE
NAME AND ADDRESS: Mr Gordon Coull
20 Rowan Crescent
Menstrie
Clackmannanshire
FK11 7DS

COMMENT TYPE: 0

REPRESENTTEE
NAME AND ADDRESS: Mr Andrew Forsyth
14 Pine Crescent
Menstrie
Clackmannanshire
FK11 7DT

COMMENT TYPE: 0

REPRESENTTEE
NAME AND ADDRESS: Mrs Susan Henderson
19 Craigomus Crescent
Menstrie
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FK11 7DN

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REPRESENTTEE
NAME AND ADDRESS: Mr Bruce Camelford
7 Ivy Leaf Place
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G66 7GJ

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REPRESENTTEE
NAME AND ADDRESS: Mr Richard Spruce
9 Holly Grove
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COMMENT TYPE: 0

REPRESENTTEE
NAME AND ADDRESS: Mr David Crozier
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REPRESENTTEE
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REPRESENTTEE
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COMMENT TYPE: 0

REPRESENTTEE
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COMMENT TYPE: O

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2 Blackthorn Grove
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COMMENT TYPE: O

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NAME AND ADDRESS: Mrs Denise McIntyre
3 Rowan Crescent
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COMMENT TYPE: O

REPRESENTTEE
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14 Rowan Crescent
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COMMENT TYPE: O

O = Objection