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## NORTH AYRSHIRE COUNCIL

22nd January 2025

### Planning Committee

Locality	Kilwinning
Reference	23/00061/PPM
Application Registered	13th February 2023
Decision Due	13th June 2023
Ward	Kilwinning

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**Recommendation**      Refused

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<b>Location</b>	Site to South of Nethermains Community Centre Nethermains Road Kilwinning
<b>Applicant</b>	CCG Homes
<b>Proposal</b>	Erection of 115 dwellinghouses to include the formation of associated site access, roads, footpaths, landscaping, drainage and ancillary works

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### 1. Description

Planning permission is sought for the erection of 115 dwellinghouses to include the formation of associated site access, roads, footpaths, landscaping, drainage, and ancillary works at Site to South of Nethermains Community Centre, Nethermains Road, Kilwinning.

The determination of this application was delayed from June 2023 to January 2025 due to the ongoing consideration of flood risk issues on the site and further information sought by Planning Services from the applicant.

The proposed housing would consist of detached, semi-detached, and terraced houses with a total of thirteen designs, known as 'house types.' Nine of the proposed house types would have 2-storeys and the four remaining house types would have 2.5 storeys. Four of the house types would feature integral garages. All house types would have gabled roofs and would be finished with grey roof tiles. The external walls would consist of a combination of off-white render and grey facing brick. Windows and gable/rear doors would be finished with white UPVC with black UPVC to the front doors. Rainwater goods would be black, and soffits and fascias would be grey UPVC.

The application site relates to vacant former industrial land of approx. 4.27ha to the south of Nethermains Community Centre. The site is bounded by Nethermains Road to the west, River Garnock to the east, and Almswall Park to the northeast. There is business/industrial land to the south of the site and on the opposite side of Nethermains Road to the west. Footpaths forming part of the National Cycle Network (NCN) Routes 7 and 73 run along the eastern and south boundaries of the site, respectively.

The proposed layout of the site would feature 2 no. vehicular accesses from Nethermains Road to the west. Path connections would be provided from both Nethermains Road and from the NCN routes to the east and south. A SuDS detention basin for the treatment and storage of surface water would be located to the eastern edge of the site adjacent to the NCN Route 7. The houses along the western edge of the site would primarily front onto Nethermains Road, with some facing "gable end" onto the main road. The houses along the southern road frontage would have vehicular access directly from Nethermains Road, while the houses along the northern frontage would be accessible via an internal road within the site. Most of the proposed housing would include in-curtilage parking, except for a terraced row of houses at the southeast corner of the site (Block 63 on plan) which would be served by a dedicated parking court. There would be an additional 28 no. visitor parking spaces provided throughout the site. An area of public open space would be provided around and adjacent to the proposed SuDS basin and a scheme of landscaping and planting is proposed throughout the site.

There is dense vegetation along the existing site boundaries. The vegetation along the western boundary would be removed to facilitate the site frontage onto Nethermains Road. There is also dense vegetation within the site, primarily to the north part of the site, which would also be cleared to facilitate the development.

Boundary treatments for the housing would consist of a 1.8m high timber fence to the rear gardens and between the individual plots. The front garden areas would be left open.

There is a disused railway embankment located to the east between the site and the River Garnock. This embankment does not form part of a formal flood prevention scheme and is outwith the control of the applicant and owned by Council.

In terms of the current Adopted Local Development Plan (LDP), the application site is allocated as an effective housing site (ref. NA1099) in Schedule 2b (Schedule of Indicative Capacity of Housing Sites anticipated to be active between 2019-2024). It is also located within the General Urban Area within the settlement boundary of Kilwinning. Part of the site falls within the defined Development High Risk Area by The Coal Authority. Part of the site is also shown to be at risk of flooding based on the SEPA Future Flood Maps. The relevant policies of the LDP to the proposed development are listed below:

- The Towns and Villages Objective of Strategic Policy 1: Spatial Strategy
- Strategic Policy 2 (Placemaking)
- Policy 1: New Houses and Maintaining an Effective Housing Land Supply
- Policy 16: Protection of our Designated Sites
- Policy 18: Forestry, Woodland, Trees and Hedgerows
- Policy 22: Water Environment Quality
- Policy 23: Flood Risk Management

National Planning Framework 4 is also relevant to the consideration of the application since this is part of the development plan.

Also relevant to the application is the National Flood Resilience Strategy published December 2024 that sets out the Scottish Government's strategy to reach a flood resilient Scotland through to 2045 and beyond.

The applicant has been in discussions with Planning Services about the residential development of the site since 2018 (ref. 18/00078/PREAPP). A Proposal of Application Notice (PoAN) was received by Planning Services on 14th February 2018. However, no subsequent application was submitted. A PoAN for the current application was received by Planning Services on 31st May 2022 (ref. 22/00418/PREAPM).

The following supporting information was submitted with the application:

- Air Quality Air Assessment
- Design and Access Statement
- Drainage Report
- Flood Risk Assessment
- Mining Report
- Network Heating Assessment
- Non-residential Mining Report
- Pre-application Consultation Report
- Preliminary Ecological Report (Habitat Survey)
- Site Investigations Report
- Transport Statement

## **2. Consultations and Representations**

Neighbour notification was conducted for this application in accordance with statutory procedures. The application was advertised in a local newspaper, the Irvine Herald. A total of one objection comment was received in response to the application. The points raised are summarised below:

1. Concerns raised about the loss of biodiversity within the site.

*Response: See consultation comments from NAC Biodiversity Officer below. The applicant was asked to resubmit a Habitat Survey considering the comments received by the Biodiversity Officer. In response, the applicant proposed to retain some of the trees along the site boundaries.*

2. The proposed development does not align with the NPF4 policies relating to biodiversity.

*Response: The relevant NPF4 policies are considered in the Analysis section below.*

3. The submitted 'Existing Tree Removal Layout' drawing incorrectly refers to a large area of semi-mature woodland within the site as "scrub" which would be removed.

*Response: See consultation comments from NAC Biodiversity Officer below. The applicant was asked to resubmit a Habitat Survey considering the comments received by the*

*Biodiversity Officer. In response, the applicant proposed to retain some of the trees along the site boundaries. No further Habitat Survey was received.*

Consultations:

**SEPA** - SEPA has issued 4 no. responses during the processing of the application as further information relating to flood risk has been provided by the applicant. A holding objection was first issued on 9th March 2023. At that time SEPA requested that a revised FRA be submitted including assessment of the flood risk areas for the 0.5% AEP +CC flood event (as per NPF4), with the disused railway embankments removed, and coastal flood risk considered. A revised FRA was submitted in October 2023. SEPA issued a further response on 29th November 2023. The holding objection was maintained, and it was requested that updated layout plans be submitted which show avoidance of the flood risk area. Further supporting information was submitted by the applicant in February 2024 and May 2024. SEPA maintained the holding objection in further responses in March 2024 and May 2024. To enable SEPA to remove the objection they require further information to be submitted and the submission of an amended site layout that avoids the flood risk area as determined by the October 2023 FRA.

SEPA's views on the proposed development are as summarised:

- The disused railway embankments between the site and the River Garnock do not form part of a formal flood prevention scheme, do not have a verified design standard, and are not maintained on an ongoing basis. These should be removed from the flood modelling for the site.
- The FRA should include assessment of the flood risk areas for the 0.5% AEP +CC flood event (as per NPF4).
- None of the exception categories set out in NPF4 Policy 22 part a) are applicable in this case. All development must therefore avoid the flood risk area.
- A reduced housing layout avoiding the flood risk area could be accommodated within the southern section of the site.

*Response: the application is considered in accordance with the relevant NPF4 policies in the analysis section below. It is not considered that the exemption under Policy 22 a) (iv) applies in this case. In line with SEPA's comments, the applicant was given the opportunity to submit a revised site layout to address the flood risk concerns. A slightly revised layout and alternative flood prevention scheme was discussed (see below in Analysis). However, no further layout has been formally submitted to date.*

**NAC Flooding** - NAC Flooding agrees with SEPA's views and objects to the proposed development because it may increase the number of people and property at flood risk. NAC Flooding may be able to remove this objection should the proposed layout of the site be amended to avoid positioning dwellings and associated infrastructure in the flood risk area.

*Response: As noted above, the applicant was given the opportunity to consider and submit an amended layout. A slightly revised layout and alternative flood prevention scheme was informally discussed (see below in Analysis). However, no further layout has been formally submitted to date.*

**Scottish Water** - no objection to this planning application. However, the applicant should be aware that this does not confirm that the proposed development can currently be serviced.

Further comments received about water capacity, wastewater capacity, and surface water. Scottish Water records indicate that there is live infrastructure in the proximity of your development area that may impact on existing Scottish Water assets. The applicant must identify any potential conflicts with Scottish Water assets and contact the Scottish Water Asset Impact Team for an appraisal of the proposals.

*Response: noted. An informative instructing the applicant to contact Scottish Water Asset Impact Team could be added to any consent granted.*

**NAC Active Travel and Transport (Roads)** - the applicant needs to provide further information before an adequate assessment can be carried out. Amended drawings required incorporating the further details relating to road dimensions, driveway dimensions, tracking drawing. Additional visitor parking required. Information regarding access to SuDS basin and continuous service strips required.

*Response: noted. The consultation response was passed to the applicant. However, no further information or drawings were received during the processing of the application.*

**The Coal Authority** - the content and conclusions of the site investigations report (First Edition, October 2022) are sufficient for the purposes of the planning system in demonstrating (based on the professional opinion of Mason Evans Partnership Limited) that the application site is safe and stable for the proposed development. No objection to the proposed development. A recommended informative note to any consent granted is recommended.

*Response: noted. An informative note could be added to any consent granted.*

**NAC Educational Services** - the site sits within the catchment area of the following schools:

- Blacklands Primary
- St Winning's Primary
- Kilwinning Academy
- St Matthew's Academy

Having reviewed the roll projections and the total number of homes within the catchment for each school, there are no current educational accommodation issues identified as arising from this proposal.

*Response: noted.*

**NAC Biodiversity Officer** - Concerns about the accuracy of the existing tree removal plan and the subsequent quality of the proposed biodiversity actions to be taken by the developer.

The issue with the tree removal plan is the developer's definition of scrub. The tree removal plan states that the site, and the off-site block of trees to be felled are scrub with a few mature trees circled in red. The accepted definition of scrub, as defined by the National Vegetation Classification (NVC), is "climax vegetation dominated by locally native shrubs, usually less than 5m tall". The provided description of the site did not seem correct. On inspection of the site, it was observed that:

- o Most of the vegetation marked in red as scrub on the tree removal plan, is in fact semi-natural young alder (*alnus glutinosa*) woodland predominantly greater than 5m in height.
- o The offsite area marked in blue as scrub on the tree removal plan is in fact mature woodland.

In biodiversity terms the current plan represents an overall net loss of approx. 38,000m<sup>2</sup> of existing habitat, including the loss of 12,900m<sup>2</sup> of woodland. In terms of net biodiversity loss this represents a 100% loss of existing habitat, and the creation of a new, mainly different, habitat that represents only 13% of the original habitat area.

### Conclusions

- o It is not considered that the developer's identification of scrub on site is correct. In this case acceptance of this designation would mask the loss of approx. 12,900m<sup>2</sup> of woodland.
- o The net loss of approx. 12,900m<sup>2</sup> of woodland is not in keeping with NACs biodiversity and climate change aspirations.
- o The biodiversity creation scheme proposed by the developer is inadequate and inappropriate in the context of the biodiversity loss on site.
- o The developer should carry out an appropriate biodiversity survey of the site and submit a proposal based on the findings to deliver a development and mitigation plan that considers the existing biodiversity of the site and minimises biodiversity loss.

*Response: The applicant was asked to resubmit a Habitat Survey considering the comments received by the Biodiversity Officer. In response, the applicant proposed to retain some of the trees along the site boundaries. No further Habitat Survey was received.*

**NAC Environmental Health** - In terms of the contaminated land issues for the site, there are significant concerns about the information that has been submitted by the applicant. The submitted reports do not provide sufficient information as to whether the site would be suitable for use in the context of the water environment and human health following redevelopment.

*Response: noted. The applicant has been made aware of Environmental Health's concerns about the contaminated land issues on the site. Additional information has been provided by the applicant over the course of the application. However, a satisfactory resolution to the contaminated land issues has not been achieved. Environmental Health have concerns about the information that has been submitted by the applicant. The submitted reports do not provide sufficient information as to whether the site would be suitable for use in the context of the water environment and human health following redevelopment. No further information has been submitted to Planning with regards to addressing these concerns.*

### 3. Analysis

When making any determination under the Planning Acts, it is the statutory duty of the planning authority to make the determination in accordance with the development plan, unless material considerations indicate otherwise. Together, the Council's Adopted Local Development Plan (LDP) and National Planning Framework 4 (NPF4) form the development plan. The relevant policies are considered below.

## **NPF4 Policy 1 (Tackling the climate and nature crises) and NPF4 Policy 2 (Climate mitigation and adaptation)**

Key to the assessment of this application are Policy 1 and Policy 2 of NPF4. Policy 1 states that when considering all development proposals significant weight will be given to the global climate and nature crises. The following requirements are set out for Policy 2:

- a) Development proposals will be sited and designed to minimise lifecycle greenhouse gas emissions as far as possible.
- b) Development proposals will be sited and designed to adapt to current and future risks from climate change.
- c) Development proposals to retrofit measures to existing developments that reduce emissions or support adaptation to climate change will be supported.

As noted earlier, part of the site is shown to be at risk of flooding based on the SEPA Future Flood Maps. The Scottish Government's National Flood Resilience Strategy (published December 2024) states that there are currently 284,000 properties across Scotland exposed to flooding, and by 2080 this number is expected to increase by 110,000 through climate change. Therefore, both the current and future risks from flooding require to be considered for the proposed residential development. An assessment of the relevant flooding policies is provided below. The site has a former industrial use. However, much of the site, particularly the northern section, has been naturalised with dense woodland vegetation. This is evident both within and along the edges of the site. The contribution of this naturalisation therefore requires to be considered as part of the biodiversity of the site. These issues are considered in terms of the relevant biodiversity policies below.

## **LDP Strategic Policy 1: Spatial Strategy (Towns and Villages Objective)**

The Towns and Villages Objective of Strategic Policy 1 (Spatial Strategy) states that within the General Urban Area, proposals for residential development will accord with the development plan in principle, and applications will be assessed against the policies of the LDP. Furthermore, the Council will support, in principle, development proposals within North Ayrshire's towns and villages that provide the right new homes in the right places. In this case, the application site is located within the General Urban Area of Kilwinning, and it is an allocated housing site.

## **LDP Policy 1: New Homes and Maintaining an Effective Housing Land Supply and NPF4 Policy 16: Quality Homes**

Policy 1 (New Homes and Maintaining an Effective Housing Land Supply) states that, in principle, the Council will support and promote residential development of the 51 effective housing supply sites shown in Schedules 2a and 2b of the LDP. The site at Nethermains Industrial Estate is identified as one of the housing sites in Schedule 2b (ref. NA1099). However, Policy 1 also states that the Council will only support new housing proposals where they would help achieve its vision by aligning with the principles of the spatial strategy and being compliant with other aspects of the plan particularly by way of impact on committed infrastructure and the environment. As noted earlier, the site is at risk of flooding (as identified by SEPA's flood risk maps). The flood risk issues for the site will be considered in further detail below. The biodiversity of the site also requires to be considered.

NPF4 Policy 16 seeks to encourage, promote and facilitate the delivery of more high quality, affordable and sustainable homes, in the right locations. Policy 16 states that development proposals for new homes on land allocated for housing in LDPs will be supported. Development proposals that include 50 or more homes should be accompanied by a Statement of Community Benefit. Development proposals for new homes that improve affordability and choice by being adaptable to changing and diverse needs, and which address identified gaps in provision, will be supported. No specific Statement of Community Benefit was submitted in this case. However, a Design and Access Statement, as required by statute, was submitted outlining the design principles and policy implications of the proposed development. The detail of the proposed development and the points raised in the Design and Access Statement will be considered in the consideration of Strategic Policy 2 (Placemaking) below.

### **LDP Strategic Policy 2: Placemaking and NPF4 Policy 14: Design, quality and place**

The stated purpose of Strategic Policy 2 on Placemaking is to ensure "all development contributes to making quality places." The policy also seeks to "safeguard, and where possible enhances environmental quality through the avoidance of adverse environmental or amenity impacts."

The proposed development would provide a variety of house types (13 in total) including detached, semi-detached, and terraced houses. All the houses would have either 2 or 2.5 storeys with gabled roof designs and consistent material finishes throughout the development. There are a range of building types in the surrounding area, including the category C listed Nethermains Community Centre building to the north of the site, the sheltered accommodation buildings at Robert W Service Court to the north-west, and the industrial buildings to the west of the site on Longford Avenue. Beyond, there are residential houses to the north of the site on Nethermains Road and to the west on Stobbs Terrace, Pollock Crescent, and Blacklands Crescent. There are a range of house types and designs in the surrounding area. The proposed development draws upon a variety of the existing building designs and features with the proposed houses having gabled roof designs and neutral material finishes.

The development would primarily consist of two road loops with most of the proposed housing facing onto the internal road layout, which would provide an attractive enclosed streetscape for residents and visitors with path connections, landscaping, and public open spaces provided throughout the development. Some of the houses along the western boundary of the site would front onto the B778, which would assist in creating a more attractive and welcoming streetscape on the approach to the site. It would also assist in improving the approach to Kilwinning from the A78 trunk road, located to the south of the town.

The proposed layout and boundary treatments would provide each house with a rear garden area and enclosures to ensure that there would be no adverse privacy or overlooking between residents. Each house would either be provided with in-curtilage parking or a dedicated parking courtyard. There would be an additional 28 no. visitor parking spaces provided throughout the development.

The submitted Design and Access Statement outlines the resource efficiency and sustainability elements of the proposed development. A variety of measures would be incorporated into the development to improve energy efficiency and to promote longer term



sustainability, with a 60-year design lifespan. These measures include the use of high-performance building elements and renewable technologies along with the use of sustainable building products, including local sourcing where possible to enhance the ecological profile of the development.

While the resource efficiency and sustainability measures as noted above are acknowledged, it is also noted that part of the applicant's strategy to address the flooding and contaminated land issues of the site is to raise the level of the site by approx. 2m. However, this would result in the loss of woodland and the established biodiversity of the site. It would also require a significant amount of material to be transported to the site, the source of which is not currently known. Therefore, any environmental benefit derived from sustainable building methods and materials or low carbon energy systems would be undermined by the loss of biodiversity and environmental impacts of land raising.

It is considered that the site would be well connected for a variety of transport modes. There would be path connections formed throughout the site with access from Nethermains Road to the east and to the NCN Route 7 to the east and NCN Route 73 to the south. The site would also be within walking distance of public transport connections with the nearest bus stop at Pollock Crescent to the west. Kilwinning Railway Station would be an approx. 20-minute walk or 8-minute cycle from the site. The site would also be connected for private vehicular travel via Nethermains Road to the west.

Therefore, given the above, it is considered that the proposed development would partially meet the relevant requirements of Strategic Policy 2 (Placemaking). However, given the proposed strategy to raise the level of the site by approx. 2 metres, it is not considered that the proposed development would be "resource efficient." Further consideration is given to the flood risk and biodiversity issues of the site and the proposed development below.

**LDP Policies 16 (Protection of our Designated Site) and 18 (Forestry, Woodland, Trees and Hedgerows) and NPF4 Policies 3 (Biodiversity), 4 (Natural places), 6 (Forestry, woodland and trees), and 9 (Brownfield, vacant and derelict land and empty buildings)**

In terms of Policies 16 and 18 of the LDP, the site is not subject to any environmental designations of local or national importance. However, the relevant NPF4 policies (noted above) place a greater importance on the conservation, restoration, and enhancement of biodiversity and natural features. Policy 3 (Biodiversity) states that development proposals will contribute to the enhancement of biodiversity and should integrate nature-based solutions where possible. Development proposals for major development will only be supported where it can be demonstrated that the proposal will conserve, restore and enhance biodiversity, including nature networks so they are in demonstrably better state than without intervention.

In this case, it is noted that the site represents brownfield land that has been previously occupied by industrial uses but is now vacant. NPF4 Policy 9 (Brownfield, vacant and derelict land and empty buildings) recognises the contribution of brownfield land to nature recovery and the opportunities of brownfield land for use as productive greenspace where appropriate. It goes on to state that development proposals that will result in the sustainable reuse of brownfield land including vacant and derelict land and buildings, whether permanent or temporary will be supported. In determining whether the reuse is sustainable, the biodiversity value of brownfield land which has naturalised should be taken into account.

A Preliminary Ecological Appraisal (PEA) prepared by Wild Surveys Ltd dated 3rd October 2022 was submitted alongside the application.

As noted earlier, the Council's Biodiversity Officer has expressed concerns about the accuracy of the existing tree removal plan and the subsequent quality of the proposed biodiversity action to be taken by the developer. It is not considered that the developer's identification of scrub on site is correct. In this case acceptance of this designation would mask the loss of approx. 12,900m<sup>2</sup> of woodland. The net loss of approx. 12,900m<sup>2</sup> of woodland is not in keeping with the Council's biodiversity and climate change aspirations. The biodiversity creation scheme proposed by the developer is inadequate and inappropriate in the context of the biodiversity loss on site. The Biodiversity Officer recommended that the applicant should therefore carry out an appropriate biodiversity survey of the site and submit a proposal based on the findings to deliver a development and mitigation plan that considers the existing biodiversity of the site and minimises biodiversity loss.

Considering the above, the applicant/agent was duly asked to undertake a further biodiversity survey of the site and for greater consideration to be given to the retention of existing habitat and creation of new habitat. In response, discussions about greater retention of trees along the western boundary of the site took place between the case officer and the agent. However, no amended tree removal plan was formally submitted, and no further biodiversity survey has been submitted. Therefore, the points as noted above have not been satisfactory addressed.

As noted earlier, part of the applicant's strategy to address the flooding and contaminated land issues of the site is to raise the level of the site by approx. 2m. This would effectively remove most of the existing biodiversity of the site and is considered contrary to the biodiversity policies of NPF4.

### **LDP Policies 22 (Water Environment Quality) and 23 (Flood Risk Management) and NPF4 Policy 22 (Flood risk and water management)**

Policy 22 of the LDP states that development will be required to ensure no unacceptable adverse impact on the water environment. Related to this issue is Policy 23, which deals with flood risk management. It states that generally development should avoid locations of flood risk and should not lead to significant increase in flood risk elsewhere.

The policy intent of NPF4 Policy 22 (Flood risk and water management), is to strengthen resilience to flood risk by promoting avoidance as a first principle and reducing the vulnerability of existing and future development to flooding.

Policy 22 lists exemptions where proposed development would be supported in a flood risk area. The most relevant exemption in this case is as follows:

a) *Development proposals at risk of flooding or in a flood risk area will only be supported if they are for: iv. Redevelopment of previously used sites in built up areas where the LDP has identified a need to bring these into positive use and where proposals demonstrate that long-term safety and resilience can be secured in accordance with relevant SEPA advice.*

It is recognised that the site has been previously used. The site is also located within the General Urban Area within the settlement boundary of Kilwinning as identified in the LDP and is allocated for housing in Schedule 2b of the LDP. However, it is not considered that the allocation of the site within the LDP equates to the LDP identifying a "need" to bring the site into "positive use" as per NPF4 Policy 22 a) without addressing site constraints. The LDP predates NPF4 and the context for identifying a "need" to redevelop previously used sites in built up areas to being into "positive use" did not exist at the time of the LDP being prepared and adopted. No similar exemption existing within the Scottish Planning Policy (SPP) which predated NPF4.

There have been several major residential developments that have been approved and implemented in recent years in Kilwinning. Planning permission was granted for 76 dwellinghouses at the former West Byrehill Industrial Estate in 2020 (ref. 20/00106/PPM), with the development completed during 2023. In addition, a development of 198 dwellinghouses was granted planning permission in 2019 at Wood Farm to the north of Kilwinning (ref. 19/00443/PPM) and is now nearing completion. 426 further dwellinghouses were granted permission at the former West Byrehill Industrial Estate in 2022 (ref. 22/00137/MSCM), the first phase of which is now underway. Most recently, planning permission was granted in November 2023 for 85 dwellinghouses at Mosscolloch Farm to the north-east of Kilwinning (ref. 23/00420/PPM).

As such, it is not considered that there is necessarily an essential "need" for new housing in Kilwinning and specifically at this site due to flood risk concerns. The "positive use" referred to in NPF4 Policy 22 a) is not limited to housing development and a less vulnerable use could potentially be more suited to the site given the identified flood risk and policy requirement to "conserve, restore and enhance" biodiversity.

A Flood Risk Assessment (FRA) prepared by Kaya Consulting dated January 2023 was submitted alongside the application. SEPA was consulted on the application and initially issued a holding objection to the application requiring that the FRA be amended to remove the effects of the former railway embankment along the east edge of the site and to include the most up to date climate change allowance.

A revised FRA prepared by Kaya Consulting dated October 2023 was submitted in response to SEPA's initial comments. In response, SEPA maintained the holding objection. NAC Flooding also agreed with SEPA's views and objected to the proposed development because it may increase the number of people and property at flood risk.

Further flooding information was submitted by the applicant in February 2024. In response, SEPA maintained their holding objection. The applicant claims that the former railway embankment to the east of the site is a substantial feature and would be expected to prevent flood water entering the site. It is also claimed that the ground levels in the proposed development would be raised about the 200-year+ climate change flood level, so that post-development the former railway embankment would not provide any protection to the site (i.e., the site itself would be above flood level and not at risk). Finally, it is claimed that flood modelling has shown that raising the site does not impact on flood risk elsewhere.

However, SEPA has been consistent in its approach that the flood modelling needs to be run without the former railway embankment in place because it provides informal flood protection that cannot be secured in the future, and it is unclear how well the embankments would perform at the present time. Furthermore, while raising ground levels above the 1 in

200 + CC flood level could, in principle, be an acceptable way of managing flood risk, compensatory flood storage would also need to be provided and all other residual flood risk would need to be understood and addressed.

In SEPA's most recent response dated May 2024, they maintain a holding objection to the application. To enable SEPA to remove the objection they require further information to be submitted and the submission of an amended site layout that avoids the flood risk area as determined by the October 2023 FRA. The applicant was asked to consider a reduced layout avoiding the areas of flood risk as per SEPA's response. A slightly revised layout and alternative flood prevention scheme was discussed (see below). However, no further layout has been formally submitted to date. As such, for reasons of flood risk, it is not considered that the application can be supported.

As noted above, the policy intent of NPF4 Policy 22 is "To strengthen resilience to flood risk by promoting avoidance as a first principle and reducing the vulnerability of existing and future development to flooding." Similarly, it is acknowledged in the Scottish Government's National Flood Resilience Strategy (published December 2024) that "we must consider how else we can make our places more flood resilient, and accept that we may not be able to do the same things in the same places indefinitely. Reducing the impacts of flooding in future will be as much about the design of our places as it is about the design of our flood actions."

In this case, it is not considered that the "first principle" of promoting avoidance of areas of flood risk has been adopted by the applicant. As such, the proposed development could increase the vulnerability of people and property at flood risk both within the site and elsewhere.

The applicant provided a slightly revised layout for the consideration of Planning Services and the Council's Flooding Team in October 2024. The revised layout showed a reduction in the number of proposed houses from 115 to 113 and featured an alternative flood prevention scheme. This layout would seek to alter the predicted 1 in 200 year + climate change flood extents within the site via a scheme of land raising and compensatory flood storage. This scheme would seek to partly displace the flood risk development constraints from the centre to the margins of the site. However, the concerns of NAC Flooding remained, and it was not considered that this revised layout could be supported. For the avoidance of doubt, the application remains at 115 houses.

Therefore, given the above observations, in recognition of the ongoing holding objection from SEPA and taking account the objection from NAC Flooding, it is considered that the proposed development does not accord with the relevant flooding policies of the development plan and cannot be supported due to the flood risk on the site.

In summary, the application has now been under consideration by Planning Services for 23 months since it was validated in February 2023. Over the course of the application process, there have been repeated requests for additional information, relating to amended layout, biodiversity, and flooding. While some additional information has been provided, issues in respect of flooding, biodiversity, contaminated land, and transport have not been satisfactorily resolved either by submission of further information or submission of revised layout. A slightly revised layout was discussed but this did not address the flooding concerns. Planning Services is happy to consider a revised development layout avoiding the areas of flood risk in the future.

In conclusion, it is not in the long term public interest to enable the development of land in such a manner as to increase the risk of flooding. In this case, the proposed development site is at risk of flooding, as identified by SEPA's flood mapping. Following investigation by the applicant's agent, extensive discussions with SEPA and the Council's flooding officer, it is understood that the degree of risk that has been identified cannot be mitigated without increasing the risk of flooding elsewhere, potentially including the existing housing estate at Dirrans, to the east of the River Garnock. National planning policy is based on the principle of avoidance of vulnerable categories of development in areas of identified flood risk, such as functional flood plains. In conclusion, the merits of the development, in terms of housing delivery, would not outweigh nor address the degree of flood risk that exists in this instance. As such, planning permission should be refused.

#### **4. Full Recommendation**

Refused

#### **Reason for Refusal**

##### **Reason**

1. The proposed development would be contrary to the aims of NPF4 in terms of Policy 2 (Climate mitigation and adaptation) and Policy 22 (Flood risk and water management). It would also be contrary to LDP Policy 23 (Flood Risk Management). The proposed development has not been adequately sited and designed to adapt to current and future flood risk. It does not avoid the area of identified flood risk and may increase the number of people and property at risk of flooding.

##### **Reason**

2. The proposed development would be contrary to the aims of NPF4 in terms of Policy 3 (Biodiversity), Policy 4 (Natural places), Policy 6 (Forestry, woodland and trees), and 9 (Brownfield, vacant and derelict land and empty buildings). It would also be contrary to LDP Policies 16 (Protection of our Designated Site) and 18 (Forestry, Woodland, Trees and Hedgerows). The biodiversity of the site has not been adequately considered and the proposed development would result in an unacceptable loss of existing habitat.

Allan Finlayson  
Chief Planning Officer

For further information please contact Mr Joe Thompson Planning Officer on 01294 324313.

## Appendix 1 – Location Plan

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