

FALKIRK COUNCIL

Subject: DISCHARGE OF PLANNING OBLIGATION IN RESPECT OF PLANNING PERMISSION F/81/176 WHICH RESTRICTED IN ALL TIME COMING THE DWELLINGHOUSE ERECTED ON THE SUBJECTS TO OCCUPATION ONLY BY PERSONS EMPLOYED IN AGRICULTURE AND THEIR DEPENDANTS, AND FURTHER REQUIRED THAT THE DWELLINGHOUSE WHICH THE NEW DWELLINGHOUSE REPLACED SHALL NEVER AT ANY TIME BE OCCUPIED AS A DWELLINGHOUSE AND SHALL BE USED AS A FARM OUTBUILDING AT MYOTHILL MAINS, DENNY, FK6 5HH FOR MR M^CISAAC RUSSELL - P/14/0190/75D

Meeting: PLANNING COMMITTEE
Date: 10 SEPTEMBER 2014
Author: DIRECTOR OF DEVELOPMENT SERVICES

Local Members: Ward - Denny and Banknock

Councillor Jim Blackwood
Councillor Brian McCabe
Councillor John McNally
Councillor Martin Oliver

Community Council: Denny and District

Case Officer: Kevin Brown (Planning Officer), Ext. 4701

1. DESCRIPTION OF PROPOSAL / SITE LOCATION

- 1.1 This application proposes the full discharge of an existing Section 50 Agreement now a Section 75 planning obligation restricting the occupancy of a dwellinghouse at Myothill Mains, Denny to persons employed in agriculture and their dependants in all time coming.
- 1.2 The applicant identified that the main justification for seeking this discharge is that Mr McIsaac Russell has had to retire due to ill health and is no longer involved in running the business at the site. The business is now run instead by his son, who lives in another dwellinghouse on the premises. Mr Russell has also referred to the likely difficulties in selling his house in the future where there is an unnecessary legal agreement attached to it.
- 1.3 This planning obligation also sought to retain the original farmhouse at the site solely as a farm building. The original farmhouse was located within the grouping of buildings at Myothill Mains to the north-west of the existing dwellinghouse, and no longer exists at the site.

2. REASON FOR COMMITTEE CONSIDERATION

- 2.1 The original application which placed this legal tie upon the property (F/81/0176) was determined by Committee. The current scheme of delegation requires applications of this nature which were previously considered by Committee to be returned to the Planning Committee when amendment or discharge of legal agreement are proposed.

3. SITE HISTORY

- 3.1 The Myothill Mains site has a lengthy planning history of applications for agricultural buildings and associated development. The most relevant application to the current proposal is F/81/0176 for the erection of a dwellinghouse at the site. Planning permission was granted for this development on 24 July 1981, with a tie to a legal agreement under Section 50 of the Town and Country Planning (Scotland) Act 1972. This legal agreement secured two elements: firstly, the occupancy restriction referred to in section 1.1 above; and secondly, restriction ensuring that the original dwellinghouse would no longer be used as a dwellinghouse in the future. It is confirmed that the original dwellinghouse, as referred to in this agreement, no longer exists at the site as it was demolished approximately 18-20 years ago.

4. COMMUNITY COUNCIL

- 4.1 Denny and District Community Council has objected to this application on the grounds that there is no justification for the proposed discharge. This objection refers to there being a high demand for agricultural properties, even with associated legal agreements restricting occupancy.

5. PUBLIC REPRESENTATION

- 5.1 No letters of representation have been received in relation to this application.

6. DETAILED APPRAISAL

- 6.1 The assessment of an application of this nature focuses on any change in circumstances since the original application was granted and assessment against current national government guidance on these matters.
- 6.2 It is accepted that Mr Russell has now retired and has handed over the running of the business to his son, who resides in a dwellinghouse close by. The wording of the existing Section 50 agreement does not allow for this scenario, and as such Mr Russell is currently in breach of this agreement. It is not considered fair or proportionate to require Mr Russell to sell his house at this time, and as such a discharge of the agreement is considered appropriate.

- 6.3 In a letter to Heads of Planning dated 4 November 2011, the Chief Planner for the Directorate for the Built Environment, set out the Scottish Government's position in respect of the use of conditions or planning obligations to restrict the occupancy of new rural housing. In this letter it is made clear that the Scottish Government do not support the use of occupancy restrictions and refers to common difficulties such as issues arising with mortgage applications, difficulties in selling a house and issues for local authorities in monitoring and enforcing such restrictions. This position is reflected in formal guidance in the form of Scottish Planning Policy (SPP) which states that decision making should generally not impose occupancy restrictions on housing. The current application is supported by this government guidance.

7. ASSESSMENT OF COMMUNITY COUNCIL CONCERNS

- 7.1 The concerns raised by Denny and District Community Council are noted, however these are in essence superseded by the Scottish Government guidance referred to in section 6.3 above.

8. CONCLUSION

- 8.1 Mr Russell has retired and is now in breach of the planning obligation attached to this property. Government guidance supports the current application to discharge the legal agreement in this instance. It is considered that current and emerging countryside local plan policies are sufficient to allow a detailed assessment of any future housing proposals in this area by linking the assessment back to a rural justification. There are therefore no reasons to justify a refusal in this instance.

9. RECOMMENDATION

- 9.1 It is recommended that Committee agree to the discharge of the planning obligation.

.....
Director of Development Services

Date: 29 August 2014

LIST OF BACKGROUND PAPERS

1. Letter from Jim McKinnon to Heads of Planning dated 4 November 2011.
2. Scottish Planning Policy (SPP).

Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504701 and ask for Kevin Brown, Planning Officer.

Planning Committee

Planning Application Location Plan

P/14/0190/75D

This plan is for location purposes only. It should not be interpreted as an exact representation of the application site.



Reproduced by permission of Ordnance Survey on behalf of HMSO.
© Crown copyright and database right 2014. All rights reserved.
Ordnance Survey Licence number 100023384