



**Falkirk Council**

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Applications cannot be validated until all necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE                      000123952-001

The online ref number is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the Planning Authority about this application.

## Applicant or Agent Details

Are you an applicant, or an agent? \* (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

Applicant    Agent

### Applicant Details

Please enter Applicant details

Title: \*                     

Other Title:                     

First Name: \*                     

Last Name: \*                     

Company/Organisation:                     

Telephone Number: \*                     

Extension Number:                     

Mobile Number:                     

Fax Number:                     

Email Address: \*                     

You must enter a Building Name or Number, or both:\*

Building Name:                     

Building Number:                     

Address 1 (Street): \*                     

Address 2:                     

Town/City: \*                     

Country: \*                     

Postcode: \*

## Site Address Details

Planning Authority:

Falkirk Council

Full postal address of the site (including postcode where available):

Address 1:

DRUMBROIDER FARM

Address 5:

Address 2:

Town/City/Settlement:

FALKIRK

Address 3:

Post Code:

FK1 2HN

Address 4:

Please identify/describe the location of the site or sites.

Northing

674087

Easting

292067

## Description of the Proposal

Please provide a description of the proposal to which your review relates. The description should be the same as given in the application form, or as amended with the agreement of the planning authority: \*  
(Max 500 characters)

Removal of condition 12 of planning permission P/11/0595/FUL under section 42. All details remain the same as per previous application.

## Type of Application

What type of application did you submit to the planning authority? \*

- Application for planning permission (including householder application but excluding application to work minerals).
- Application for planning permission in principle.
- Further application.
- Application for approval of matters specified in conditions.

What does your review relate to? \*

- Refusal Notice.
- Grant of permission with Conditions imposed.
- No decision reached within the prescribed period (two months after validation date or any agreed extension) – deemed refusal.

## Statement of reasons for seeking review

You must state in full, why you are seeking a review of the planning authority's decision (or failure to make a decision). Your statement must set out all matters you consider require to be taken into account in determining your review. If necessary this can be provided as a separate document in the 'Supporting Documents' section: \* (Max 500 characters)

Note: you are unlikely to have a further opportunity to add to your statement of appeal at a later date, so it is essential that you produce all of the information you want the decision-maker to take into account.

You should not however raise any new matter which was not before the planning authority at the time it decided your application (or at the time of expiry of the period of determination), unless you can demonstrate that the new matter could not have been raised before that time or that it not being raised before that time is a consequence of exceptional circumstances.

Please see supporting docs

Have you raised any matters which were not before the appointed officer at the time the determination on your application was made? \*

Yes  No

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review. You can attach these documents electronically later in the process: \* (Max 500 characters)

Supporting statement, Location Plan,

## Application Details

Please provide details of the application and decision.

What is the application reference number? \*

P/15/0129/VRC

What date was the application submitted to the planning authority? \*

05/03/15

What date was the decision issued by the planning authority? \*

16/06/15

## Review Procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Can this review continue to a conclusion, in your opinion, based on a review of the relevant information provided by yourself and other parties only, without any further procedures? For example, written submission, hearing session, site inspection. \*

Yes  No

In the event that the Local Review Body appointed to consider your application decides to inspect the site, in your opinion:

Can the site be clearly seen from a road or public land? \*

Yes  No

Is it possible for the site to be accessed safely and without barriers to entry? \*

Yes  No

## Checklist - Application for Notice of Review

Please complete the following checklist to make sure you have provided all the necessary information in support of your appeal. Failure to submit all this information may result in your appeal being deemed invalid.

Have you provided the name and address of the applicant? \*  Yes  No

Have you provided the date and reference number of the application which is the subject of this review? \*  Yes  No

If you are the agent, acting on behalf of the applicant, have you provided details of your name and address and indicated whether any notice or correspondence required in connection with the review should be sent to you or the applicant? \*

Yes  No  N/A

Have you provided a statement setting out your reasons for requiring a review and by what procedure (or combination of procedures) you wish the review to be conducted? \*  Yes  No

Note: You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. You may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

Please attach a copy of all documents, material and evidence which you intend to rely on (e.g. plans and drawings) which are now the subject of this review \*  Yes  No

Note: Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice (if any) from the earlier consent.

## Declare - Notice of Review

I/We the applicant/agent certify that this is an application for review on the grounds stated.

Declaration Name: Mr Mark Baird

Declaration Date: 23/06/2015

Submission Date: 23/06/2015

# Supporting Statement

Application under Section 42 of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006: Removal of condition no. 12 of planning consent reference: P/11/0595/FUL

This statement provides a case to support the removal of condition no. 12 which ties the occupation of the house given approval under planning reference P/11/0595/FUL to agricultural employees.

# Supporting Statement

Application under Section 42 of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006: Removal of condition no. 12 of planning consent reference: P/11/0595/FUL

## Background

Planning permission was granted, subject to conditions, on 21<sup>st</sup> September 2012 for the Erection of Dwellinghouse, Storage Buildings, New Retail Store, Café and Associated Ancillary Buildings, Associated Parking and New Vehicular Access at Drumbroider Farm, Falkirk, FK1 2HN.

Condition number 12 of the planning consent states: “Occupation of the house will be limited to a person solely or mainly employed, or last employed in agriculture at Drumbroider Farm, or to a widow or widower of such a person and to any dependants.”

The inclusion of this condition has rendered the permission undeliverable as mortgage lenders and business loans are not willing to accept its terms. Funding is therefore being withheld on this basis.

The Scottish Government’s advice to planning authorities through Scottish Planning Policy and Advice from the Chief Planner supports, and encourages development which supports growth of the rural economy including rural housing where appropriate development plan policies are met. Scottish Governments advice and guidance does not support restrictions on occupancy.

This statement will demonstrate that condition 12 is not appropriate or necessary, is overly onerous and is questionable in its ability to be enforced. By removing the condition, the development could proceed; complementing and completing the high quality rural development which supports the economy and tourism trade in the area.

## Scottish Planning Policy

“Scottish Planning Policy promotes a positive approach to rural housing. It does not promote the use of occupancy restrictions.”

(Letter from Chief Planner to Heads of Planning, 4th Nov 2011.)

## National Statute and Policy

Scottish Planning Policy 2010 (SPP) (Current policy at time of consideration of the application)

*“Development plans should support more opportunities for small scale housing development in all rural areas, including new clusters and groups ...and new build or conversion housing which is linked to rural businesses...”*

*The aim is not to see small settlements lose their identity nor to suburbanise the Scottish countryside but to maintain and improve the viability of communities and to support rural businesses.*

*...new housing out with existing settlements may have a part to play in economic regeneration and environmental renewal. All new development should respond to the specific local character of the location, fit in the landscape and seek to achieve high design and environmental standards, particularly in relation to energy efficiency.”* (Scottish Planning Policy, 2010)

The policy advice provided by the Scottish Government clearly promotes sensitive and appropriate rural development, including housing particularly where linked to rural businesses. Therefore the principle of a house linked to a rural business is accepted as appropriate and supported. The report of handling (Appendix 1) relating to the application confirms that appropriate consideration was given to siting, design and environmental considerations as well as the economic benefits. The officer concluded that the house was acceptable as part of the overall development.

### Scottish Planning Policy 2014 (SPP 2014) Published 23<sup>rd</sup> June 2014

The recently published SPP 2014 confirms the Government’s commitment to encourage and support for well-planned rural development.

*“The planning system should:*

- *in all rural and island areas promote a pattern of development that is appropriate to the character of the particular rural area and the challenges it faces;*
- *encourage rural development that supports prosperous and sustainable communities and businesses whilst protecting and enhancing environmental quality;...”* (SPP 2014, para75)

The Scottish Government does not support the use of occupancy conditions in any circumstance related to rural housing.

Both paragraphs 81 and 83 explicitly advise against the use of occupancy conditions in relation to new rural housing.

*“In accessible or pressured rural areas, where there is a danger of unsustainable growth in long-distance car-based commuting or suburbanisation of the countryside, a more restrictive approach to new housing development is appropriate, and plans and decision-making should generally:*

- *guide most new development to locations within or adjacent to settlements; and*
- *set out the circumstances in which new housing out with settlements may be appropriate, **avoiding use of occupancy restrictions.**”* (SPP 2014, para 81)

*“In remote rural areas, where new development can often help to sustain fragile communities, plans and decision-making should generally:*

- ***not impose occupancy restrictions on housing.**”* (SPP 2014, para 83)

## Circular 4/1998: The Use of Conditions in Planning Permissions

This statute states that planning conditions should only be imposed where they meet the following 6 tests. Conditions must be:-

- **necessary**
- **relevant to planning**
- **relevant to the development to be permitted**
- **enforceable**
- **precise**
- **reasonable in all other respects.**

### **Necessary:**

#### **“TEST: NEED FOR A CONDITION**

*In considering whether a particular condition is necessary, authorities should ask themselves whether planning permission would have to be refused if that condition were not to be imposed. If it would not, then the condition needs special and precise justification. Planning authorities should also **avoid imposing conditions through anxiety to guard against every possible contingency, however remote.** The argument that a condition will do no harm is no justification for its imposition; **as a matter of policy a condition ought not to be imposed unless there is a definite need for it.** The same principles, of course, must be applied in dealing with applications for the removal of a condition under section 33 or 42 of the Act; **a condition should not be retained unless there are sound and clear-cut reasons for doing so.**” (Circular 4/1998)*

Guidance was provided to the Heads of Planning Authorities across Scotland in the form of a Letter from the then Chief Planner – Jim McKinnon - in November 2011. The advice was clear:

*“Scottish Planning Policy promotes a positive approach to rural housing. It states that development plans should support more opportunities for small scale housing development in all rural areas, including housing which is linked to rural businesses. **It does not promote the use of occupancy restrictions.**”*

***The Scottish Government believes that occupancy restrictions are rarely appropriate and so should generally be avoided.***

*Where the authority is satisfied that an adequate case has been made, **it should not be necessary to use formal mechanisms to restrict occupancy.** In areas where new housing can help to support vibrant rural communities or sustain fragile rural areas, **planning authorities should seek to support suitable investment in additional provision, focussing on the issues of location, siting, design and environmental impact rather than seeking to place restrictions on who occupies the housing.**”* (Letter from Chief Planner to Heads of Planning, Nov 2011).

A copy of the full letter from the Chief Planner can be found in Appendix 1 for information.

Guidance and advice both directly from the Chief Planner and contained in the Scottish Planning Policy promote rural housing linked to rural business, and do not support the use of occupancy conditions. On this basis it is challenged that the condition is needed in the context that the rural business expansion granted permission was fully supported throughout the planning process.

## Reasonable:

### **“TEST: REASONABLENESS**

#### ***Avoidance of Onerous Requirements***

*Even where a condition would not be so unreasonably restrictive as to be ultra vires, it may still be so onerous that as a matter of policy it should be avoided. **For example, a condition which would put a severe limitation on the freedom of an owner to dispose of his property, or which would obviously make it difficult to finance the erection of the permitted building by borrowing on mortgage, should be avoided on these grounds.** An unduly restrictive condition can never be made acceptable by offering the prospect of informal relaxation of its effect.”*

(Circular 4/1998)

The occupancy limitation applied through condition 12 has directly impacted on the ability of Mr. and Mrs. Baird to gain mortgage funding for the house. The condition limits the banks’ ability to guarantee a return at the full market value for the house even with a first ranking security. The value of the house will be suppressed by the condition on the basis that the house cannot be openly marketed. On this basis condition 12 does not meet the test for reasonableness. This is confirmed within the Letter from the Chief Planner also referenced above which states:

*“A number of issues have arisen with the use of occupancy restrictions, some of which have been exacerbated by the current economic situation. **Some people have found it difficult to get a mortgage to buy a house with an occupancy restriction.** Others have found it difficult to sell the house, or have the restriction lifted, when they are forced by necessity to move... **In areas where new housing can help to support vibrant rural communities or sustain fragile rural areas, planning authorities should seek to support suitable investment in additional provision, focussing on the issues of location, siting, design and environmental impact rather than seeking to place restrictions on who occupies the housing.**” (Letter from Chief Planner to Heads of Planning, Nov 2011).*

On the basis of the above, condition 12 is not considered to meet the test of reasonableness.

## **Enforceable:**

### **“TEST: ABILITY TO ENFORCE**

A condition should not be imposed if it cannot be enforced...

### ***Practicality of Enforcement***

Sometimes a condition will be unenforceable because it is in practice impossible to detect an infringement. **More commonly it will merely be difficult to prove a breach** of its requirements... **Slavish or uncritical application of conditions is wholly inappropriate.”** (Circular 4/1998)

Again referencing the Letter from the Chief Planner, it clearly states that occupancy conditions are both difficult to monitor and enforce providing another reason why occupancy conditions should not be imposed.

“Occupancy restrictions can also be intrusive, resource-intensive and difficult to monitor and enforce.” Letter from Chief Planner to Heads of Planning, Nov 2011).

Historically, the application of standardised occupancy conditions tying rural housing to agriculture was a common approach to protecting the rural environment from over development. However the recent guidance provided in Scottish Planning Policy and advice from the Chief Planner to planning authorities takes a more proactive and positive approach to rural development and actively promotes appropriate development in the countryside where it complies with relevant policy.

The report of handling confirms that the planning officer was content that the development, in all respects, complied with all relevant policies in both the development plan and at national level. Condition 12 appears to have been added in response to concerns raised from comments received from 3<sup>rd</sup> parties. This position is not supported by statute, policy, guidance or from consultees.

## Conclusion

In conclusion, SPP and SPP 2014 supports and promotes housing in rural areas, particularly where linked to rural businesses, provided it is developed sensitively within the appropriate landscape context.

The house, as part of the overall development, was fully considered at the planning application stage and confirmed by the officer as complying with all relevant policies and guidance in the report of handling. The house was therefore considered to be acceptable.

Statute makes it clear when, and in what context, conditions are acceptable, through application of the 6 tests within Circular 4/1998.

The Letter from the Chief Planner referenced above (Nov 2011), confirms that if a development is, in all other respects, acceptable, the use of occupancy conditions is rarely appropriate and should be avoided particularly where this leads to limitation of funding.

According to the Chief Planner, the need for a condition to restrict occupancy of a house, is not necessary, is onerous and is difficult to monitor and enforce. The condition does not therefore meet 3 of the 6 tests within Circular 4/1998.

In this context, it is respectfully requested that the condition be removed, allowing the development to proceed.

## Appendix 1: Supporting Documents

Report of Handling: P/11/0595/FUL

[http://eplanning.falkirk.gov.uk/online/files/A0AE3F3BF8EEE357D310E507E252CAD0/pdf/P\\_11\\_0595\\_FUL-Report\\_of\\_Handling-334865.pdf](http://eplanning.falkirk.gov.uk/online/files/A0AE3F3BF8EEE357D310E507E252CAD0/pdf/P_11_0595_FUL-Report_of_Handling-334865.pdf)

Planning Decision Notice:

[http://eplanning.falkirk.gov.uk/online/files/DB88BDDEAAA2CBACF8E3894B26BB2E91/pdf/P\\_11\\_0595\\_FUL-Decision\\_Note-334861.pdf](http://eplanning.falkirk.gov.uk/online/files/DB88BDDEAAA2CBACF8E3894B26BB2E91/pdf/P_11_0595_FUL-Decision_Note-334861.pdf)

Scottish Government Circular 4/1998: The Use of Conditions in Planning Permissions

<http://www.scotland.gov.uk/Publications/1998/02/circular-4-1998/circular-4-1998-a>

Scottish Government: Scottish Planning Policy, Feb 2010

<http://www.scotland.gov.uk/Resource/Doc/300760/0093908.pdf>

Scottish Government: Scottish Planning Policy, June 2014

<http://www.scotland.gov.uk/Resource/0045/00453827.pdf>

Letter from Chief Planner to Heads of Planning Nov 2011:

<http://www.scotland.gov.uk/Resource/0042/00427279.pdf>



