

FAO The Development Manager
Development Management
Falkirk Council
Abbotsford House
Davids Loan
Falkirk
FK2 7YZ

Ref: **Planning Application P/15/0129/VRC**

12th September 2015

Dear Sir,

We are writing in response to the Appellant's request for a review of the decision by the Council to retain Condition 12 of Planning Permission P/11/0595/FUL (relating to occupation of new dwelling house at Drumbroider Farm).

It is stated in the Appellant's statement that "*The Scottish Government does not support the use of occupancy conditions in any circumstance related to rural housing*" and cites paragraphs 81 and 83 of SPP 2014 in support of this statement.

In fact, this is a significant exaggeration of the actual policy guidance. Firstly, Drumbroider is hardly a remote rural area, which is the focus of paragraph 83. In fact it is very accessible (being less than 4 miles from the M9 and less than 7 from the centre of Falkirk – see paragraph 76) and there is therefore pressure for "*suburbanisation of the countryside*". Paragraph 81 actually concludes that in these circumstances "*a more restrictive approach to new housing development is appropriate*" and that decision making should "*generally*" avoid the use of occupancy restrictions. Clearly this recognises that there are occasions where the use of an occupancy restriction is appropriate.

If operational need had not been cited under the original 2011 application it is highly likely that it would have been refused as it would have failed to meet any of the other categories contained within the Housing / Countryside Policy applicable at that time (noting also that the development is within the Avon Valley Area of Great Landscape Value).

Without any restriction of the occupancy of the dwelling house the Council would be unable to exercise control over its future use and as a consequence it is considered that it would fail to comply with the Local Development Plan and there are no material considerations which are presented to provide sufficient justification to allow a departure to the Local Development Plan.

We note that the Council, when rejecting the application, stated that the condition does satisfy the criteria in Circular 4/1998. The Appellant's submission contests this on the basis that the planning condition does not meet the 3 tests of being necessary, reasonable or enforceable. In our view the Council's decision is correct and the Appellant is not.

1. The Appellant has stated (correctly) that conditions should only be imposed and retained if there are sound and clear-cut reasons for doing so, that are not just to guard against remote contingencies. In this case there are clear cut reasons to guard against a distinct possibility.

The Council would not have granted permission if the application had been for a property to sell on the open market. Neither is the concept of developing a house to sell at a profit a remote possibility. It happens all the time.

Clearly the land could have been used to develop the farming side of the business over the last 3 years and yet it is still the case that the land appears to be rented out to other farmers for the majority of the time (who seem to manage to farm it without interfering with members of the public visiting the existing retail business and notwithstanding any associated road crossings). There should therefore be concerns over the operational necessity for the development of the

dwelling house under these circumstances. The application for the removal of the occupancy condition only serves to confirm this view.

It remains our view that this is not only a necessary, but essential condition to enable the Council to implement its Development Policies.

2. The Appellant has stated that the condition is unreasonable because it "*has rendered the permission undeliverable*".

The full application (P/11/0595/FUL) involved major expansion of the retail business as well as the construction of the dwelling house. Given the fact that other farmers currently appear able to use the land for farming without affecting the operation of the retail businesses, it is certainly not the case to say that the whole application cannot proceed just because the dwelling house is not built. Unless of course it is the proceeds from the sale of a new dwelling development that are needed to meet the costs of the retail development (noting that in the case of a sale the proposed dwelling house is conveniently located at the furthest extremity of the Drumbroider land).

3. The Appellant has stated that the condition is unenforceable on the grounds that in practice it is impossible to detect and then prove a breach.

This is clearly not the case since in this situation it is extremely easy to detect if the condition has been breached, since it would involve the marketing and sale of a property. More importantly, if the council were alerted to the breach, it would be extremely simple to prove if a breach had occurred, since title deeds and employment records are statutory requirements.

In conclusion, if the application for deletion of the condition was approved, it would set an undesirable precedent for other unrestricted residential development in the countryside which could undermine the Planning Authority's policy approach to such development. We do not believe that the limited justification put forward is sufficient to justify a departure from Local Development Plan policy and therefore believe that the Council was correct in its decision to retain the occupancy restriction.

Finally as a point of process, it is our understanding that no new information should be presented with a request for a review that was not included with the original application. To our knowledge (based on the "eplanning" documents available for application P/15/0129/VRC to delete Condition 12), no evidence of the Appellant having difficulty obtaining a mortgage was submitted with the application.

Y
H

