



# **AGENDA ITEM**

## **5**

**Discharge of Section 50 Agreement Under the Town and Country Planning (Scotland) Act 1972 on Planning Permission F/94/0206, Which Restricted Occupation of the Dwellinghouse Approved Under that Permission to a Person or Persons (Together with Dependant or Dependents, if any, of That Person or Persons) Employed in a Full Time Basis in Agriculture at Standalane Farm, Lochgreen Road, Falkirk at Standalane Farm, 22 Lochgreen Road, Falkirk FK1 5PP for Mr Douglas Hill - P/16/0650/75D**

**FALKIRK COUNCIL**

**Subject:** DISCHARGE OF SECTION 50 AGREEMENT UNDER THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1972 ON PLANNING PERMISSION F/94/0206, WHICH RESTRICTED OCCUPATION OF THE DWELLINGHOUSE APPROVED UNDER THAT PERMISSION TO A PERSON OR PERSONS (TOGETHER WITH DEPENDANT OR DEPENDANTS, IF ANY, OF THAT PERSON OR PERSONS) EMPLOYED IN A FULL TIME BASIS IN AGRICULTURE AT STANDALANE FARM, LOCHGREEN ROAD, FALKIRK AT STANDALANE FARM, 22 LOCHGREEN ROAD, FALKIRK, FK1 5PP, FOR MR DOUGLAS HILL - P/16/0650/75D

**Meeting:** PLANNING COMMITTEE

**Date:** 25 January 2017

**Author:** DIRECTOR OF DEVELOPMENT SERVICES

**Local Members:** Ward - Falkirk South

Councillor Colin Chalmers  
Councillor Dennis Goldie  
Councillor Gerry Goldie  
Depute Provost John Patrick

**Community Council:** Falkirk South

**Case Officer:** Julie Seidel (Planning Officer), Ext. 4880

**1. INTRODUCTION**

- 1.1 A request has been submitted to discharge a Legal Agreement made under the terms of Section 50 of the Town and Country Planning (Scotland) Act 1972, restricting the occupation of the dwellinghouse (approved outline planning permission under Ref: F/94/0206) to a person or persons (together with dependant or dependants, if any, of that person or persons) employed in a full time basis in agriculture at Standalane Farm, Lochgreen Road, Falkirk.

**2. REASON FOR COMMITTEE CONSIDERATION**

- 2.1 The current Scheme of Delegation requires applications of this nature, which were previously determined by Committee, to be determined by the Planning Committee when amendments or discharges of Legal Agreements are proposed. Planning application Ref: F/94/0206 was determined by the Development Services Sub-Committee on 21 June 1994.

### **3. BACKGROUND TO SECTION 75 AGREEMENT/SITE HISTORY**

- 3.1 Planning permission Ref: F/94/0206 for the outline erection of a dwellinghouse was subject to the conclusion of a Legal Agreement under Section 50 of the Town and Country Planning (Scotland) Act 1972. This agreement restricts the occupancy of the dwellinghouse and effectively ties it to Standalane Farm.

### **4. REQUEST TO DISCHARGE SECTION 75 AGREEMENT**

- 4.1 The applicant requests discharge of the Legal Agreement for the following reasons:
- The applicant is separated from his wife and is struggling to pay the mortgage.
  - The farm, although still active, relies on income from rentals.
  - The applicant has no livestock at the farm and the processing dairy was ceased 15 years ago.
  - The applicant's father has retired due to disability.
  - There remains an element of milk retail at the farm, but it is bought in pre-packaged for distribution only.
  - There is no requirement to live on site and due to financial pressures the house requires to be sold.

### **5. CONSIDERATION OF REQUEST**

- 5.1 Outline planning permission Ref: F/94/0206 was granted for the erection of a dwellinghouse on 20 December 1994. The application was justified on the basis of the applicant and his family having to live on site as he was involved in all aspects of the farm business including the supervision of animals, general maintenance, maintenance and operation of dairy equipment (which ran from 3am) and deliveries.
- 5.2 It is noted that the Department of Agriculture did not support the application, at that time, as it was considered the farm business was only capable of generating agricultural employment for one. However, they did mention that consideration could be given to the applicant's domestic arrangements and the generation of employment in an area of high unemployment. The Development Services Sub-Committee were minded to grant the application on 21 June 1994 and thereafter a Section 50 Legal Agreement was concluded as part of this application, thereby tying the proposed house to the farm. A reserved matters application Ref: F/95/0045 was granted on 7 March 1995 and the house was subsequently built.

- 5.3 Legal Agreements are now referred to as Planning Obligations. Circular 3/2012 'Planning Obligations and Good Neighbour Agreements', advises that planning authorities should take into account any changes in circumstances; for example, external factors affecting the development meaning that the obligation is no longer reasonable and should be modified or discharged to reflect the change in circumstances appropriate. It is noted that the use of occupancy restrictions introduces an additional level of complexity (and potential expense) into the process of seeking permission for a new house. Occupancy restrictions can also be intrusive, resource-intensive and difficult to monitor or enforce.
- 5.4 Planning Obligations should only be sought where they meet all the following tests:
- Necessary to make the proposed development acceptable in planning terms;
  - Serve a planning purpose and, where it is possible to identify infrastructure provision requirements in advance, should relate to Development Plans;
  - Relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area;
  - Fairly and reasonably relate in scale and kind to the proposed development; and
  - Be reasonable in all other respects.
- 5.5 In this instance it is considered that the Legal Agreement, at the time, met all the above tests; however Standalane Farm has evolved over time. This means that the Legal Agreement no longer serves a planning purpose i.e. there is no requirement for a person to be on site at all times to manage the farm and run a dairy and as such there is no operational business requirement for the Legal Agreement and the tying of the house to the business.
- 5.6 Further it is considered that the Legal Agreement has now led to a financial burden for the applicant, in that he cannot sell the house as the Legal Agreement is in place. It is noted that this has become more of a burden following the breakup of the applicant's marriage. This means that the Legal Agreement is not fairly and reasonably related in scale and kind to the farm business (today) or reasonable in all other respects.
- 5.7 It is considered that the house is read as being a farmhouse from road level and this would not be materially changed if the Legal Agreement were discharged and house sold. The operation of the farm and cessation of the processing dairy means that the applicant no longer needs to live on site to manage the business elements which have survived.
- 5.8 In conclusion, it is considered that the Legal Agreement no longer serves a planning purpose based on the current operation of the farm business. As such and in light of Circular 3/2012, it is considered that the Legal Agreement should now be discharged.

**6. RECOMMENDATION**

- 6.1 It is recommended that Committee agree to the discharge of the 50 Legal Agreement on the grounds that it no longer serves a sound planning purpose and is no longer fair or reasonable based on the current operation of the farm and the personal circumstances of the applicant.**

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**pp Director of Development Services**

**Date: 16 January 2017**

**LIST OF BACKGROUND PAPERS**

1. Planning application Ref: F/94/0206
2. Planning application Ref: F/95/0045
3. Scottish Government Circular 3/2012 Planning Obligations and Good Neighbour Agreements.

Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504880 and ask for Julie Seidel, Planning Officer.

# Planning Committee

## Planning Application Location Plan

**P/16/0650/75D**

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



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