

## **Agenda Item 13**

**DISCHARGE OF PLANNING OBLIGATION  
ATTACHED TO PLANNING PERMISSION  
F/98/0414 WHICH RESTRICTED THE  
DEVELOPMENT TO THE ERECTION OF 5  
DWELLINGHOUSES IN TOTAL AT  
FAIRVIEW HOUSE, AIRTH, FALKIRK, FK2  
8RY FOR MR TOM SMITH -  
P/19/0422/75D**

**FALKIRK COUNCIL**

**Subject:** DISCHARGE OF PLANNING OBLIGATION ATTACHED TO PLANNING PERMISSION F/98/0414 WHICH RESTRICTED THE DEVELOPMENT TO THE ERECTION OF 5 DWELLINGHOUSES IN TOTAL AT FAIRVIEW HOUSE, AIRTH, FALKIRK, FK2 8RY FOR MR TOM SMITH - P/19/0422/75D

**Meeting:** PLANNING COMMITTEE

**Date:** 23 January 2020

**Author:** DIRECTOR OF DEVELOPMENT SERVICES

**Local Members:** Ward - Carse, Kinnaird and Tryst

Councillor Gary Bouse  
Councillor Joan Coombes  
Councillor Jim Flynn  
Councillor Laura Murtagh

**Community Council:** Airth Parish

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

[View this Application on Public Access](#)

**1. DESCRIPTION OF PROPOSAL / SITE LOCATION**

- 1.1 This application seeks discharge of a Legal Agreement made under the terms of Section 75 of the Town and Country Planning (Scotland) Act 1997, restricting the development of land, now known as Fairfields, to the erection of 5 dwellinghouses in total as granted under planning application F/98/0414.

**2. REASON FOR COMMITTEE CONSIDERATION**

- 2.1 The original application to which the Section 75 Planning Obligation relates was originally determined by Planning Committee.

**3. SITE HISTORY**

- 3.1 P/19/0421/75D - Pending Decision - Discharge of Planning obligation attached to Planning Permission F/2001/0140 which restricted the development to the erection of 6 dwellinghouses in total.
- 3.2 P/17/0463/FUL - Detail - Granted 25 August 2017 - Installation of Air Source Heat Pump Units.

- 3.3 F/2001/0140 - Detail - Granted 16 April 2002 - Demolition of Existing Building, Erection of Dwellinghouse and Garage.
- 3.4 F/98/0414 - Detail - Granted 16 February 2000 - Erection of 5 Dwellinghouses and Garages (Detailed).
- 3.5 F/97/0570 - Detail - Granted 10 November 1997 - Change of Use of Former Public House / Restaurant to Form Offices (Class 4) (Retrospective) (Detailed).

#### **4. CONSULTATIONS**

- 4.1 No consultations were carried out on this proposal.

#### **5. COMMUNITY COUNCIL**

- 5.1 Airth Parish Community Council has not commented on this application.

#### **6. PUBLIC REPRESENTATION**

- 6.1 Following neighbour notification and during the course of this application, two letters of representation have been received from a representative acting on behalf of the residents of three separate households at 2, 3 and 4 Fairfields. The salient issues raised are summarised as follows:

- Queries raised over procedural elements of the application process.
- The previous planning decisions made it clear that development on the land to the west of the existing properties was not desirable.
- The planning obligation restricting development was previously deemed necessary and this remains the case today.
- The current policy position within the Local Development Plan would not appear to support any further residential development at Fairfields.
- Circumstances have not changed since the planning obligations were entered into.

#### **7. DETAILED APPRAISAL**

Under section 25 of the Town and Country Planning (Scotland) Act 1997, as amended, the determination of planning applications for local and major developments shall be made in accordance with the Development Plan unless material considerations indicate otherwise.

Accordingly,

##### **7a The Development Plan**

- 7a.1 The Falkirk Local Development Plan was adopted on 16 July 2015. It includes a number of supplementary guidance documents which also have statutory status as part of the Development Plan. There are no policy considerations in terms of the Falkirk Local Development Plan.

## **7b Material Considerations**

7b.1 The material consideration to be assessed are the planning history of the site and surroundings and National Policy and Guidance.

### **Planning History**

7b.2 Planning application F/98/0414 for the erection of 5 dwellinghouses and subsequent application F/2001/0140 for the construction of a sixth dwellinghouse in this location were accompanied by planning obligations intended to prevent the construction of any further dwellinghouses at this location. The Planning Committee report for F/98/0414 provides detail as to why this restriction was deemed necessary at that time. The report states that the grant of planning permission was only considered to be appropriate due to the exceptional circumstances at that time. Further development of the site was therefore sought to be controlled by way of a Section 75 Agreement in order to preserve the existing mature landscape setting and to clearly illustrate the Council's determination that the grant of planning permission would not be accepted as setting a precedent for further development within the grounds of Fairview House or within the surrounding area.

7b.3 Since consideration of planning applications F98/0414 and F/2001/0140, the physical characteristics of the site and surrounding area have changed. The site is no longer set within a mature woodland setting as a large number of the mature trees within the site have now been felled. The land surrounding the application site has also since seen a significant degree of development since determination of the original planning applications. In particular, a number of houses have since been constructed within Stirling Council boundaries on land to the south of the application site as well as an additional house on land to the immediate north of the site within the Falkirk Council area.

7b.4 The reasons as to why the planning obligation was deemed necessary in the first place are no longer considered relevant or applicable in the current circumstances.

### **National Policy and Guidance**

#### Scottish Government Circular 3/2012 Planning Agreements and Good Neighbour Agreements

7b.5 This guidance sets out the circumstances within which it is deemed appropriate for a planning obligation to be applied. The guidance sets out a series of tests against which proposals for planning obligations should be assessed. For a planning obligation to be deemed acceptable, it must meet all of the relevant tests. The relevant tests and considerations in relation to the current discharge application are summarised below.

#### Necessity Test

7b.6 The planning obligations in this case were originally sought in order to preserve the mature landscape setting and to remove the potential for a precedent to be set by the development. In practice however, the landscape setting of the development site and wider area has since changed significantly. Future development proposals can be controlled through the planning application process and assessment against the Development Plan. The obligations are not therefore necessary in order to make the proposed development acceptable in planning terms.

### Planning Purpose Test

- 7b.7 The planning obligation in this instance was initially sought with good intention however it is no longer considered to be serving a planning purpose.

### Relationship to Proposed Development Test

- 7b.8 It is considered that the potentially damaging impacts of additional development envisaged during the assessment of the original applications are no longer applicable. The aims of this planning obligation no longer therefore relate to the proposed development. Potential impacts of new development could reasonably be controlled through the planning application process and assessment against the Development Plan.

### Reasonable Test

- 7b.9 The restrictions contained within the planning obligation are no longer considered to be reasonable in the circumstances of this particular case due to the change in circumstances highlighted above and the requirement for any future development proposals to be formally assessed by way of a planning application and the provisions of the Development Plan.

### **7c Conclusion**

- 7c.1 It is recommended that the Section 75 Legal Agreement be discharged on the grounds that it no longer serves a planning purpose and is no longer necessary, fair or reasonable.

### **8. RECOMMENDATION**

- 8.1 It is recommended that Committee agree to discharge the Planning Obligation.**

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**pp Director of Development Services**

**Date: 15 January 2020**

## **LIST OF BACKGROUND PAPERS**

1. Scottish Government Circular 3/2012 'Planning Agreements and Good Neighbour Agreements'.
2. Objection received from JM Planning Services, FAO John MacCallum, 31 Kilburn Wood Drive, Roslin, Midlothian, EH25 9AA on 31 October 2019

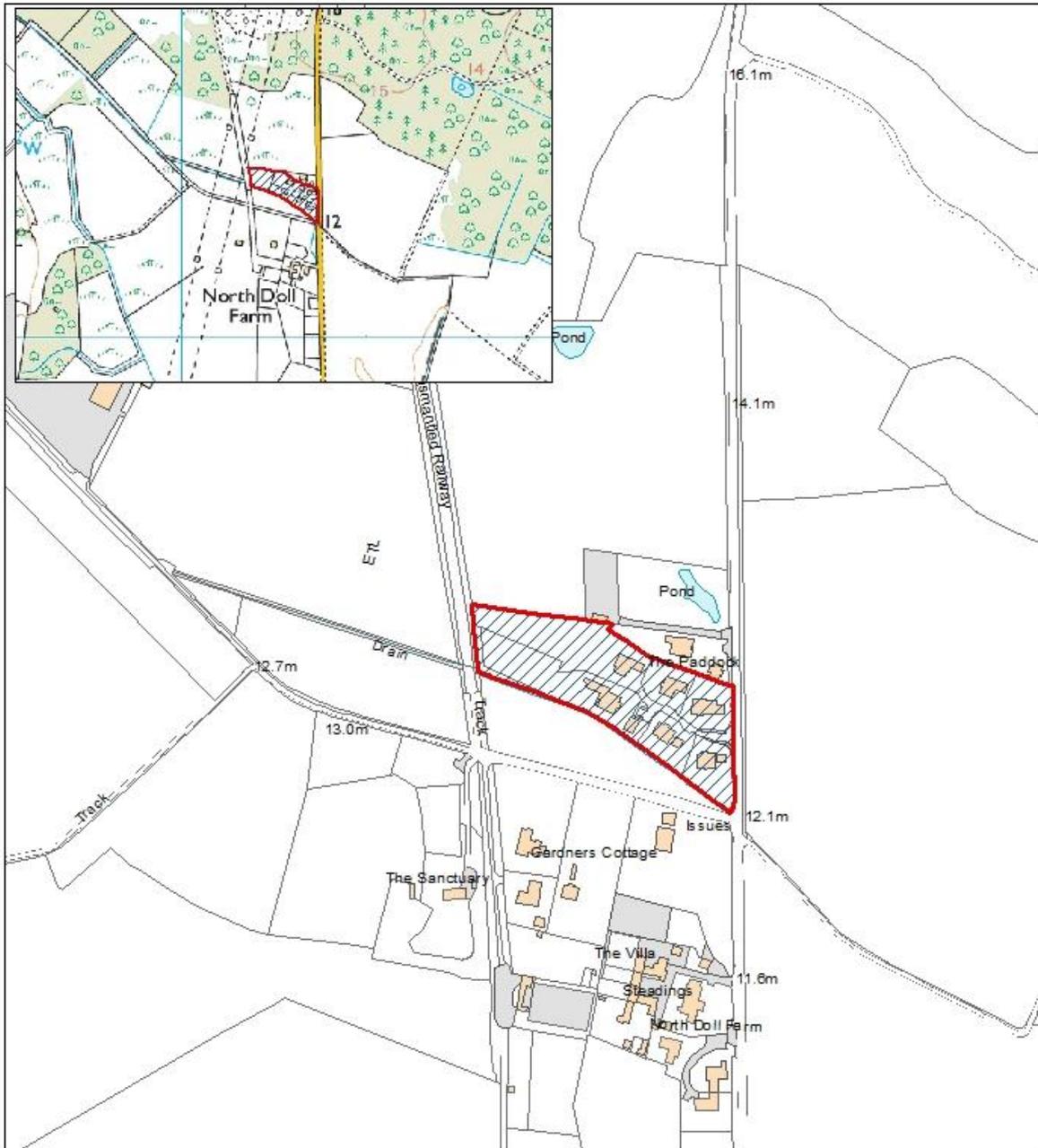
Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504701 and ask for Kevin Brown, Planning Officer.

# Planning Committee

## Planning Application Location Plan

## P/19/0422/75D

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



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