

FALKIRK COUNCIL

Subject: DISCHARGE OF PLANNING OBLIGATION ATTACHED TO PLANNING PERMISSION F/90/1152 WHICH RESTRICTS OCCUPATION OF THE DWELLINGHOUSE NOW KNOWN AS BIRCHFIELD, HILLS OF DUNIPACE LARBERT FK5 4RY, TO A PERSON OR PERSONS (TOGETHER WITH THE DEPENDANT OR DEPENDANTS, IF ANY, OF THAT PERSON) EMPLOYED UPON A FULL TIME BASIS BY THE DUNIPACE NURSERY, A BUSINESS SITUATED AT OR ADJACENT TO DUNIPACE MILL HOUSE AT BIRCHFIELD, HILLS OF DUNIPACE, LARBERT FK5 4RY FOR MRS STEWART – P/13/0757/75D

Meeting: PLANNING COMMITTEE
Date: 29 January 2014
Author: DIRECTOR OF DEVELOPMENT SERVICES

Local Members: Bonnybridge and Larbert

Baillie Billy Buchanan
Councillor Tom Coleman
Councillor Linda Gow

Community Council: Larbert, Stenhousemuir and Torwood

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 75 (formerly Section 50) of the Town and Country Planning (Scotland) Act 1997 restricting the occupation of the dwellinghouse (approved outline planning permission under Ref: F/90/1152) to a person or persons (together with the dependant, or dependants, if any, of that person) employed, upon a full time basis by the Dunipace Nursery, a business situated at or adjacent to Dunipace Mill House.

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/90/1152 was determined by Committee.

3. BACKGROUND TO SECTION 75 AGREEMENT/SITE HISTORY

3.1 Planning permission Ref: F/90/1152 for the outline erection of a dwellinghouse was subject to the conclusion of a Legal Agreement under Section 75 (formerly Section 50) of the Town and Country Planning (Scotland) Act 1997. This agreement restricts the occupancy of the dwellinghouse and effectively ties it to the adjacent nursery, Dunipace Mill Nursery (Birchfield).

4. REQUEST TO DISCHARGE SECTION 75 AGREEMENT

4.1 The applicant requests discharge of the Legal Agreement for the following reasons:

- The applicant is elderly and widowed and is no longer involved in the nursery. The applicant's son and daughter-in-law manage and work in the nursery;
- The applicant's son wants to buy the nursery, but is unable to as it remains tied to Birchfield (Dunipace Mill Nursery);
- Birchfield was justified on the basis that it was essential to continuously monitor the large glass house and poly tunnel when growing/cultivating plants and vegetables. This is no longer the case as the glass house is without a heating system and is used for storage. The poly tunnels used for sales. As such it is no longer necessary for a person to be on site at all times;
- The nursery now buys in plants and ornaments and has become more akin to a garden centre although not, in terms of the current operation, to the extent that it would constitute a material change of use; and
- The applicant wishes to have the Legal Agreement discharged so that she can continue to live in Birchfield for the remainder of her retirement and lease or sell the nursery to her son.

5. CONSIDERATION OF REQUEST

5.1 Outline planning permission Ref: F/90/1152 was granted for the erection of a dwellinghouse on 30 September 1991. The application was justified, following a number of refusals, on the basis of a consultation with the Department of Agriculture which gave agricultural support for an additional dwellinghouse for the nursery business. A Section 50 Legal Agreement (which would now be Section 75) was concluded as part of this application, thereby tying the proposed house to the nursery business. A reserved matters application Ref: F/92/0673 was granted on 23 April 1993 and Birchfield was subsequently built.

5.2 Section 75 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.

- 5.3 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.
- 5.4 In this instance it is considered that the Legal Agreement at the time met all the above tests, however the Dunipace Nursery has evolved over time to the form and function of a garden centre use. 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 nursery and as such there is no operational business requirement for the Legal Agreement and the tying of the house to the business.
- 5.5 Further it is considered that the Legal Agreement has now led to a financial burden for the applicant, in that she cannot sell or formally lease the nursery with the Legal Agreement in place. It is also considered reasonable that she would want to spend the remainder of her retirement living in the property.
- 5.6 It is considered that the relationship of the property to the nursery buildings, sharing an access with the nursery and its set back from the main road gives the appearance of the property being part of the nursery with or without the Legal Agreement being in place. The property is also single storey and not highly visible from outside the site. It is also noted that the applicant keeps horses and other livestock on the site. Overall the property is read as being part of the envelope of nursery buildings and this would not be affected by the discharge of the Legal Agreement.
- 5.7 In conclusion, it is considered that the Legal Agreement no longer serves a planning purpose based on the current operation of the nursery 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 75 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 nursery business and the personal circumstances of the applicant.**

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 Director of Development Services

Date: 17 January 2014

LIST OF BACKGROUND PAPERS

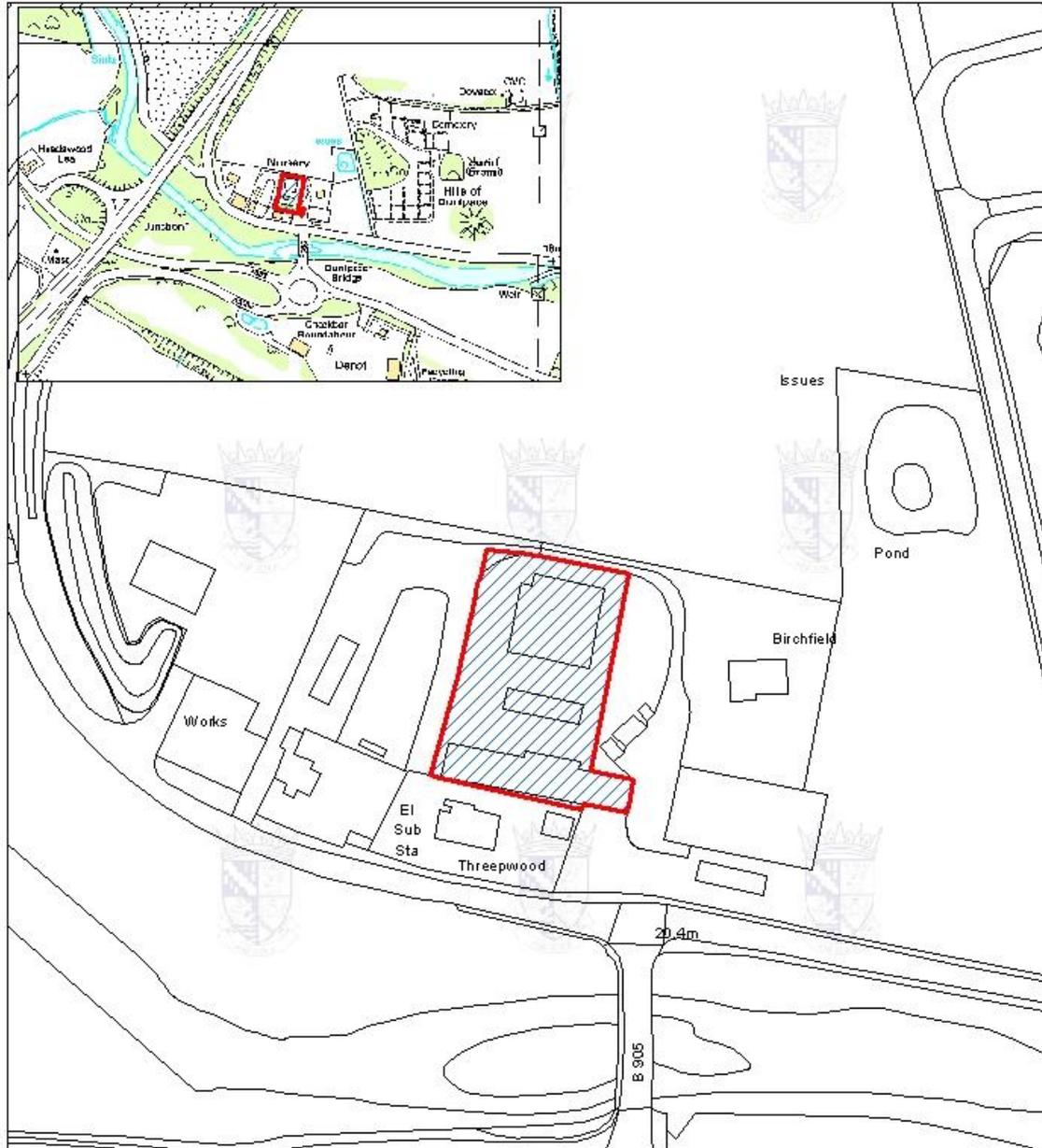
1. Planning application Ref: F/90/1152
2. Planning application Ref: F/92/0673
3. Scottish Government Circular 3/2012 Planning Obligations and Good Neighbour Agreements.

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/13/0757/75D**

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



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