

**FALKIRK COUNCIL**

**Subject:** DISCHARGE OF PLANNING OBLIGATION IN RESPECT OF PLANNING PERMISSION F/95/0456 WHICH RESTRICTED FOR ALL TIME COMING, THE OCCUPATION OF ANY DWELLINGHOUSE ERECTED ON THE SITE IN TERMS OF THAT PERMISSION TO A PERSON OR PERSONS CURRENTLY OR LAST EMPLOYED IN AGRICULTURE AS DEFINED IN SECTION 277(1) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997, TOGETHER WITH THE DEPENDANTS OF SUCH PERSON OR PERSONS. AT AGRICOLAE HOUSE, CEMETERY ROAD, AIRTH, FALKIRK, FK2 8JG, FOR - MRS JEANETTE VIRGINIA SUTHERLAND (P/14/0041/75D)

**Meeting:** PLANNING COMMITTEE

**Date:** 28 May 2014

**Author:** DIRECTOR OF DEVELOPMENT SERVICES

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

Councillor Stephen Bird  
Councillor Steven Carleschi  
Councillor Charles MacDonald  
Councillor Craig Martin

**Community Council:** Airth Parish

**Case Officer:** Allan Finlayson (Senior Planning Officer), Ext. 4706

**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 planning permission P/95/0456) to a person or persons currently or last employed in the business of agriculture as defined in Section 277 of the Town and Country Planning (Scotland) Act 1997, together with the dependants of such persons, now and in all time coming.

## **2. REASON FOR COMMITTEE CONSIDERATION**

- 2.1 The current Scheme of Delegation requires applications of this nature, which were previously determined by the Planning Committee, to be determined by the Committee when amendments or discharges of Legal Agreements are proposed. Planning application F/95/0456 was considered by the then Strategic Services Sub-Committee (On Site) Committee on 15 August 1996 when it was minded to grant planning permission subject to the conclusion of a Section 50 Agreement restricting the occupancy of the dwellinghouse.

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

- 3.1 Planning permission reference F/95/0456 for the erection of a dwellinghouse at Airth Mains Farm 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 to occupants employed in agriculture.

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

- 4.1 The applicant requests discharge of the Legal Agreement for the following reasons:
- The approved dwellinghouse now lies within the established settlement of Airth being surrounded by housing developed over the period since the dwellinghouse was originally constructed.
  - The approved dwellinghouse no longer lies within the countryside.
  - The approved dwellinghouse is within an area identified by housing allocation opportunity H.AIR.04 – Castle View.

## **5. CONSIDERATION OF REQUEST**

- 5.1 Planning permission reference F/95/0456 was granted on 4 October 1999. At that time the application site was located in the countryside and the restriction of the occupancy of the dwellinghouse was appropriate. This restriction was recorded in the legal title of the approved dwellinghouse by means of a Section 75 (formerly Section 50 Agreement).
- 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 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 therefore 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 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 aspects.

5.4 In this instance it is considered that the Legal Agreement met the above tests at the time. However circumstances have changed significantly since its conclusion. The application site is no longer located in the countryside and is now within the settlement area of Airth as established by the extant Falkirk Local Plan. This means that the Agreement no longer serves a planning purpose i.e. the allocation of the site has changed and many properties now exist in the surroundings with no occupancy restriction.

5.5 In conclusion it is considered that the Legal Agreement relating to planning permission F/95/0456 no longer serves a planning purpose. 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 agrees to the discharge of the Section 75 Agreement on the grounds that it no longer serves a planning purpose.

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Director of Development Services

Date: 19 May 2014

## LIST OF BACKGROUND PAPERS

1. Planning application reference F/95/0456.
2. Scottish Government Circular 3/2012 Planning Obligations and Good Neighbour Agreements.
3. Falkirk Council Local Plan.

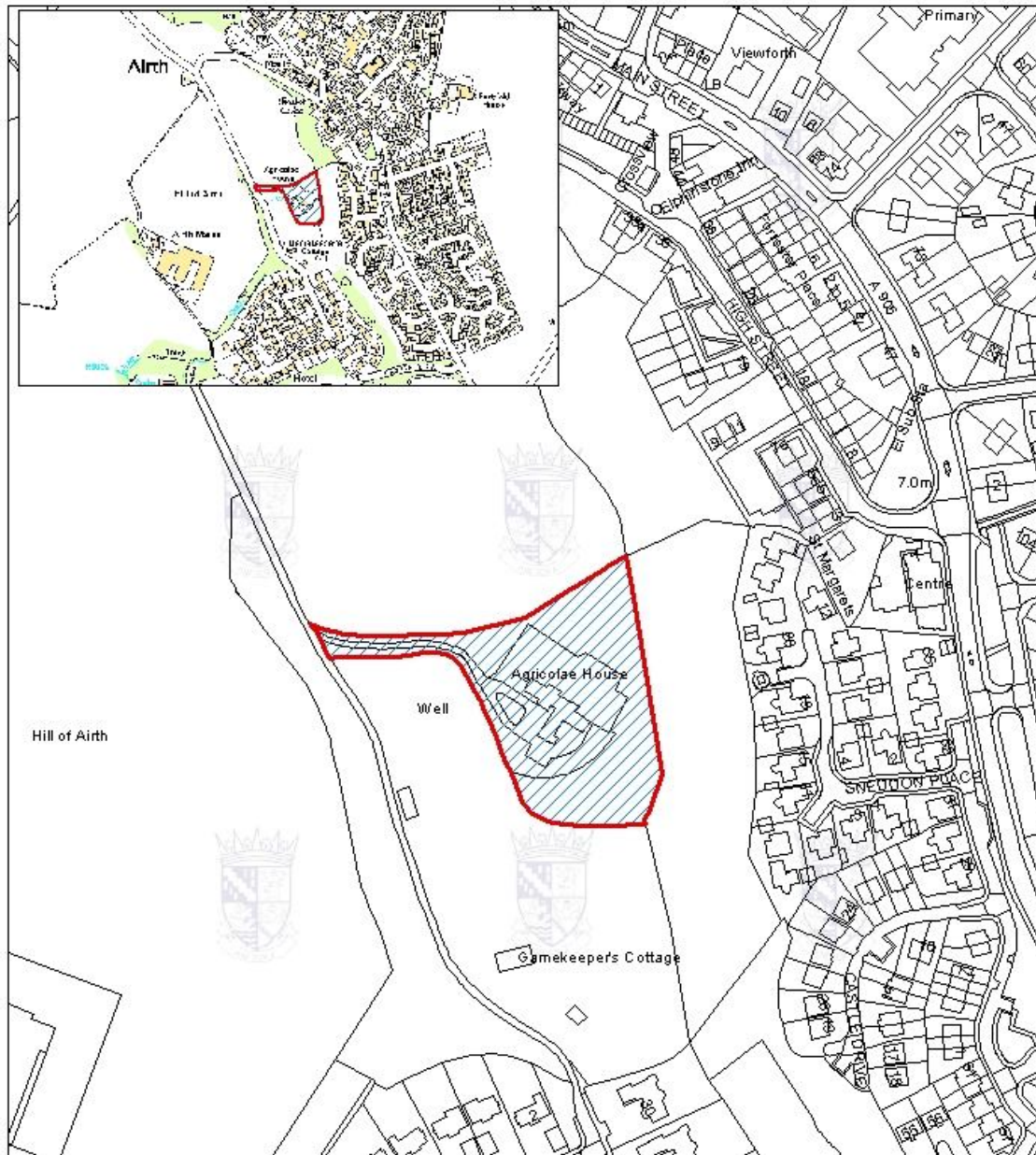
Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504706 and ask for Allan Finlayson, Senior Planning Officer.

# Planning Committee

## Planning Application Location Plan

**P/14/0041/75D**

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



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