



Agenda Item 5

**DISCHARGE OF PLANNING OBLIGATION
ATTACHED TO PLANNING PERMISSION F/95/0453
WHICH RESTRICTED THE OCCUPATION OF THE
DWELLINGHOUSE APPROVED UNDER THAT
PERMISSION AND NOW KNOWN AS TARDUFF
GRANGE, MADDISTON, FALKIRK TO A PERSON
OR PERSONS (TOGETHER WITH THE
DEPENDANT OR DEPENDANTS, IF ANY, OF THAT
PERSON OR PERSONS) EMPLOYED ON A FULL-
TIME BASIS IN CONNECTION WITH THE
OPERATION OF THE EXISTING KENNELS ON THE
SITE AT TARDUFF GRANGE, WHITECROSS,
FALKIRK, FK2 0BS, FOR MRS VALERIE ROY -
P/20/0427/75D**

FALKIRK COUNCIL

Subject: DISCHARGE OF PLANNING OBLIGATION ATTACHED TO PLANNING PERMISSION F/95/0453 WHICH RESTRICTED THE OCCUPATION OF THE DWELLINGHOUSE APPROVED UNDER THAT PERMISSION AND NOW KNOWN AS TARDUFF GRANGE, MADDISTON, FALKIRK TO A PERSON OR PERSONS (TOGETHER WITH THE DEPENDANT OR DEPENDANTS, IF ANY, OF THAT PERSON OR PERSONS) EMPLOYED ON A FULL-TIME BASIS IN CONNECTION WITH THE OPERATION OF THE EXISTING KENNELS ON THE SITE AT TARDUFF GRANGE, WHITECROSS, FALKIRK, FK2 0BS, FOR MRS VALERIE ROY - P/20/0427/75D

Meeting: PLANNING COMMITTEE

Date: 18 November 2020

Author: DIRECTOR OF DEVELOPMENT SERVICES

Local Members: Ward - Upper Braes

Councillor Gordon Hughes
Councillor James Kerr
Councillor John McLuckie

Community Council: Maddiston

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

[View this Application on Public Access](#)

1. DESCRIPTION OF PROPOSAL / SITE LOCATION

- 1.1 The application site is in open countryside to the south of Maddiston. The site is occupied by a detached dwellinghouse, Tarduff Grange, and disused kennels. Access is via a private access track from the B 825.
- 1.2 This application seeks discharge of a legal agreement attached to planning permission F/95/0453, secured under the terms of Section 50 of the Town and Country Planning (Scotland) Act 1972.
- 1.3 The legal agreement restricts the occupancy of the dwellinghouse to a person or persons employed on a full time basis in connection with the operation of the kennels.

2. REASON FOR COMMITTEE CONSIDERATION

- 2.1 The current Scheme of Delegation requires that applications of this nature, which were previously determined by Committee, be determined by Planning Committee when amendments or discharge of planning obligations are proposed. Planning application F/95/0453 was determined by Development Services Sub Committee on 24 August 1995.

3. BACKGROUND TO DISCHARGE OF SECTION 50 LEGAL AGREEMENT

- 3.1 Planning application F/95/0453 related to the erection of a dwellinghouse and was granted on 20 February 1996. A Section 50 Legal Agreement is attached to this planning permission which restricts the occupancy of the dwellinghouse to a person or persons employed full-time in the running of the existing kennels (at the same site).
- 3.2 A Reserved Matters Planning Application (F/96/0083) for the erection of the dwellinghouse was granted on 18 April 1996. Planning permission was implemented.

4. REQUEST TO DISCHARGE SECTION 50 LEGAL AGREEMENT

- 4.2 The applicant now requests that the Legal Agreement be discharged for the following reasons:
- The kennels were operational on site, however, environmental licensing requirements at that time changed. This meant that a person was required to be on site at all times (day and night) to supervise animals;
 - The dwellinghouse was developed subject to the Section 50 Legal Agreement. The applicant resides at the property and ran the kennels for a number of years;
 - The kennel business no longer operates and the kennel buildings are only used for domestic storage;
 - The applicant is now retired. The applicant may wish to sell the property in the future, as the site has become a physical and financial burden;
 - The discharge is requested to facilitate the sale of the property at a future date.

5. CONSIDERATION OF REQUEST

- 5.1 Planning application F/95/0453 was granted on the basis of there being operational requirements for a house (full time on-site presence) in association with the running of the existing kennels. An occupancy restriction was secured under a Section 50 Legal Agreement.
- 5.2 Section 50 Legal Agreements are now known as Section 75 planning obligations. Circular 3/2012 'Planning Obligations and Good Neighbour Agreements' advises that Planning Authorities should take into account any changes in circumstance which mean that the obligation is no longer reasonable and should be modified or discharged to reflect the change in circumstances as appropriate.

5.3 Planning Obligations should only be sought where they meet all of 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;
- Be reasonable in all other respects;

5.4 Circular 3/2012 notes that restrictions on the use of land or buildings have historically been used, particularly in respect of housing in rural areas. The Circular advises that imposing restrictions on use are rarely appropriate and should generally be avoided. This type of occupancy restriction can be intrusive, resource intensive, difficult to monitor and enforce and can introduce unnecessary burdens and constraints.

5.5 At the time of the planning application, the kennels had been operational on the site for a number of years. Licencing requirements at the time required a responsible person in, on, or adjacent to the establishment to deal with any emergencies. The applicant's then property was not within a reasonable distance of the kennels. The justification for the dwellinghouse being required for the running of the kennels was accepted and a Section 50 Legal Agreement to restrict occupancy was secured. This was in keeping with the accepted practice at the time.

5.6 The applicant's supporting statement now points to a change in circumstance. The kennels have not been operational for some time and the buildings are starting to become dilapidated, which is symptomatic of their disuse. The applicant is now retired and the property may have to be sold in the future.

5.7 The advice contained in Circular 3/2010 is noted. The occupancy restriction is a burden in terms of the future sale of the property and a legal impediment to the applicant's continued residence in the house, because the kennels are no longer operational. It is considered that the change of circumstances provides sufficient justification that the occupancy restriction can no longer be seen as reasonable or necessary to serve a planning purpose.

6. Conclusion

6.1 The Section 50 Legal Agreement attached to planning permission F/95/0453 is not considered to meet all of the tests for a planning obligation set out in Planning Circular 3/2012 'Planning Obligations and Good Neighbour Agreements'. This is due to a change in circumstances. It is therefore recommended that the Legal Agreement be discharged.

7. RECOMMENDATION

- 7.1 It is recommended that the Planning Committee agree to Discharge the Planning Obligation**

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pp Director of Development Services

Date: 6 November 2020

LIST OF BACKGROUND PAPERS

1. Planning application F/95/0453
2. Planning application F/96/0083
3. Scottish Government 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.

Policy Schedule

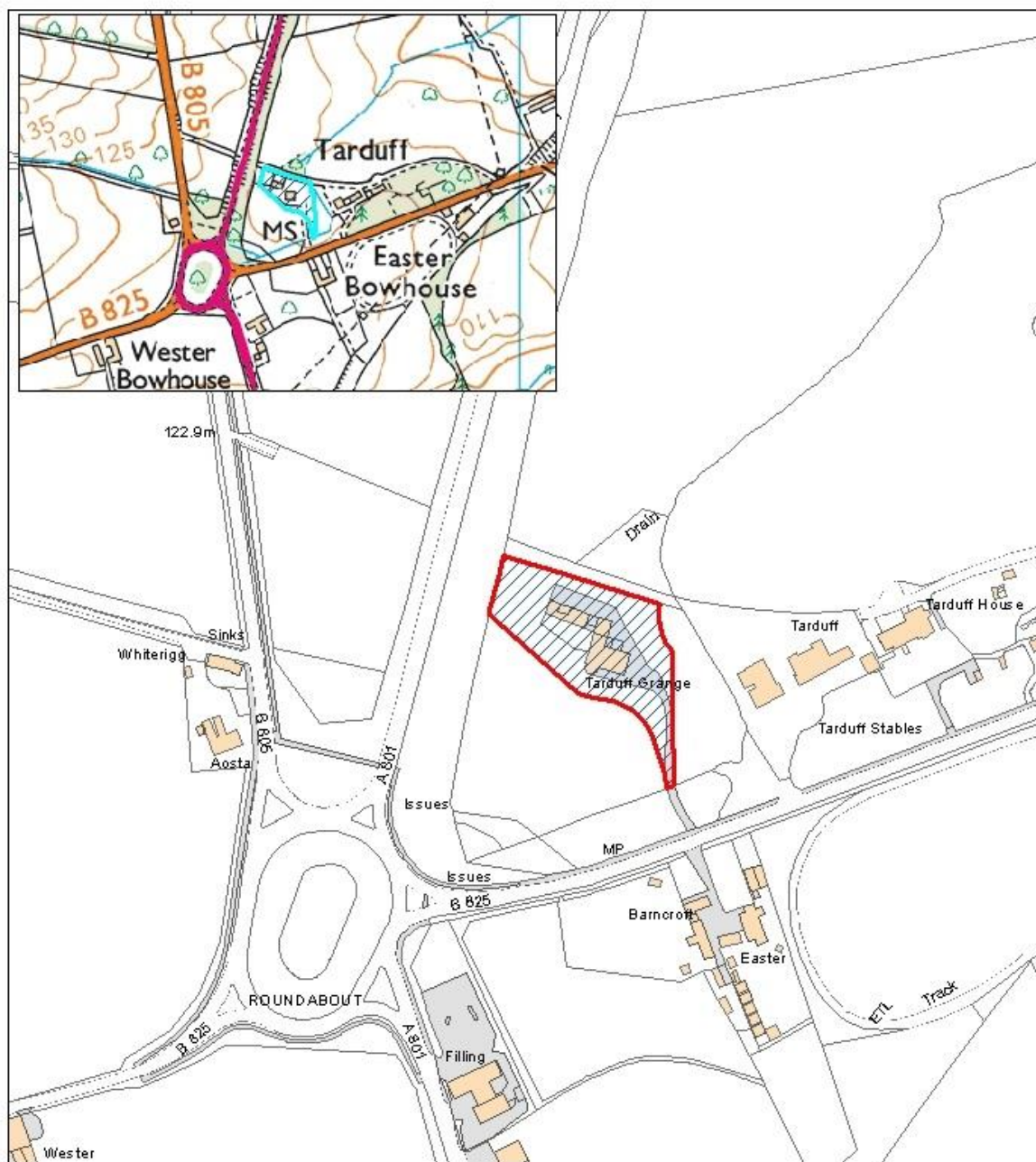
There are no policy considerations in terms of the Falkirk Local Development Plan.

Planning Committee

Planning Application Location Plan

P/20/0427/75D

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



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