



Agenda Item 10

**DISCHARGE OF PLANNING OBLIGATION
ATTACHED TO PLANNING PERMISSION
F/90/0530 WHICH RESTRICTS THE
OCCUPANCY OF THE DWELLINGHOUSE (NOW
KNOWN AS FORRESTERS COTTAGE,
TORWOOD, FK5 4SW) TO A PERSON
EMPLOYED IN THE MANAGEMENT AND
SUPERVISION OF A TREE NURSERY
OPERATION AT TORWOOD NURSERY, BY
TORWOOD CASTLE, NEAR DUNIPACE AT
FORRESTERS COTTAGE, TORWOOD,
LARBERT, FK5 4SW FOR MR AND MRS JOHN
AND DOROTHY TAYLOR - P/22/0285/75D**

FALKIRK COUNCIL

Subject: DISCHARGE OF PLANNING OBLIGATION ATTACHED TO PLANNING PERMISSION F/90/0530 WHICH RESTRICTS THE OCCUPANCY OF THE DWELLINGHOUSE (NOW KNOWN AS FORRESTERS COTTAGE, TORWOOD, FK5 4SW) TO A PERSON EMPLOYED IN THE MANAGEMENT AND SUPERVISION OF A TREE NURSERY OPERATION AT TORWOOD NURSERY, BY TORWOOD CASTLE, NEAR DUNIPACE AT FORRESTERS COTTAGE, TORWOOD, LARBERT, FK5 4SW FOR MR AND MRS JOHN AND DOROTHY TAYLOR - P/22/0285/75D

Meeting: PLANNING COMMITTEE

Date: 25 October 2022

Author: DIRECTOR OF PLACE SERVICES

Local Members: Ward - Bonnybridge and Larbert

Councillor William Buchanan
Councillor Bryan Deakin
Councillor Jack Redmond

Community Council: Larbert, Stenhousemuir and Torwood (Inactive)

Case Officer: Katherine Chorley (Planning Officer), Ext. 4704

[View this Application on Public Access](#)

1. DESCRIPTION OF PROPOSAL / SITE LOCATION

- 1.1 The application site consists of a detached dwellinghouse located in a rural area. It is accessed from a track to the south of Torwood and is surrounded by countryside with Torwood Castle located a short distance further south.
- 1.2 The applicant seeks the discharge of a legal agreement attached to outline planning permission F/90/0530, made 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 future dwellinghouse (constructed under F/90/1178) to a person employed in the management and supervision of the Tree Nursery at Torwood Nursery, by Torwood Castle.

2. REASON FOR COMMITTEE CONSIDERATION

- 2.1 The original legal agreement was associated with application F/90/0530, this application was determined by Planning Committee. The Standing Orders require that an application to vary or discharge such a legal agreement should be returned to Planning Committee for determination.

3. SITE HISTORY

- 3.1 Planning permission was granted on 26th November 2019 for the construction of an outbuilding. P/19/0631/FUL
- 3.2 Outline planning permission was granted on 25th October 1990 for the construction of a dwellinghouse. This permission was granted subject to a legal agreement. F/90/0530.
- 3.3 A reserved matters application for a new dwellinghouse was granted on 12th February 1991. F/90/1178

4. CONSULTATIONS

- 4.1 No consultations were carried out on this proposal.

5. COMMUNITY COUNCIL

- 5.1 The community council is inactive in this area.

6. PUBLIC REPRESENTATION

- 6.1 During consideration of the application, no letters of objection or representation were received.

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 \(LDP2\)](#) was adopted on 7 August 2020. There are no policy considerations in terms of the Falkirk Local Development Plan (LDP2).

7b Material Considerations

7b.1 The material consideration to be assessed are:

Information Submitted in Support of the Proposal
Additional Planning Considerations

Information Submitted in Support of the Proposal

7b.2 The applicant has submitted the following information in support of the application:

- Application Form;
- Location Plan;
- Copy of Title Deeds from Land Register of Scotland;
- Signed and Stamped copy of the Section 50 Agreement, dated 26th October 1990; and
- Supporting Correspondence.

In addition, the applicant has made the following submissions:

- Saplings and shrubs are generally supplied on a much larger scale these days and it is becoming impossible for smaller operators to compete with the prices the larger operators can offer;
- The nursery is no longer commercially viable, and operations have ceased;
- There is no operational business requirement for the s50 Agreement to remain in place;
- The applicants are both in their late sixties and are unable to meet the physical demands that would go with running a nursery at this stage in their lives;
- It is not currently intended to sell the property, but the S50 remaining in place would make any sale difficult;
- The applicants consider it highly unlikely that a buyer could be found who would consider the nursery operation at the property to be commercially viable; and
- The section 50 agreement effectively renders the property unmarketable due to the constraints on use.

Additional Planning Considerations

7b.3 Outline Planning permission Ref: F/90/0530 for the erection of a dwellinghouse at Torwood Nursery was granted on 25th October 1990. At the time of the application, a tree nursery business had been set up on the site and was being operated by the applicant. The development was supported by the Department of Agriculture and Fisheries for Scotland in so far as they considered the works carried out prior to the application (which included most of the capital outlay) would make for a viable business. It was noted however that income would take some time to achieve. The Department for Agriculture and Fisheries for Scotland considered that agricultural support for the house was justified. The application was approved subject to a Section 50 Legal Agreement which restricted the occupancy to a person associated with the business, as was considered appropriate at the time.

- 7b.4 In 2011, the Chief Planner wrote to planning authorities, to clarify the Scottish Government's view on the use of planning obligations to restrict the occupancy of new rural housing. The Scottish Government believes in general that occupancy restrictions are rarely appropriate and should be avoided except in a number of restrictive circumstances.
- 7b.5 Legal Agreements are now referred to as Planning Obligations. Circular 3/2012 'Planning Obligations and Good Neighbour Agreements' followed the Chief Planner's letter. The Circular advises that planning authorities should take into account any changes in circumstance; for example, external factors affecting the development which would mean an obligation is no longer reasonable and should be modified or discharged. 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.

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.

- 7b.6 In this instance it is considered that the Legal Agreement, at the time, met all the above tests. The house was justified on the basis of it being required to provide accommodation for a supervisor/manager associated with the tree nursery business. At the time this provided acceptable grounds for the house in the context of the relevant Housing in the Countryside policy as it was then.
- 7b.7 Notwithstanding this, based on the information provided by the agent, the applicants and owners of Forresters Cottage are no longer involved in the tree nursery business, with the business having ceased trading. It is noted by the agent that tree saplings and shrubs are generally supplied on a much larger scale than in the 1990s and smaller operators cannot compete with the prices larger operators can offer. The nursery is no longer commercially viable and operations have ceased.
- 7b.8 It is also considered that the Legal Agreement has now led to a potential financial burden for the applicants, in that the house cannot be sold separately from a tree nursery business, however the business has ceased trading. Given the difficulty that would likely occur in selling the property on, it is considered that the Legal Agreement does not fairly and reasonably relate in scale and kind to the proposed development and it would not be reasonable in all other respects. It is considered that the change in circumstances would justify the discharge of the Legal Agreement.
- 7b.9 In conclusion, it is considered that the Legal Agreement no longer serves a planning purpose based on the current situation, the change in business circumstances and occupation of Forresters Cottage.

7b.10 As such, and in light of Circular 3/2012 and the associated Chief Planner's letter, it is considered that the Legal Agreement should now be discharged.

7c Conclusion

7c.1 It is considered that the Section 50 legal agreement attached to planning permission F/90/0530 does not meet all the tests for a planning obligation under Planning Circular 3/2012 'Planning Obligations and Good Neighbour Agreements', for the reasons detailed in this report. It is therefore recommended that the legal agreement be discharged.

8. HUMAN RIGHTS AND EQUALITY ASSESSMENT

8.1 Officers have considered the Human Rights Act 1998 in making this recommendation. It is considered that the proposed recommendation would not adversely impact on any protected characteristic groups as identified within the Equality Act 2010.

9. RECOMMENDATION

9.1 **It is recommended that Planning Committee agree to Discharge the Planning Obligation for the following reason;**

- 1. It is considered that the Section 50 Legal Agreement attached to planning permission F/90/0530 does not meet all of the tests for a planning obligation under Planning Circular 3/2012 'Planning Obligations and Good Neighbour Agreements'.**

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pp Director of Place Services

Date: 7 October 2022

LIST OF BACKGROUND PAPERS

1. Planning Application F/90/0530.
2. Planning Circular 3/2012 'Planning Obligations and Good Neighbour Agreements'.
3. 4th November 2011 Chief Planner's Letter 'Occupancy Restrictions and Rural Housing'.
4. Section 50 Legal Agreement for F/90/0530.

Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504704 and ask for Katherine Chorley, Planning Officer.

Policy Schedule

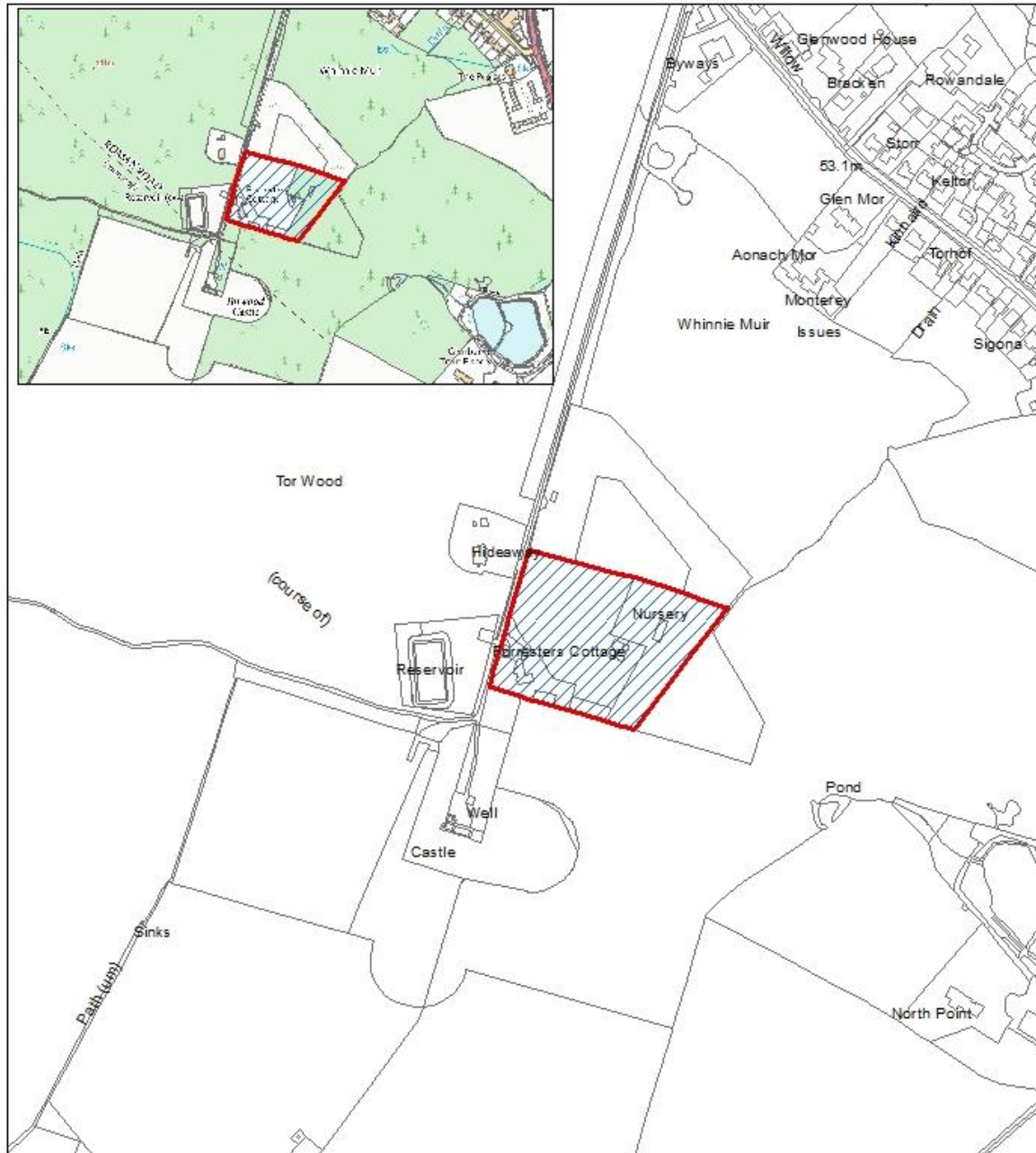
There are no policy considerations in terms of the Falkirk Local Development Plan.

Planning Committee

Planning Application Location Plan

P/22/0285/75D

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



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