AGENDA ITEM 9

FALKIRK COUNCIL

Subject:	**MODIFICATION OF AGREEMENT ON PLANNING PERMISSION F/96/0002 TO ALLOW THE DWELLINGHOUSE TO BE OCCUPIED BY A PERSON "MAINLY OR LASTLY EMPLOYED IN AGRICULTURE, FORESTRY OR LANDSCAPE INDUSTRIES LIKE A TREE NURSERY, IN THE LOCAL AREA, OR TO A DEPENDANT OF SUCH A PERSON RESIDING WITH HIM OR HER, OR A WIDOW OR WIDOWER OF SUCH A PERSON" AT ALMA COTTAGE, 7A MANNERSTON HOLDINGS, LINLITHGOW, EH49 7LY FOR MARTIN AND ALISON WATT - P/11/0439/75M**
Meeting:	**PLANNING COMMITTEE**
Date:	**21 September 2011**
Author:	**DIRECTOR OF DEVELOPMENT SERVICES**
Local Members:	**Ward - Bo'ness and Blackness** **Councillor Sandy Turner** **Councillor Ann Ritchie** **Councillor Adrian Mahoney**
Community Council:	**Blackness Area**
Case Officer:	Bernard Whittle, (Development Management Co-ordinator) Ext. 4875

UPDATE REPORT FOLLOWING COMMITTEE SITE VISIT

1. Members will recall that this planning application was originally considered at the Planning Committee on 24 August 2011 (copy of previous report appended), where it was agreed to continue the planning application for a site visit. This visit took place on 5 September 2011.

2. The main issue highlighted at the visit concerned the scenario that if the Agreement, when modified, would revert back to the original agreement if the applicant's circumstances changed and that he no longer wished the terms of the agreement to reflect that which he is applying for.

3. It was confirmed that once amended, this would be the new terms of the agreement that would relate to the property in question and that it would not revert back to the original agreement. New legislation introduced in February 2011 would require any subsequent changes to the agreement to be the subject of a further application to the planning authority seeking their agreement for modification or discharge. The merits of the case would then be considered at that time.

4. No further matters were revised at the site visit which would alter the previous recommendation.

5. RECOMMENDATION

5.1 It is recommended that Committee agree to modify the Section 50 Agreement restricting occupation of the dwellinghouse at 7A Mannerston Holdings subject to the Council's legal costs being met by the applicant.

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Director of Development Services

Date: 14 September 2011

LIST OF BACKGROUND PAPERS

1. The Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010
2. Annex to Circular 1/2010: Planning Agreements, Planning Obligations and Good Neighbour Agreements
3. Falkirk Council Structure Plan
4. Falkirk Council Local Plan
5. Letter of representation from Blackness Area Community Council

Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504875 and ask for Bernard Whittle, Development Management Co-ordinator.

APPENDIX 1

FALKIRK COUNCIL

Subject:	**MODIFICATION OF AGREEMENT ON PLANNING PERMISSION F/96/0002 TO ALLOW THE DWELLINGHOUSE TO BE OCCUPIED BY A PERSON "MAINLY OR LASTLY EMPLOYED IN AGRICULTURE, FORESTRY OR LANDSCAPE INDUSTRIES LIKE A TREE NURSERY, IN THE LOCAL AREA, OR TO A DEPENDANT OF SUCH A PERSON RESIDING WITH HIM OR HER, OR A WIDOW OR WIDOWER OF SUCH A PERSON." AT ALMA COTTAGE, 7A MANNERSTON HOLDINGS, LINLITHGOW, EH49 7LY FOR MARTIN AND ALISON WATT – P/11/0439/74M**
Meeting:	**PLANNING COMMITTEE**
Date:	**24 August 2011**
Author:	**DIRECTOR OF DEVELOPMENT SERVICES**
Local Members:	**Ward - Bo'ness and Blackness** **Councillor Sandy Turner** **Councillor Ann Ritchie** **Councillor Adrian Mahoney**
Community Council:	**Blackness Area**
Case Officer:	Bernard Whittle, (Development Management Co-ordinator) Ext. 4875

1. INTRODUCTION

1.1. A request has been made to modify an Agreement made under the terms of Section 50 of the Town and Country Planning (Scotland) Act 1972, (now Section 75 of the Town and Country Planning (Scotland) Act 1997), as amended, relating to restrictions on the occupancy of a dwellinghouse at 7A Mannerston Holdings, Linlithgow.

1.2 The site is located within the area of Mannerston Holdings at the end of a private access track leading from the A904 at the Rouken Glen Garden Centre.

2. REASON FOR COMMITTEE CONSIDERATION

2.1 The decision to grant planning permission subject to a Section 50 Agreement in the terms set out above was a decision of the Regulatory Committee (now Planning Committee). In these circumstances the Scheme of Delegation, as amended, requires that applications for modification and discharge of an Agreement shall be determined by the Planning Committee.

3. BACKGROUND TO SECTION 50 AGREEMENT/ SITE HISTORY

3.1 A detailed planning application by Mr Martin Watt (reference F/96/0002) was granted by the Council in September 1997 for the erection of a dwellinghouse associated with a tree nursery business on this site subject to an Agreement under Section 50 of the Town and Country Planning (Scotland) Act 1972. The Agreement restricts occupancy of the dwellinghouse to a person or persons employed for a minimum of 35 hours per week in a tree nursery business at Mannerston Holdings and his, her or their dependants in all time coming.

3.2 The site lies outwith settlement boundaries identified in the Development Plan in an area where there is a general presumption against new dwellinghouses other than in exceptional circumstances. Planning permission was granted for the dwellinghouse on the basis that the applicant's tree nursery business was an exceptional circumstance and justified the need for a new dwellinghouse in this location.

3.3 Mr Watt has advised that due to an unfortunate combination of unforeseen personal health problems and financial circumstances the tree nursery business has failed and he can not now comply with the restrictive terms of the Agreement. Modification of the Agreement as proposed in the application description is sought to allow Mr Watt and his wife and children to continue to live in the dwellinghouse in the changed circumstances he now finds himself in.

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4. REQUEST TO MODIFY THE SECTION 50 AGREEMENT

4.1 New legislation introduced in February 2011 by the Planning etc (Scotland) Act 2006 requires that where a person against whom a planning agreement is enforceable wishes to modify or discharge the agreement they have to apply to the planning authority seeking their agreement for the modification or discharge. These provisions are set out in the Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010 and annex to Circular 1/2010 published in February 2011.

4.2 On receipt of an application the planning authority is required to notify the owner of the land and/or any other person against whom the planning agreement is enforceable and to allow a period of at least 21 days for these interested parties to submit representations. The planning authority is not required to notify or consider representations from any other parties.

4.3 The planning authority is to issue notice of their decision in respect of the application within two months of the date of validation. The applicant has a right of appeal to Scottish Ministers if the planning authority fails to give notice of their decision within the two month period.

5. CONSIDERATION OF REQUEST

5.1 Details of the Section 50 Agreement and the request for its modification are provided earlier in this report. The comments made by the applicant are noted and it is considered that there is no prospect of the terms of the current restriction being met.

5.2 No representations have been received from interested parties. The Blackness Area Community Council is not an interested party and has no locus to submit representations but they have written to advise that they have no comments to make on the application.

5.3 Since the decision to grant planning permission in 1997 there has been a material change in circumstances outwith the control of the applicant. The proposed modification to the Section 50 Agreement would still limit occupation of the dwellinghouse. It would allow the applicant and his family to continue to live in the dwellinghouse but would maintain an agricultural/rural tie in keeping with the spirit of the original planning decision and current Development Plan Policies set out in Falkirk Council Structure Plan Policy ENV.1 and Falkirk Council Local Plan Policies EQ19 and SC3, restricting residential development in the countryside.

6. RECOMMENDATION

6.1 It is recommended that Committee agree to modify the Section 50 Agreement restricting occupation of the dwellinghouse at 7A Mannerston Holdings subject to the Council's legal costs being met by the applicant.

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Director of Development Services

Date: 16 August 2011

LIST OF BACKGROUND PAPERS

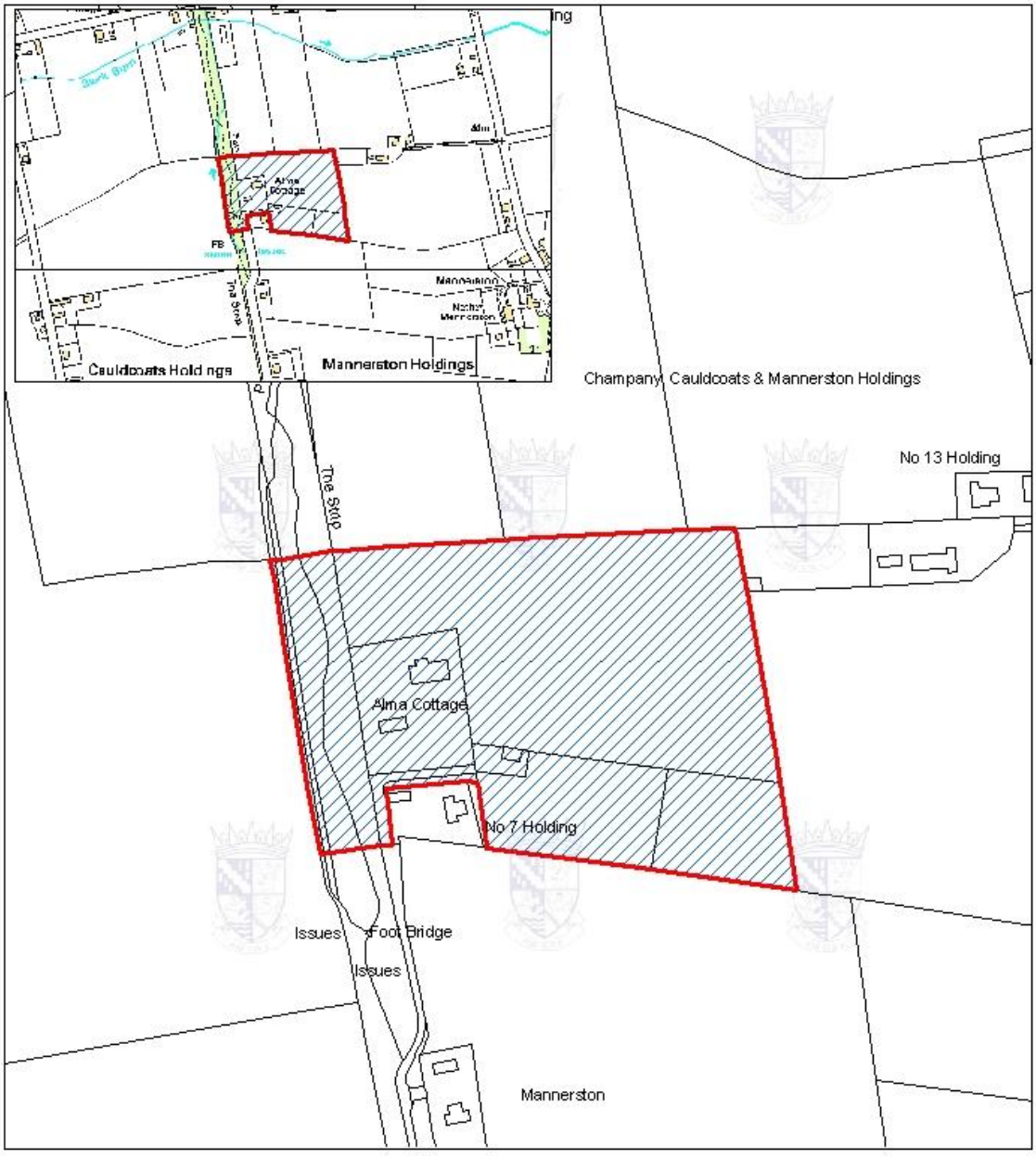
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Planning Committee

Planning Application Location Plan P/11/0439/75M

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



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