

FALKIRK COUNCIL

Subject: **MODIFICATION OF PLANNING OBLIGATION UNDER SECTION 50 OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1972 ATTACHED TO PLANNING PERMISSION F/90/0589 RESTRICTING ANCILLARY RETAIL USE AT 1 GRANARY SQUARE, BANKSIDE, FALKIRK, FK2 7XJ, FOR R & R PROPERTIES (FALKIRK) LTD – P/12/0065/75M**

Meeting: **PLANNING COMMITTEE**

Date: **4 April 2012**

Author: **DIRECTOR OF DEVELOPMENT SERVICES**

Local Members: **Ward - Falkirk North**
Provost Pat Reid
Councillor David Alexander
Councillor Craig R. Martin
Councillor Cecil Meiklejohn

Community Council: **Langlees, Bainsford and New Carron**

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

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 ancillary retail use associated with planning permission for Class 4 Business Use. The legal agreement is attached to outline planning permission F/90/0589.
- 1.2 The application site is located at 1 Granary Square, Falkirk to the east of Grahams Road at Lock 5 (Bainsford) on the Forth and Clyde Canal.

2. REASON FOR COMMITTEE CONSIDERATION

- 2.1 The decision to grant outline planning permission (ref: F/90/0589) subject to a Section 50 Agreement in the terms described above was taken by Falkirk District Council Development Control Sub Committee on 12 September 1990. In these circumstances Falkirk Council's Scheme of Delegation, as amended, requires that applications for modifications or discharge of an Agreement shall be determined by the Planning Committee.

3. BACKGROUND TO SECTION 50 AGREEMENT/SITE HISTORY

- 3.1 An outline planning permission (now planning permission in principle) was granted by Falkirk District Council on 12 September 1990 subject to an Agreement under Section 50 of the Town and Country Planning (Scotland) Act 1972. The Agreement restricts any ancillary retail use associated with the approved Class 4 Business Use to the sale of goods associated with the motor trade.
- 3.2 The application site lies within an area defined by Policy EP3 – “Existing Business and Industrial Areas with the Potential for Re-development” of the Falkirk Local Plan. A variety of uses ranging from Class 1 (Retail) to Class 5 (General Industrial) exist in proximity to the application site.
- 3.3 The applicant’s agent has advised that the applicant R and R Properties (Falkirk) Ltd who are the proprietors of the business unit, are seeking to lease the unit and the terms of the Section 50 Agreement are restricting the potential to do so.

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 an agreement they have to apply to the Planning Authority seeking their agreement for the modification or discharge. The 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 person against whom the planning agreement is enforceable and to allow a period of at least 21 days for those interested parties to submit representations. The planning authority is not required to notify or consider representations from 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 its 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 in relation to leasing the premises are noted.
- 5.2 No representations have been received from interested parties.
- 5.3 Subsequent to the grant of outline planning permission in 1990 further reserved matters permission has been granted for the erection of a building for Class 4 (Business) use (Ref: F/91/0287). A variety of uses have been operated on the site since 1991 within the Class 4 approved use.

- 5.4 In addition to the above, unrestricted ancillary retail use has been approved in proximity to the application site. Furthermore the allocation of the site as an area for industrial use with the potential for re-development (Falkirk Council Local Plan Policy EP3) provides for the consideration of alternative uses at the site and its surroundings.
- 5.5 A modification to the Section 50 to allow unrestricted ancillary retail use is considered to be acceptable following assessment of the original Section 50 intentions and the evolution of Falkirk Council Local Plan policy in the subsequent period and the existence of similar approved planning uses in the surrounding area.

6. RECOMMENDATION

- 6.1 It is recommended that Planning Committee agree to modify the Section 50 Agreement restricting ancillary retail use at 1 Granary Square, Falkirk, in order to permit unrestricted ancillary retail use from the site.

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Director of Development Services

Date: 27 March 2012

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 (February 2011).
3. Falkirk Council Structure Plan.
4. 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/12/0065/75/M

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



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