
NORTH AYRSHIRE COUNCIL

26th September 2018

Planning Committee

Locality	Arran
Reference	18/00823/ALO
Application Registered	5th September 2018
Decision Due	5th November 2018
Ward	Ardrossan And Arran

Recommendation	Approved with no Conditions
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Location	Whin Farm Ballymenoch Kildonan Brodick Isle Of Arran KA27 8SF
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Applicant	Mr & Mrs I Armstrong
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Proposal	Removal of Section 75 obligation attached to planning permission 06/00278/PP to remove occupancy restriction
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1. Description

An application has been made in terms of Section 75A of the Town and Country Planning (Scotland) Act 1997 to remove a legal obligation that was entered in to under Section 75 of the Town and Country Planning (Scotland) Act 1997. The obligation was in relation to an occupancy restriction.

Planning permission (ref.96/00451/PP) for a house on a different part of the site was granted on 31st May 1996 but was not implemented and lapsed. An application for planning permission for a revised siting of a detached dwellinghouse for an agricultural worker (ref: 06/00278/PP) was approved by the Planning Committee on 29th May 2006, subject to a Section 75 obligation and conditions. The planning permission was subsequently issued on 16th May 2007 following the signing of a legal agreement which stipulated that the house must be occupied only by a person either currently or last employed locally in agriculture, or in forestry, or their dependants, or a widow or widower of such a person.

The detached single storey dwellinghouse is sited in an elevated position approximately 1km north of the settlement of Kildonan and is accessed by a 130m long private road from the north side of the A841. It has a small entrance porch to the front (south) elevation and a pitched roof and is externally finished in slate effect roof tiles and white painted render. The house is bounded by the associated farmland on all sides and the immediate curtilage is defined by stob and wire fences and tree planting.

The 2006 planning application was accompanied by supporting statements and labour reports indicating a requirement for an agricultural worker's house to replace a previous caravan on the land to serve the 65ha farm which supported a herd of 350 sheep.

The current applicants were also the original applicants in 2006 and were signatory to the Section 75 legal agreement. A supporting statement has been submitted with this application stating their intention to sell the farming unit which they have built up and to re-invest in a larger farm. They have now applied for discharge of the legal agreement on the following grounds:

- Some years have passed since the house was built and the owners wish to move on to new projects;
- The post 'credit crunch' housing market and lack of bank funding has made it almost impossible to sell the property, with the occupancy restriction, at the market value required to fund their further investment;
- Sales evaluations have been submitted showing that the property valuation would be £73,000 less with the occupancy condition attached than if it were removed, which the applicants consider to have a major negative impact on their business and livelihood;
- A copy of the Scottish Government Chief Planner's letter to planning authorities of 4th November 2011 in which he states that "the Scottish Government believes that occupancy restrictions are rarely appropriate and should generally be avoided" has been submitted. The Chief Planner continues that occupancy restrictions should only be used where there is a potential for adverse impacts on road safety, landscape quality, natural heritage etc. and it is submitted that there would be no such impacts at Whin Farm;

The application site is located within the countryside, as identified in the adopted North Ayrshire Local Development Plan ("the LDP") and is unaffected by any site specific policies or proposals therein. The relevant policy is ENV 2 (Housing Development in the Countryside). This allows that housing for workers engaged in an appropriate rural business (such as farming) shall accord with the LDP, subject to meeting a range of criteria, including a genuine operational need for a dwellinghouse.

2. Consultations and Representations

Consultations were not required, the statutory neighbour notification procedures were followed and the application did not require to be advertised. No objections were received.

3. Analysis

The proposal requires to be considered in terms of the adopted Local Development Plan policy ENV 2 and any other material planning considerations. Policy ENV 2 relates to the

circumstances under which new housing in the countryside can be justified. It does not specifically address a change of circumstances such as has been presented in this case. The application seeks to discharge the occupancy restriction attached to the Section 75 and provides a supporting statement in relation to the justification for the removal of this restriction.

In terms of the removal of occupancy conditions, the following points can be considered to be material considerations:

- (i) The house was originally occupied in association with the rural business against which it was justified;
- (ii) The associated agricultural land has not been split from the house and the applicants advise that they propose to sell the whole farm unit including the house and all land;
- (iii) The occupancy restriction has caused difficulty for the owners in achieving the required sale to allow them to pursue their own future plans;
- (iv) SPP (Scottish Planning Policy 2014) has indicated a shifting policy in regards to the use of occupancy conditions since the time of the original approval.

Requests to remove such occupancy restrictions should normally take into consideration: the time passed since the original restriction was imposed; the change in circumstances given as justification; consideration of any risks associated with removal of the restriction; difficulties caused by retention of the restriction, e.g. mortgage borrowing; and that the house is suitably sited and designed and provides a reasonable level of residential amenity.

The applicants first purchased the farm in 1997 with existing planning permission for a house; they then lived in a temporary caravan on the land whilst building the business finances to a state allowing the house to be constructed; the revised planning permission was granted in 2007 and the house completed in 2011. Twenty one years have therefore passed since the original consent and seven years from the completion of the house, which is considered to be a sufficiently long period following the imposition of the occupancy restriction.

The supporting statement advises that the applicants intend to sell the house and land together but that the occupancy restriction unfairly restricts the achievable sale value. Whilst removal of the restriction may result in the house being occupied in isolation from the operation of the agricultural land, planning law cannot compel an owner to work farmland in their ownership. Should the land ownership be split from the house in future, any proposed new farmhouse would require planning permission which would be assessed on its own merits against the LDP policies.

In terms of siting and amenity, the house has been in occupation for many years and provides a reasonable level of residential amenity and outlook. It is relatively close to the main road and the siting is acceptable. It is also agreed that the Chief Planners advice on the desirability of avoiding occupancy restrictions, other than to guard against identified impacts on road safety, amenity etc. is a material planning consideration.

Taking all of these factors into consideration, it is considered that there is no longer a requirement to retain the occupancy restriction. It is therefore recommended that the occupancy restriction be removed, and the associated Section 75 agreement be discharged.

4. Full Recommendation

Approved with no Conditions

A handwritten signature in black ink, appearing to read 'Karen Yeomans', written in a cursive style.

Karen Yeomans
Executive Director
Economy & Communities

For further information please contact Mr Neil McAteer Planning Officer on 01294 324316.

Appendix 1 – Location Plan

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