
NORTH AYRSHIRE COUNCIL

23rd May 2018

Planning Committee

Locality	Arran
Reference	18/00379/ALO
Application Registered	27th April 2018
Decision Due	27th June 2018
Ward	Ardrossan And Arran

Recommendation	Grant
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Location	Site To South And West Of Tighenmenach Blackwaterfoot Brodick Isle Of Arran
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Applicant	Mr Ian McChlery
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Proposal	Removal of Section 75 obligation attached to planning permission N/04/00937/PP relating to occupancy restriction
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1. Description

This 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 is in relation to an occupancy restriction.

An application for planning permission for the erection of a detached dwellinghouse for an agricultural worker (ref: 04/00937/PP) was granted by the Planning Committee on 7th February 2005, subject to a Section 75 obligation and conditions. The planning permission was subsequently issued on 12th July 2005 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 two storey dwellinghouse is sited in an elevated position approximately 350m east of the settlement of Blackwaterfoot and is accessed by a private road from the A841. It has a pitched roof and is externally finished in white render and roof slates with some timber

detailing to the upper walls. The house has fairly extensive glazed windows to take advantage of solar gain.

The original application was accompanied by supporting statements and reports indicating a requirement for an additional agricultural workers house as the surrounding farmland had been acquired by the applicant in 2004 to provide a reliable source of milk production to the Bellevue Cheese Company on the island. The previous buildings at Tighenmenach to the east had previously been converted to mainstream housing.

The applicant is the original applicant in 2004 and the signatory to the Section 75 legal agreement. This application has been submitted due to a change of circumstances. The applicant seeks to discharge the legal agreement on the following grounds:

- Some years after the occupation of the house, personal circumstances of the applicant's business partners led to re-organisation of the Cheese Co. The new directors dismissed his contract to supply milk;
- Cattle farming continued on the land until around 18 months ago until workload became too much and the applicant considered retirement;
- The attached farmland was sold off to the adjoining farm. The adjoining farm has its own dwellinghouse and the agricultural land is to be accessed from that farm only; there is no legal right of access through the application site;
- The applicant is now retired, no longer employed in agriculture but wishes to remain in the house which he and his wife have lived in for over 10 years and so wishes to remove the occupancy restriction so that in future, the family can secure a tenant or buyer from outwith the agricultural sector.

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). ENV2 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.

At the time of the decision to grant planning permission, the determination of the application was based on the adopted development plan policy prevailing at that time. The policy was HOU5 of the Isle of Arran Local Plan, which was broadly similar to the current LDP policy, and required proposals to demonstrate a "genuine operational need for a worker to live on site in pursuance of an established rural business" in order to justify the development of a new house in the countryside.

2. Consultations and Representations

Consultations were not required for this application. 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 originally justified;
- (ii) Business changes rendered it unnecessary to that business;
- (iii) It continued to be occupied in association with farming until this became unviable;
- (iv) The attached farmland was sold off to an adjoining farm. The adjoining farm is served by its own dwelling and has not approached the Council regarding any future requirement for further accommodation;
- (v) Access through the site is no longer required for the continuing management of the farmland; there is no legal right of access through the application site;
- (vi) The applicant is now retired, no longer employed in agriculture but wishes to continue living in the family home but without any future legal occupancy burden on his descendants.
- (vii) Scottish Planning Policy 2014 (SPP) comments on the use of occupancy conditions since the time of the original approval.

Although it is claimed that the house is no longer required by a farmer, the applicant wishes to continue living there and has not therefore submitted any evidence of attempts to dispose of the property on the open market, with the occupancy restriction.

Requests to remove occupancy restrictions should 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 condition; difficulties caused by retention of the restriction, e.g. mortgage borrowing; and that the house provides a reasonable level of amenity.

Thirteen years have passed since the original consent, which is considered to be a sufficient period; the supporting statement advises that the house is no longer needed to farm the land; the land has been disposed of to the adjacent farm which already has its own accommodation and the LDP policies would remain sufficient to address any future proposals. 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. Whilst the elevated siting may be more prominent in the landscape than would be expected by modern rural design standards, and the Council's Rural Housing Guidance, it is considered to be acceptable.

It is therefore recommended that the occupancy restriction be removed, and the associated Section 75 agreement be discharged.

4. Full Recommendation

Grant

Karen Yeomans

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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