
NORTH AYRSHIRE COUNCIL

31st October 2018

Planning Committee

Locality	Three Towns
Reference	18/00846/ALO
Application Registered	14th September 2018
Decision Due	14th November 2018
Ward	Dalry And West Kilbride

Recommendation	Approved with no Conditions
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Location	Meikle Ittington Farm Ardrossan Ayrshire KA22 7NX
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Applicant	Mr Lewis Scott
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Proposal	Removal of Section 75 obligation attached to planning permission 10/00326/PP to remove 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 was in relation to an occupancy restriction.

A planning application (ref. 09/00523/PP) was refused in 2009 for the erection of a dwellinghouse on Meikle Ittington Farm for an agricultural worker. The refusal was appealed to the Local Review Body (LRB). The LRB dismissed the appeal on the grounds of the siting of the proposed house. However, the LRB accepted that there was a genuine operational need for another worker to live on site in association with the farming business.

A subsequent application for a dwellinghouse for an agricultural worker in an alternative location at Meikle Ittington Farm (ref. 10/00326/PP) was duly submitted. This was approved under delegated powers on 16th May 2011, following the signing of a Section 75 legal obligation which stipulated that the house "must be occupied only by a person either currently or last employed locally in agriculture, or their dependants, or a widow or widower of such a person."

The detached single storey dwellinghouse is sited on an elevated position to the south of the main farm steading. The farm yard is to the immediate north with farmland to all other sides. The property is some 675m south-east of the B780 Ardrossan to Dalry Road.

The 2009 and 2010 planning applications were accompanied by supporting statements and labour reports indicating a requirement for 2 workers to live on site. The applicant's brother lived in the existing farm house and their retired father in the cottage to the south-east of the farm yard.

The current applicant was also the original applicant in 2010 and signatory to the Section 75 legal obligation. A supporting statement has been submitted with this application stating he remains involved in the running of the farm with his brother. There remains a requirement for 2 workers but they make this application to support their plans to diversify the farm business and make it sustainable for the future. They advise that the Section 75 obligation prevents the house being used as a security for raising an investment loan for the farm business.

The applicant also makes reference to 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." This stance is reiterated in Scottish Government Planning Circular 3/2012. The advice continues that occupancy restrictions should only be used where there is a potential for adverse impacts on road safety, landscape quality, natural heritage etc. It is submitted by the applicant that there would be no such impacts at Meikle Ittington.

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 states 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 assessed 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 obligation 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 has been occupied in association with the rural business against which it was originally justified and granted planning permission;
- (ii) The associated agricultural unit continues to be operated;
- (iii) The occupancy restriction has caused difficulty for the owners in raising finance for their planned investment in the agricultural unit;
- (iv) Scottish Government advice 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 farm is a family concern with its operation having been passed from father to son. The current operator of the farm is the applicant's brother and both brothers are occupied in the running of the farm. The family originally lived in the farm house with the retired parents moving to a nearby cottage. The house, the subject of this application, was permitted to allow both adult brothers and their families to live on site. The farm can therefore be seen to be a long standing family enterprise in the rural area, with the current arrangement having been in place for around seven years. This time is considered to be a sufficiently long period following the creation of the occupancy restriction.

The supporting statement advises that the occupancy restriction restricts the potential to raise finance against the value of the house, which limits the potential for diversification of and investment in the core farm business. Whilst removal of the restriction may result in the house being occupied in isolation from the operation of the farm, planning law cannot compel an owner to work farmland in their ownership. Should the house be split from the farm in the future, any proposed additional residence associated with the farm would require planning permission which would be assessed on its own merits the LDP policies prevailing at the time. However this scenario is not before the Council at the present time.

In terms of siting and amenity, the house has been in occupation for a number of years. It is considered that the house provides a reasonable level of residential amenity and outlook. It is to the south of the farm yard with its own access off the road from the B780. It is also agreed that the Scottish Government's advice, in the form of the former Chief Planner's letter, Circular 3/2012 and Scottish Planning Policy 2014, 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'.

Karen Yeomans
Executive Director
Economy & Communities

For further information please contact Mr Iain Davies on 01294 324320.

Appendix 1 – Location Plan

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