
NORTH AYRSHIRE COUNCIL

20th February 2019

Planning Committee

Locality	Garnock Valley
Reference	18/01067/ALO
Application Registered	5th December 2018
Decision Due	5th February 2019
Ward	Kilbirnie And Beith

Recommendation	Approved with no Conditions
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Location	Dalziel House Beith Ayrshire KA15 2JN
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Applicant	Mr D Young
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Proposal	Removal of Section 75 obligation attached to planning permission 07/01160/OPP 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.

On the 25th March 2008, the Council's Planning Committee agreed to grant planning permission (in principle) for the erection of a dwellinghouse (ref. 07/01160/OPP). This permission was subsequently issued on the 23rd June 2008 following the signing of a Section 75 legal obligation, the purpose of which was to limit the occupancy of the new house to a person solely, mainly or last employed in the locality in agriculture or forestry, or to a dependent, widow or widower of such a person.

An application to discharge the matters specified in the planning permission in principle was subsequently granted on 19th August 2011 (ref. 11/00415/MS). An amendment to the house design was also permitted 13th September 2013 (ref: 13/00427/PP). Thereafter, the house was built along with an associated agricultural shed.

The detached one and a half storey dwellinghouse is sited to the northeast of Beith, on the southern side of the access road between Clerksbridge Roundabout on the A737 and Brownmuir Farm, approx. 900m east of the A737 and close to the boundary with Renfrewshire.

The 2008 planning application was accompanied by a labour report, which stated that the applicant worked in agriculture and had been a tenant farmer for many years. However, that farmhouse was sold for development. The applicant retained land in his own ownership and a herd of cattle. The house was held to be required to allow the applicant to continue the agricultural use of the land in his ownership.

The current applicant is the son of the original applicant. A supporting statement has been submitted with this application stating he has taken over the running of the farm. The applicant makes this application to support the plans to diversify the farm business and make it sustainable for the future. The S.75 obligation prevents borrowing against the house to raise money for investment in the farm. The applicant is specifically seeking finance to improve the agricultural shed which remains open-sided.

The applicant also makes reference to the Scottish Government Chief Planner's letter to planning authorities of 4th November 2011 in which he stated that "the Scottish Government believes that occupancy restrictions are rarely appropriate and should generally be avoided." This 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. and it is submitted that there would be no such impacts at Dalziel House.

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.

Relevant Development Plan Policies

ENV2

POLICY ENV 2: HOUSING DEVELOPMENT IN THE COUNTRYSIDE

Single houses in rural areas

Proposals for a single new stand-alone house within its own established setting in a rural area shall not accord with the LDP unless it can be demonstrated that:

- (a) the proposal demonstrates outstanding quality of design; AND
- (b) is distinctive and responsive to its setting, making a positive contribution to the locality of the area; AND
- (c) the proposal integrates with, complements and enhances the established character of the area and the cumulative impact on the landscape of the development is acceptable; AND
- (d) is located a sufficient distance from a village, existing grouping, building or settlement

to ensure that the development is considered as part of an established rural landscape;
AND

(e) account has been taken of the possibility of converting, rehabilitating or replacing an existing building in the countryside or of locating a new building in a brownfield location;
AND

(f) the development is not proposed in an area of 'sensitive countryside' (see glossary), is not of a suburban character and takes cognisance of the Rural Design Guidance; AND

(g) the proposal has been closely scrutinised and positively endorsed by a design review (internal to the Council) and/or Architecture and Design Scotland.

Small scale growth of existing rural housing groups

Proposals for development in rural areas not defined in the LDP as a settlement or village shall accord with the LDP subject to satisfying the following criteria:

(a) the proposal constitutes a small-scale, sympathetic addition to an existing well-defined nucleated group of four or more houses (including conversions) in close proximity to one another and visually identifiable as a group with some common feature e.g. shared access. Expansion of such a group will be limited to 50% of dwellings existing in that group as of 1 January 2005 up to a maximum of four new housing units (rounded down where applicable); AND

(b) the proposal is not suburban in character and takes cognisance of the approved Rural Design Guidance; AND

(c) any individual proposal does not prejudice a future development opportunity; AND

(d) the proposal complies with relevant Roads Guidelines.

(e) the proposal is not located within an area of 'sensitive countryside' (see glossary).

The sensitive infilling of any available gap sites consolidating existing groups will be particularly encouraged.

Housing for workers engaged in a rural business

Proposals for housing for workers engaged in an appropriate rural business (such as agriculture, forestry, or other operations provided for under Policy ENV 1) shall accord with the LDP subject to the following criteria:

1. The dwelling is for a farmer who owns and operates a viable agricultural holding full time which has no farmhouse at present; OR

2. A farmer is the owner and occupier of an agricultural holding and proposes to erect a dwelling for a family member in full time employment on the farm and who intends to take over the farm in time; OR

3. A genuine operational need for a worker to live on site in pursuance of an established rural business has been demonstrated; AND

4. All proposals will also be required to demonstrate that:

(a) accommodation cannot be reasonably provided by another existing dwelling on site or in the area (including by any buildings after re-use, replacement, conversion or rehabilitation at reasonable cost) or within existing rural housing groups suitable for expansion under the other provisions of this policy;

(b) there are no existing planning consents (not time expired) for residential developments which have not commenced and would provide a suitable accommodation arrangement;

(c) the siting, design and external appearance of the new development (including any conversion) complements any existing building group on the site;

(d) the scale of the housing provided is commensurate with the need of the person or persons who will occupy it; and

(e) cognisance has been taken of the Council's Rural Design Guidance.

Note:

In the case of housing for a worker engaged in a rural business, where an operational need requires to be demonstrated, this should take the form of an independent report/business plan prepared by a suitably qualified professional. This justification should demonstrate the ongoing viability of the business and provide reasons why residential accommodation located on site is essential to the functional needs of the business, and is not merely for convenience.

For housing justified as 'housing for workers engaged in a rural business', occupation of such shall be limited to persons employed (and any dependents) in agriculture, forestry or other rural activities allowed under Policy ENV 1 and this will be secured via planning condition and/or legal agreement as appropriate.

All proposals will require to be supported by a design statement, inclusive of landscaping proposals particularly in regard to urban fringe sites, to assist the Council to fully assess the proposal.

The submission of an area landscape capacity evaluation will normally be required for all development in the countryside.

It will be a condition that the development be commenced within two years to prevent land banking.

In the case of single houses in rural areas, permitted development rights may be removed in recognition of the high standard of design required from the development.

No applications for planning in principle shall be accepted for development. Pre-application discussions are encouraged prior to the submission of a full application.

Provision of temporary accommodation for an agreed period in pursuance of a viable rural business, requiring an operational need for a worker to live on-site, will be in accordance with the Plan subject to compliance with other policies.

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.

Relevant Planning History

07/01160/OPP for Erection of detached dwelling house Approved subject to Conditions on 23.06.2008.

11/00415/MSC Erection of detached dwellinghouse (07/01160/OPP) Approved subject to Conditions on 19.08.2011.

13/00427/PP Amendment to house type on planning permission N/11/00415/MSC to form 2 dormers to front elevation, additional bay window and reduction in size of lay-by Approved subject to Conditions on 13.09.2013.

3. Analysis

The proposal requires to be considered in terms of the adopted Local Development Plan policy ENV2 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 includes a supporting statement which offers a 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) since it was built around 5 years ago, the house has been occupied in association with the rural business against which it was justified;
- (ii) the associated agricultural unit continues to be operated;
- (iii) the occupancy restriction has caused difficulty for the owner in achieving finance for his planned investment in the agricultural unit, since lenders advise that the house cannot be used as a security against borrowing;
- (iv) Scottish Government advice dating from 2011 indicates that little weight should now be afforded to the use of occupancy conditions for housing in the countryside. Instead, the planning considerations should focus on siting, design, environmental impacts, access and so on.

Requests to remove such occupancy restrictions should normally take into consideration the following factors: 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 family originally lived as tenants in a nearby farm house which was sold by its owner. The family retained agricultural land and a herd of cattle. The house, the subject of this application, was permitted to allow the operator of this farming unit to live on site. The farm unit can therefore be seen to be a long standing business with the current arrangement having been in place for around ten years and although the house was erected less than five years ago, taken with the previous occupancy of the unit, it could be considered to be a sufficiently long period following the imposition of the occupancy restriction.

The supporting statement advises that the occupancy restriction restricts the potential to raise finance against the house, which limits the potential for diversification of and investment in the farm business. Whilst removal of the restriction may result in the house being occupied in isolation from the operation of the farm unit, planning law cannot compel an owner to work farmland in his or her ownership. Should the house be split from the farm unit in the future, any proposed additional residence associated with the farm unit 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 several years and provides a reasonable level of residential amenity and outlook. It is at least 100m from the

next nearest residential property. It is also agreed that the Scottish Government's advice, in the form of the 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 obligation be discharged.

4. Full Recommendation

Approved with no Conditions



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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