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**NORTH AYRSHIRE COUNCIL**

24th April 2024

**Planning Committee**

Locality	Isle of Arran
Reference	24/00162/ALO
Application Registered	5th March 2024
Decision Due	5th May 2024
Ward	Arran

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**Recommendation**      Approved with no Conditions

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**Location**              Mannsfield Kings Cross Brodick Isle Of Arran North  
Ayrshire  
KA27 8RF**Applicant**              Mr Ronald Mann**Proposal**                Request for removal of Section 75 agreement from  
planning permission 13/00329/PP

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**1. Description**

This can be ascertained by reference to the attached plans and photographs.

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 a house.

Planning permission for a detached one and a half storey house (ref:11/00856/PP) was approved by the Planning Committee on 14th February 2012, subject to a Section 75 Agreement and conditions.

The planning permission was subsequently issued on 27th June 2012 following the signing of a legal agreement between North Ayrshire Council (NAC) and the applicant Robin Burns Gray which limited occupancy of the house to persons occupied in the horticultural business, Arran Kitchen Garden, at the location and restricted the sale or letting of the property on the open housing market.

A subsequent planning permission (ref: 13/00329/PP) was then granted for design amendments to the approved house. The case file and Report on Handling of that application details that a request was also made at the time to amend the existing legal agreement to reflect that the house would be occupied by the new owner of the business, Ronald Mann, but that the previous owner Mr Gray would continue to be involved in the business. However, NAC Legal advice was that the existing legal agreement remained sufficient, and that such amendment was not therefore necessary. 13/00329/PP was granted on 7th August 2013.

The current application to discharge the legal agreement has been made by Mr Mann on the grounds that he and his wife now wish to retire from the business due to age but wish to remain living in the house. The application states that ownership of the business and land would be transferred back to Mr Gray, who continues to live in the vicinity.

A supporting letter from Mr Gray was also submitted confirming the arrangements as above and confirming that he will continue to cultivate the land for the foreseeable future and that division of the title of the house and land would not therefore affect the operation of the business. Mr Gray also pointed out that there would be no requirement for a further house as he continues to live 200m from the business.

Mannsfield is sited in a rural grouping of houses, approximately 150m northeast of Whiting Bay and some 480m southwest of Kings Cross.

It is a relatively substantial 155m<sup>2</sup> detached house with a pitched roof 7.3m high but is of fairly traditional design and appearance. It is sited 19m back from the unclassified road, benefits from a private driveway and c.1250m<sup>2</sup> of private garden and is bounded by dwellinghouses to both sides, land of the horticultural business to the rear (north) and by the foreshore to the front (south).

The applicants have applied for discharge of the legal agreement on the following grounds:

- Changes in the business. Since the business has become established, there is a reduced labour workload requirement. This is not expanded upon;
- Due to the imminent complete retirement of the applicants from the business, the workforce will be reduced from four to two people;
- The applicants wish to split the title, thereby allowing Mr Gray to continue with the business and allowing them to pass the house Mannsfield and its garden ground on to family without title burden;
- The applicants do not consider that there would be any amenity issues arising from the removal of the occupancy restriction.

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 policies are Strategic Policy 1: the Countryside Objective and Strategic Policy 2: Placemaking.

## Relevant Planning History

11/00856/PP for Erection of one and half storey detached dwellinghouse with associated drainage, access & parking Approved subject to Conditions on 27.06.2012.

13/00329/PP for Amendment to planning permission N/11/00856/PP to amend house type Approved subject to Conditions on 07.08.2013.

## Relevant Development Plan Policies

SP1 - The Countryside Objective  
The Countryside Objective

We recognise that our countryside areas play an important role in providing homes, employment and leisure opportunities for our rural communities. We need to protect our valuable environmental assets in the countryside while promoting sustainable development which can result in positive social and economic outcomes. We want to encourage opportunities for our existing rural communities and businesses to grow, particularly on Arran and Cumbrae, and to support these areas so that they flourish.

We also recognise that, in general, countryside areas are less well suited to unplanned residential and other developments because of their lack of access to services, employment and established communities. We will seek to protect our prime and locally important agricultural land from development except where proposals align with this spatial strategy. In principle, we will support proposals outwith our identified towns and villages for:

- a) expansions to existing rural businesses and uses such as expansions to the brewery and distillery based enterprises in the area.
- b) ancillary development for existing rural businesses and uses, including housing for workers engaged in agriculture or forestry.
- c) developments with a demonstrable specific locational need including developments for renewable energy production i.e. wind turbines, hydroelectric schemes and solar farms.
- d) tourism and leisure uses, where they would promote economic activity, diversification and sustainable development, particularly where they develop our coastal tourism offer/ infrastructure.
- e) developments which result in the reuse or rehabilitation of derelict land or buildings (as recognised by the Vacant and Derelict Land Survey) for uses which contribute to the Green and Blue Network such as habitat creation, new forestry, paths and cycle networks.
- f) sensitive infilling of gap sites consolidating existing developments where it would define/provide a defensible boundary for further expansion.
- g) small-scale expansion of settlements on Arran and Cumbrae for community led proposals for housing for people employed on the island, where a delivery plan is included, and infrastructure capacity is sufficient or can be addressed by the development and where the proposal meets an identified deficiency in the housing stock and is required at that location. All proposals will be expected to demonstrate the identified housing need cannot be met from the existing housing land supply.
- h) new housing in the countryside where it is a replacement or converted building or it is a house of exceptional design quality.

i) sympathetic additions to existing well-defined nucleated groups 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. Additions will be limited to 50% of dwellings existing in that group as of January 2005 up to a maximum of four new housing units (rounded down where applicable).

## Strategic Policy 2

### Placemaking

Our Placemaking policy will ensure we are meeting LOIP priorities to make North Ayrshire safer and healthier by ensuring that all development contributes to making quality places. The policy also safeguards, and where possible enhances environmental quality through the avoidance of unacceptable adverse environmental or amenity impacts. We expect that all applications for planning permission meet the six qualities of successful places, contained in this policy. This is in addition to establishing the principle of development in accordance with Strategic Policy 1: Spatial Strategy. These detailed criteria are generally not repeated in the detailed policies section of the LDP. They will apply, as appropriate, to all developments.

### Six qualities of a successful place

#### Distinctive

The proposal draws upon the positive characteristics of the surrounding area including landscapes, topography, ecology, skylines, spaces and scales, street and building forms, and materials to create places with a sense of identity.

#### Welcoming

The proposal considers the future users of the site and helps people to find their way around, for example, by accentuating existing landmarks to create or improve views (including sea views), locating a distinctive work of art in a notable place or making the most of gateway features to and from the development. It should also ensure that appropriate signage and lighting is used to improve safety and illuminate attractive buildings.

#### Safe and Pleasant

The proposal creates attractive places by providing a sense of security, including by encouraging activity, considering crime rates, providing a clear distinction between private and public space, creating active frontages and considering the benefits of natural surveillance for streets, paths and open spaces.

The proposal creates a pleasant, positive sense of place by promoting visual quality, encouraging social and economic interaction and activity, and by considering the place before vehicle movement.

The proposal respects the amenity of existing and future users in terms of noise, privacy, sunlight/daylight, smells, vibrations, glare, traffic generation, and parking. The proposal sufficiently investigates and responds to any issues of ground instability.

#### Adaptable

The proposal considers future users of the site and ensures that the design is adaptable to their needs. This includes consideration of future changes of use that may involve a mix of densities, tenures, and typologies to ensure that future diverse but compatible uses can be integrated including the provision of versatile multi-functional greenspace.

#### Resource Efficient

The proposal maximises the efficient use of resources. This can be achieved by re-using or sharing existing resources and by minimising their future depletion. This includes consideration of technological and natural means such as flood drainage systems, heat networks, solar gain, renewable energy and waste recycling as well as use of green and blue networks.

#### Easy to Move Around and Beyond

The proposal considers the connectedness of the site for people before the movement of motor vehicles, by prioritising sustainable and active travel choices, such as walking, cycling and public transport and ensuring layouts reflect likely desire lines, through routes and future expansions.

## 2. Consultations and Representations

There is no statutory requirement for neighbour notification or other publicity for this type of application and no consultations were required.

**Publicity:-** Not Advertised

**Site Notices:-** No Site Notice

## 3. Analysis

Essentially, the proposal is to allow on-going occupation of a house by the inhabitants of the past 11 years who would no longer be directly involved in the operation of the business against which it was originally justified.

The proposal requires to be considered in terms of Strategic Policy 1: the Countryside Objective and Strategic Policy 2: Placemaking in the adopted Local Development Plan.

SP1 accepts new development in the countryside which is ancillary to existing rural uses and the house was initially justified and approved in these terms as being intended to support the existing business operation. The policy does not specifically address a change in circumstances such as is requested here.

In terms of the requested removal of the occupancy condition, the following points are therefore considered to be material:

- (i) Since it was initially built eleven years ago, the house has been occupied in association with the rural business against which it was justified;
- (ii) The associated business continues to operate but business changes indicate that there is no longer a need for two houses;
- (iii) Retention of the occupancy restriction would cause difficulty for the ageing applicants' family due to the requirement to retain a link to a business with which they are no longer involved;
- (iv) Since the time of the original approval, Scottish Government advice, in a 2011 letter from the Chief Planner to local authorities, 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 etc.

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 house was granted in 2012 and was justified against the needs of the business at that time. It has since been occupied on the terms it was approved and it is accepted that business circumstances can change in a period of eleven years and that retirement due to age is a valid reason. It is therefore accepted that the house has been occupied in line with the agreement for a sufficiently long period following the imposition of the occupancy restriction.

The circumstances of the farm business have changed, as has national planning policy and guidance on rural housing and, as stated by the original and again prospective owner, Mr Gray, there would not be any specific risk to the existing horticultural business unit arising from the removal of the restriction.

The proposal relates to an existing house which was already considered and approved against the Local Development Plan at the time of application and this application does not therefore raise any significant strategic planning issues in terms of Strategic Policy 1.

In terms of siting and amenity, the house is of relatively traditional design appropriate to the surrounding built environment in this part of the countryside, which is fairly close to the eastern edge of the general urban area of Whiting Bay and also provides a good level of residential amenity and outlook which would be unchanged by the requested removal of the occupancy restriction. It does not adversely impact on the privacy or residential amenity of any other properties.

The proposal also therefore complies with Strategic Policy 2: Placemaking in the LDP.

The application has also been assessed against the approved National Planning Framework 4 and it has been determined that the proposal does not raise any significant strategic planning issues which conflict with the foregoing assessment.

The proposal therefore accords with the Development Plan.

Again, it is noted that the Chief Planner's most recent 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

Allan Finlayson  
Chief Planning Officer

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

## Appendix 1 – Location Plan

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