
NORTH AYRSHIRE COUNCIL

22nd May 2024

Planning Committee

Locality	Garnock Valley
Reference	24/00331/PP
Application Registered	19th April 2024
Decision Due	19th June 2024
Ward	Garnock Valley

Recommendation	Approved with no Conditions
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Location	'Endmoor', Lochlibo Road, Burnhouse KA15 1LF
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Applicant	Mrs Patricia Wilson
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Proposal	Section 42 application to remove agricultural occupancy restriction for dwellinghouse granted under condition 1 of planning permission 02/00232/PP
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1. Description

The application seeks permission to delete a condition that was imposed on a planning permission granted in 2002 for the erection of a dwellinghouse within the settlement of Burnhouse (ref. 02/00232/PP).

The condition limits the occupation of the house to a person employed in an agricultural contractors business and reads as follows:

“That the occupancy of the dwellinghouse hereby approved shall be restricted to a person who owns or is employed by the agricultural contractors business of which the application site forms part of the premises, or a person last employed by that business, or a dependent of such a person residing with him or her, or a widow or widower of such a person.

Reason: To restrict the development to the terms of its justification/special need.”

The applicant seeks its removal given that the use of such conditions is no longer regarded as appropriate, as per the advice of the Scottish Government's Chief Planner (issued in 2010). A supporting statement to this effect has been provided with the application.

An application under Section 42 of the Act, if granted, creates a new planning permission without altering the conditions on the previously granted permission. The planning authority must consider "only the question of the conditions to which planning permission should be granted."

The application site is allocated as countryside in the Adopted Local Development Plan (LDP) and therefore the Countryside Objective of Strategic Policy 1 (Spatial Strategy) applies. National Planning Policy 4 is also relevant.

2. Consultations and Representations

The application was subject to the statutory neighbour notification procedures, and included an advertisement in a local newspaper. No representations were received. No consultations required to be undertaken.

3. Analysis

Section 42 of the Town and Country Planning (Scotland) Act 1997 is a mechanism which allows for the submission of a planning application for the development of land without complying with condition(s) subject to which a previous permission was granted. As noted above, Section 42 of the Act stipulates that in this type of application the "planning authority shall consider only the question of the conditions subject to which permission should be granted." The main determining issue in this case is whether the removal of the condition would accord with the relevant development plan policies.

Strategic Policy 1, the spatial strategy of the adopted Local Development Plan (LDP), states under the Countryside Objective that housing for workers engaged in agriculture or forestry is appropriate development. The policy goes on to state that sensitive infilling of gap sites consolidating existing developments where it would define/provide a defensible boundary for further expansion can be supported.

In this case, the house was developed over twenty years ago. The intended occupant was a worker engaged in an agricultural contractors business along with their family. Burnhouse is a rural hamlet with a defined identity, built form and street plan. The other dwellings in the hamlet are not restricted with occupancy conditions, making Endmoor an anomaly within Burnhouse. As such, there is no convincing reason to retain the condition. It is therefore considered that the proposal would accord with Strategic Policy 1,

This conclusion would accord with the tests for planning conditions as set out in Circular 4/1998:

- Need for a Condition
- Relevance to Planning
- Relevance to the Development to be Permitted
- Ability to Enforce
- Precision
- Reasonableness

The proposed removal of the condition would be consistent with the advice contained in NFP4 in that decisions on applications should be taken on their planning merits rather than on the occupancy of a development.

It is therefore recommended that the application is granted. No further conditions require to be attached since the only matter for consideration is the occupancy condition.

4. Full Recommendation

Approved with no Conditions

Allan Finlayson
Chief Planning Officer

For further information please contact Mr A Hume Planning Officer on 01294 324318.

Appendix 1 – Location Plan

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