

The Highland Council

**North Planning Applications Committee
15 September 2015**

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| Agenda Item | 5.2 |
| Report No | PLN/051/15 |

**15/00435/S75D : Mr Ian MacDonald
Land 50m East of Woodside, West Park, Strathpeffer
Supplementary Report No 1
Report by Area Planning Manager**

SUMMARY

Description : Application to discharge planning obligation related to planning permission 12/01782/FUL – Erection of house with garage.

Recommendation - REFUSE

Ward : 06 - Wester Ross, Strathpeffer & Lochalsh

Development category : Local Development

Pre-determination hearing : Not required

Reason referred to Committee : Member Referral.

1. Background

- 1.1 Members will recall that this application was considered by the North Planning Applications Committee on 4th August 2015. Planning permission exists for a house and garage (12/01782/FUL) which was granted following the conclusion of a S75 planning obligation to tie the house to the agricultural unit (delegated report attached). The applicant has advised he has been struggling to secure a mortgage due to the S75 planning obligation, so has applied for the S75 to be discharged. The application was continued at the August meeting to allow further examination of the issues associated with lenders' concerns over the use of S75 obligations.
- 1.2 A copy of the previous report is attached.

2 Update

- 2.1 Since the last meeting we have had further correspondence with the Council of Mortgage Lenders (CML), two lenders and the Highlands Small Communities Housing Trust. In our correspondence we highlighted the presence of a release clause which allowed a S75 obligation to be discharged in the event of the lender calling up the security and exercising a power of sale.
- 2.2 Following discussions, the CML have highlighted some concerns in relation to the use of S75 obligations. They acknowledged that the existence of the release clause when lenders take possession of the property satisfied their legal requirement to have clear title. In response to feedback from the CML we have amended the

wording of our S75 obligations to make it clearer that once the S75 obligation is discharged, it is done so in perpetuity and allows clear title for any subsequent purchaser.

- 2.3 The CML highlighted that the presence of the release clause in the S75 obligation addresses their legal requirements to ensure “clear” title if selling the property as a lender in possession. However, they have made it clear that the willingness of lenders to lend will be influenced by the individual circumstances of each applicant both in terms of their ability to pay as well as the individual characteristics of the relevant site. In addition it is apparent that factors which can be perceived to have an adverse impact on the potential resale value of the property will also be considered by lenders when deciding whether or not to lend.
- 2.4 Following receipt of correspondence from two lenders highlighting they would not offer funding where a S75 obligation was involved, we wrote to both Scottish Building Society (SBS) and the Halifax. The SBS have acknowledged receipt of our correspondence but have not yet formally responded.
- 2.5 The applicants provided correspondence from the Halifax, who had declined their funding request on the basis of the the S75 obligation. Initially they stated that this was due to the S75 restricting ownership/occupation linked to the management of the farm and that tying the land to the house was not suitable for mortgage purposes. They considered that although there was provision of a release clause, if re-possession occurred to allow the lender to take possession and dispose of the house separately from the land; this did not allow for a valuation on market value. The basis of valuation would become “forced sale value” and not “market value”.
- 2.6 We sought to clarify this position by writing directly to the lender to advise that there was no occupancy restriction, the S75 obligation ensured the house remained with the land and highlighted the presence of the release clause. In their response the Halifax stated that they do lend where there are S75 agreements in place. They also acknowledged that the release clause was unequivocal in removing heritable rights and allowed for a clean title for the disposal of the property if the lender took possession following non payment. They advised, however, that the presence of the S75 obligation was such that the house could only be sold with the farm in circumstances other than a forced sale. Therefore, in cases where the owner may be in financial difficulties they could not dispose of the house separately from the land unless the bank took possession. It is stated that the presence of the S75 obligation resulted in there being no active market for the property and therefore no active value could be attributed to it.
- 2.7 We have sought to clarify this position with the Halifax. Where funds are provided by a lender it is clearly the case they need to minimise risk. What is unclear is, if the lender can cover the value of the security, why they remain concerned. In those instances where a lender takes possession of a property, there would no longer be any link between the house and the land. The house could be disposed of separately in such circumstances.
- 2.8 As a Planning Service we are keen to address and resolve obstacles for applicants to enable them to progress developments which accord with Council policy and recognise we may require to have regard to other factors in the future in the assessment of suitable sites for houses. We welcome the offer by the Halifax to discuss these issues further to see if the challenges presented can be overcome.

The Planning Service is keen to pursue this avenue directly with the Halifax along with other interested parties.

- 2.9 In addition to our discussions with lenders we sought an update from the Highlands Small Communities Housing Trust and Scottish Government with regard to the proposed launch of the Scottish Government's pilot scheme in Highland for a Self Build Loan Fund. We have been advised that the scheme is intended to be a short term pilot (2 years funding available - £4m in total).
- 2.10 The intention is that the fund would be available to enable applicants to build and take occupation of their houses. Thereafter, once the house was complete, it would be for the applicants to secure a mortgage from lenders in the usual manner. The aim is to reduce the risk for lenders who are then asked to provide a mortgage on a completed house rather than a self build project.
- 2.11 The scheme will be administered by the Highland Small Communities Housing Trust (HSCCT). Issues with the Financial Control Authority Regulator (FCAR) regarding the fund have now been resolved. The formal agreement between Scottish Government and HSCCT is currently being reviewed to ensure compliance with the FCAR. It is hoped that this will be concluded within the next 6-8 weeks. Work has already started on how the fund will be administered by HSCCT. Once the contract has been signed applications for such financial assistance can be made.
- 2.12 To be eligible for support, applicants would need to:
- Wish to build a home in the Highland Council area.
 - Have full land ownership (or scope to secure this), allowing a first ranking security to be taken
 - Have planning permission and a building warrant in place to allow work on the project to commence quickly.
 - Have fully costed proposals and scope to put contracts in place with reputable companies to undertake work – these would be assessed by the appointed agent.
 - Show that standard bank lending was not available to support their project, so as to avoid displacement:
 - Demonstrate however that a lender would be willing to lend on the completed house.
 - Show that the amount of finance required for the project was less than £150,000

It is considered that the establishment of this fund would be a significant and welcome boost to enable people in the Highlands to build their own homes and therefore we are fully supportive of its aims and objectives.

3 **Conclusion**

- 3.1 The Planning Service acknowledges and accepts that lenders reserve the right to decline to offer financial support for proposals which do not meet their financial criteria. We are keen to ensure that the presence of a S75 planning obligation should not exclude that option.

- 3.2 The Planning Service notes and welcomes the comments and views of both the Halifax and the Council of Mortgage Lenders. Both acknowledge the presence of the S75 obligation in itself does not prevent lending being offered and that the release clause allows for a clean title in the event of a property being repossessed by the lender. What remains unresolved at present is the concerns of lenders on how a S75 obligation can impact on market values, even when the release clause is considered. We will continue to explore and discuss a meaningful way forward with regard to this both with the CML and Lenders
- 3.3 Regrettably it has not been possible in this specific case to resolve and address the applicant's concerns. Clearly they are disappointed about the prolonged nature of discussion and the time which has elapsed to date. Whilst we have sympathy with the applicant's circumstances, in the absence of an appropriate resolution of the Planning Services' concerns to allow for dispensation of the S75 obligation we are not in position to support the applicant's request for its removal.
- 3.4 All relevant matters have been taken into account when appraising this application. It is considered that the proposal does not accord with the principles and policies contained within the Development Plan and is unacceptable in terms of applicable material considerations.
- 3.5 It is recommended that permission be refused.

4. RECOMMENDATION

Action required before decision issued N

It is recommended the original recommendation that the application be **REFUSED** should remain for the following reason:

1. Policy 35 of the Highland-wide Local Development Plan presumes against housing in the hinterland unless it complies with at least one of the recognised policy exceptions (as detailed in the Council's adopted Supplementary Guidance: Housing in the Countryside and Siting and Design). The house and garage the subject of 12/01782/FUL were permitted in recognition of the special circumstances demonstrated in relation to land management requirements.

The erection of a house and garage which are not tied to the agricultural unit by means of a Section 75 Planning Obligation is contrary to paragraph 6.38 of the said adopted Housing in the Countryside and Siting and Design Supplementary Guidance made under Policy 35 of the Highland-wide Local Development Plan which presumes against new houses within the hinterland without a restriction that ties the proposed house to the land which justified its approval.

Signature:

Designation: Area Planning Manager North

Author: Dafydd Jones

Background Papers: Documents referred to in report and in case file.

Relevant Plans: Plan 1 – location plan

Plan 2 – site layout plan

PLANNING AND DEVELOPMENT SERVICES

REPORT OF HANDLING

| | | | | | |
|---------------------------|--|--|---|-------------------|--------------|
| Reference: | 12/01782/FUL | Case Officer | Rebecca Hindson | Tel. | 01408 635372 |
| Address: | Land 50M East Of Woodside, West Park, Strathpeffer, IV14 9BU | | | | |
| Proposal: | Erection of house with garage | | | | |
| Ward: | 06 - Wester Ross, Strathpeffer and Lochalsh | | | | |
| Advertised: | Potential departure Unknown Neighbour | Closing Date for Reps: 03.08.2012 | | | |
| Timeous Reps: | For: 0 | Against: 0 | | Neutral: 0 | |
| Target Date: | 05.09.2012 | Met: N | Reason not met: Section 75 Legal agreement | | |
| Quality Indicator: | | | | | |

Planning History

YES

NO

Details:

DEVELOPMENT PLAN

Highland- wide Local
Development Plan:

ACCORD

CONFLICT

Policies: 28 (Sustainable Design)
35 (Housing in the Countryside (Hinterland Areas))

Ross & Cromarty Easy
Local Plan Local Plan:

Policies: Hinterland area

Additional Policy/Supplementary Guidance

National Planning Policy
Housing in the Countryside and Siting and
Design Guidance

ACCORD

CONFLICT

CONSULTATIONS

| | CONSULTED | NO OBJECTIONS | OBJECTIONS | RESOLVED |
|-------------------------|-------------------------------------|-------------------------------------|--------------------------|--------------------------|
| Scottish Water | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Agricultural Consultant | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

ASSESSMENT

| | | | | | |
|---|--|---|-----------------------------------|---|-------------------------|
| Date of Site Visit: | | October 2012 | | | |
| Site Description: | | The site is an agricultural field located at the edge of the West Park area, Strathpeffer. Levels rise gradually upwards from Park Road towards the site, which itself is relatively level. The original 1¼ storey stone farmhouse and a cluster of agricultural buildings lie to the south-west of the site. Blackmuir Wood lies to the south of the site. | | | |
| Material Considerations: | | The planning assessment takes account of the following and other matters identified in the main issues section: | | | |
| x | Layout | x | Consultee comments | | Conservation area |
| x | Design and materials | x | Car parking, access and servicing | | Listed building |
| x | Trees and landscaping | | Noise | x | Infrastructure/drainage |
| x | Residential amenity/impact on neighbours | | Privacy/Day-lighting | | Planning history |
| | Representations | | Public Safety | | Other: |
| <p>Proposal The application seeks detailed consent for a 1¼ storey detached house on the edge of Strathpeffer, within the designated hinterland.</p> <p>Policy Policy 28 (Sustainable Design) of the HWLDP aims to ensure that development is sustainable and lists the criterion against which proposals shall be assessed. The parts of the policy of particular relevance to this proposal state that proposals should be assessed on the extent to which they “impact on individual and community residential amenity” and “demonstrate sensitive siting and high quality design in keeping with local character’.</p> <p>Policy 35 (Housing in the Countryside (Hinterland Areas)) states that the Council will presume against housing in the open countryside of the hinterlands around towns. The policy then lists the exceptions, including, “a house which is essential for land management or family purposes related to the management of land”. The exceptions to the policy are outlined in more detail within the Housing in the Countryside Siting and Design Guidance.</p> <p>The application was accompanied by an operational needs assessment, which outlined a case for a house on the holding based on family succession purposes. In this particular instance, the applicant has taken over the day to day running of the enterprise from his father, who still wished to reside on the farm. Development plan policy does allow for housing required for succession purposes. The agricultural consultant queried the labour unit calculation contained in the SAC report and suggested that the holding could only warrant 0.67 labour units as opposed to 1.08 labour units. This seems likely and the application does state that the applicant’s intention is to still do some part-time joinery work. The agricultural consultant also commented that being resident on site would provide security against theft, vandalism, and provide necessary welfare requirements for livestock. Even though the applicant’s father is still resident on the site and could meet the animal welfare requirements regardless of his absence from in the day to day running of the holding, it is accepted that there is a desire for this element of the operation to also be part of the succession for reasons of practicality. The proposal is considered to comply with Development plan policy and the Housing in the Countryside Guidance.</p> <p>A section 75 legal agreement is considered necessary to tie the new house to the agricultural holding.</p> <p>Design and materials The 1¼ storey 4 bedroom house takes a traditional T-shape form, with a 45° roof pitch and pitched roof porch and dormers. The south-east projections are stepped down in ridge height, which helps to break up the mass and scale of the building. The design seeks to replicate a vernacular property and takes cues from the adjacent 1¼ storey farm house. The house is to be finished in a traditional white wet harl</p> | | | | | |

and natural slate and shall have timber windows and doors. The design and materials are considered to be sympathetic to the character and appearance of the location and are therefore considered to be acceptable.

Access/parking/drainage

Access is via a well maintained private track leading to the existing farm. There is ample space in the site for the parking and turning of two vehicles.

Trees/landscaping

Boundaries are to be delineated by post and wire fencing and planting and screening around the boundary has been shown on the site plan. A more detailed planting schedule is required, as the proposal will benefit from planting to screen the house from Park Road below and soften its impact.

Supporting information – Operational Needs Assessment

Third party comments – None

Section 75 Agreement – Yes- ties house to agricultural unit

Variations - None

Conclusion - All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

It is recommended that permission be granted.

DELEGATED DECISION

Decision Grant subject to conditions

Action required before decision issued? Y

Notification to Scottish Ministers N Reason :

Notification to Historic Scotland N Reason :

Referral to Ward Members N Reason :

Conclusion of Section 75 Agreement Y Reason : Compliance with policy. To tie house to agricultural holding.

Revocation of previous permission N Reason :

SIGNATURE

Rebecca Hindson: _____

Date:

Julie Ferguson: _____

Date:

CONDITIONS AND REASONS RELATIVE TO APPLICATION 12/01782/FUL

1. The external walls of the house shall be finished in white or off-white wet harl, unless otherwise agreed in writing with the Planning Authority as a non-material variation.

Reason: For the avoidance of doubt and in order to ensure that the development harmonises with the character and appearance of the area.

2. The roof shall be finished in natural slate. No development shall commence until a sample of the slate is submitted to, and approved in writing by the Planning Authority. Thereafter, development shall progress in accordance with the agreed details.

Reason: For the avoidance of doubt and in order to ensure that the development harmonises with the character and appearance of the area.

3. Prior to the first occupation of the development hereby approved, the car parking and access arrangements detailed on approved plan ref 102 D shall be completed in full and made available for use. Thereafter, all car parking spaces shall be maintained for this use in perpetuity.

Reason: To ensure that an adequate level of access is timeously provided for the development; in the interests of road safety and amenity.

4. No development shall commence until details of a scheme of hard and soft landscaping works have been submitted to, and approved in writing by, the Planning Authority. Details of the scheme shall include:

- i. All earthworks and existing and finished ground levels in relation to an identified fixed datum point;
- ii. A plan showing existing landscaping features and vegetation to be retained;
- iii. The location and design, including materials, of any existing or proposed walls, fences and gates;
- iv. All soft landscaping and planting works, including plans and schedules showing the location, species and size of each individual tree and/or shrub and planting densities; and
- v. A programme for preparation, completion and subsequent on-going maintenance and protection of all landscaping works.

Landscaping works shall be carried out in accordance with the approved scheme. All planting, seeding or turfing as may be comprised in the approved details shall be carried out in the first planting and seeding seasons following the commencement of development, unless otherwise stated in the approved scheme.

Any trees or plants which within a period of five years from the completion of the development die, for whatever reason are removed or damaged shall be replaced in the next planting season with others of the same size and species.

Reason: In order to ensure that a high standard of landscaping is achieved, appropriate to the location of the site.

REASON FOR DECISION

The proposals accord with the provisions of the Development Plan and there are no material considerations which would warrant refusal of the application.

TIME LIMITS

LIMIT FOR THE IMPLEMENTATION OF THIS PLANNING PERMISSION In accordance with Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended), the development to which this planning permission relates must commence within THREE YEARS of the date of this decision notice. If development has not commenced within this period, then this planning permission shall lapse.

Initiation and Completion Notices

The Town and Country Planning (Scotland) Act 1997 (as amended) requires all developers to submit notices to the Planning Authority prior to, and upon completion of, development. These are in addition to any other similar requirements (such as Building Warrant completion notices) and failure to comply represents a breach of planning control and may result in formal enforcement action.

1. The developer must submit a Notice of Initiation of Development in accordance with Section 27A of the Act to the Planning Authority prior to work commencing on site.
2. On completion of the development, the developer must submit a Notice of Completion in accordance with Section 27B of the Act to the Planning Authority.

Copies of the notices referred to are attached to this decision notice for your convenience.

FOOTNOTE TO APPLICANT

Accordance with Approved Plans & Conditions

You are advised that development must progress in accordance with the plans approved under, and any conditions attached to, this permission. You must not deviate from this permission without consent from the Planning Authority (irrespective of any changes that may separately be requested at the Building Warrant stage or by any other Statutory Authority). Any pre-conditions (those requiring certain works, submissions etc. prior to commencement of development) must be fulfilled prior to work starting on site. Failure to adhere to this permission and meet the requirements of all conditions may invalidate your permission or result in formal enforcement action.

Flood Risk

It is important to note that the granting of planning permission does not imply there is an unconditional absence of flood risk relating to (or emanating from) the application site. As per Scottish Planning Policy (p.198), planning permission does not remove the liability position of developers or owners in relation to flood risk.

Scottish Water

You are advised that a supply and connection to Scottish Water infrastructure is dependent on sufficient spare capacity at the time of the application for connection to Scottish Water. The granting of planning permission does not guarantee a connection. Any enquiries with regards to sewerage connection and/or water supply should be directed to Scottish Water on 0845 601 8855.

Septic Tanks & Soakaways

Where a private foul drainage solution is proposed, you will require separate consent from the Scottish Environment Protection Agency (SEPA). Planning permission does not guarantee that approval will be given by SEPA and as such you are advised to contact them direct to discuss the matter (01349 862021).

Local Roads Authority Consent

In addition to planning permission, you may require one or more separate consents (such as dropped kerb consent, a road openings permit, occupation of the road permit etc.) from TECS Roads prior to work commencing. These consents may require additional work and/or introduce additional specifications and you are therefore advised to contact your local TECS Roads office for further guidance at the earliest opportunity.

Failure to comply with access, parking and drainage infrastructure requirements may endanger road users, affect the safety and free-flow of traffic and is likely to result in enforcement action being taken against you under both the Town and Country Planning (Scotland) Act 1997 and the Roads (Scotland) Act 1984.

Further information on the Council's roads standards can be found at:

<http://www.highland.gov.uk/yourenvironment/roadsandtransport>

Application forms and guidance notes for access-related consents can be downloaded from:

<http://www.highland.gov.uk/yourenvironment/roadsandtransport/roads/Applicationformsforroadoccupatation.htm>

Mud & Debris on Road

Please note that it is an offence under Section 95 of the Roads (Scotland) Act 1984 to allow mud or any other material to be deposited, and thereafter remain, on a public road from any vehicle or development site. You must, therefore, put in place a strategy for dealing with any material deposited on the public road network and maintain this until development is complete.

CHECK SHEET FOR PREPARING AND ISSUING DECISION

| | |
|--------------------|-----------------------------|
| Application Number | 12/01782/FUL |
| Decision Date | |
| Decision | Grant subject to conditions |
| Decision Type | Delegated |

Date signed by AM/TL or
Committee date

| Don't Issue Decision | Tick if relevant | Action (tick) | Date sent |
|------------------------------------|------------------|---------------|-----------|
| Notification to Scottish Ministers | | | |
| Notification to Historic Scotland | | | |
| Refer to Ward Members | | | |
| Section 75 Obligation | | | |
| Revocation | | | |

| Issue Decision | | Tick | Standard Conditions/Notes to include | | | | |
|----------------|---------------------------|--------------|--------------------------------------|------------|----------------|---------|---------|
| Tick | Dev/Decision Type | Time Scale * | Initiation | Completion | Display Notice | 1A & 2A | 1B & 2B |
| | | | Only use if FUL/AMSC & Granted | | | | |
| | National | | | | | | |
| | Major | | | | | | |
| | Local – Sch.3 - Committee | | | | | | |
| | Local – Sch.3 – Delegated | | | | | | |
| | Local – Committee | | | | | | |
| | Local – Delegated | ✓ | ✓ | ✓ | | ✓ | |

*standard time condition not required if application retrospective.

| Include with Decision Notice | |
|---------------------------------|---|
| Terms of Section 75 | |
| Summary of Variations made | |
| Notification of Initiation Form | ✓ |
| Notification of Completion Form | ✓ |
| Notice for Display | |
| Roads Schedule | |
| Contaminated Land Form | |
| Private Water Supply Form | |
| Archaeology Guidance | |
| Other: | |

| Notify of Decision | |
|------------------------|--|
| Objectors/Contributors | |
| Community Council | |
| Roads | |
| Scottish Water | |
| SEPA | |
| | |
| | |
| Ongoing Monitoring | |
| Other: | |

| Total residential units FP3 | | | |
|-----------------------------|---|------------|---|
| Houses | 0 | Sheltered | 0 |
| Flats | 0 | Affordable | 0 |