

Planning and Environmental Appeals Division

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Mr S Hadfield
Highland Council
Sent By E-mail

Our ref: POA-270-2005

17 February 2016

Dear Ms Hadfield

PLANNING OBLIGATION APPEAL: LAND 50M EAST OF WOODSIDE WEST PARK STRATHPEFFER

Please find attached a copy of the decision on this appeal.

The reporter's decision is final. However you may wish to know that individuals unhappy with the decision made by the reporter may have the right to appeal to the Court of Session, Parliament House, Parliament Square, Edinburgh, EH1 1RQ. An appeal **must** be made within six weeks of the date of the appeal decision. Please note though, that an appeal to the Court of Session can only be made on a point of law and it may be useful to seek professional advice before taking this course of action. For more information on challenging decisions made by DPEA please see <http://www.gov.scot/Topics/Built-Environment/planning/Appeals/ourperformance/commentsandcomplaints>.

Your attention is drawn to the advisory note at the end of the decision notice. The advisory note confirms that the determination does not come into effect until the date the notice is given and registered in the Land Register of Scotland.

I trust this information is clear. Please do not hesitate to contact me if you require any further information.

Yours sincerely

Jane Robertson

JANE ROBERTSON
Case Officer
Planning and Environmental Appeals Division



Determination by Don Rankin, a Reporter appointed by the Scottish Ministers
Appeal under S75B of the Town and Country Planning (Scotland) Act 1997

- Planning obligation appeal reference: POA-270-2005
- Site address: Land 50 metres east of Woodside, West Park, Strathpeffer, IV14 9BU
- Appeal by Ian McDonald against the decision by The Highland Council.
- Application to modify or discharge the planning obligation 15/00435/S75D dated 9 February 2015 refused by notice dated 8 October 2015
- Modification sought: discharge of obligation
- Planning obligation details: Minute of Agreement amongst (First) The Highland Council, (Second) Ian David MacDonald and Emily Deas, and (Third) Ian Corbett MacDonald and Mrs Margaret MacDonald concerning subjects at Woodside Croft, Westpark, Strathpeffer, Ross and Cromarty dated 29 November 2013 and 3 January 2014 and recorded in the General Register of Sasines for the County of Ross and Cromarty on 23 January 2014.
- Date of site visit by Reporter: 9 January 2016

Date of appeal decision: 17 February 2016

Determination

I allow the appeal and determine that the planning obligation comprising the Minute of Agreement referred to above is removed and discharged.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. Having regard to the provisions of the development plan the main issues in this appeal are: (1) whether the requirement for a Section 75 planning obligation complies with Policy 35 of the Highland-Wide Local Development Plan (HWLDP); (2) whether this requirement complies with current Scottish Planning Policy (SPP) and Circular 3/2012; and (3) whether other material considerations warrant maintaining or discharging the planning obligation.

Local Development Plan policy considerations

2. The appellant was granted permission to build a house adjacent to Woodside the family farm which he works. This was to enable him to take over from his father who wished to retire from the family business though remain living on the farm. The council accepted therefore the appraisal establishing that to enable effective land management of the agricultural holding required the appellant's building a house. Although adjacent to a substantial housing development, part of the built up area of Strathpeffer, the proposed

house is located in the 'hinterland' area in open countryside beyond the development boundary of Strathpeffer. In this area there is a presumption against new housing. The proposal was only considered to comply with Policy 35 of the HWLDP and related supplementary guidance *Housing in the Countryside: Siting and Design (2013)* if subject to a Section 75 planning obligation tying the tenure of the house to that of the adjacent farm. Discharge of the planning obligation would render the appeal property able to be sold on the open market and therefore possibly no longer available for its intended purpose of providing accommodation linked to the working of the adjacent farm. This would be contrary to Policy 35 of the HWLDP and related supplementary guidance. Adoption of the Inner Moray Firth Local Plan in July 2015 confirms the broad land allocations of the HWLDP and confirms the role of the hinterland designation with respect to this appeal.

Scottish Planning Policy and Circular 3/2012 considerations

3. The planning obligation required in this case has a seriously detrimental effect on the estimated value of the property which could be realised by any mortgage lender. As a result, the appellant cannot get a mortgage to finance completion of the house resulting in his family residing in a caravan on the site, alongside a half completed house. This is not an unusual problem and one which led the government to provide guidance from the Chief Planner in 2011 unequivocally advising against the use of conditions involving occupancy restrictions and Section 75 agreements which were designed to achieve the same purpose. This government stance is confirmed in a subsequent revision of Scottish Planning Policy (SPP). The relevant parts of SPP are paragraphs 80-83. Paragraph 81 in particular refers to development outwith settlement boundaries in areas where there is a danger of unsustainable growth in long distance car-based commuting or suburbanisation of the countryside. In such circumstances policy makers are encouraged to guide most new developments to locations within or adjacent to settlements and to set out the circumstances in which new housing outwith settlements may be appropriate, avoiding the use of occupancy restrictions.
4. The HWLDP guidance referred to in paragraph 2 above sets out firstly the necessity to justify the agricultural need for additional worker housing either to meet an identified need for on-site supervision or for family succession planning, as is the case with this appeal. Secondly for housing in the hinterland area requires a Section 75 planning obligation to tie the sale of the house to that of the agricultural enterprise needing the accommodation.
5. Notwithstanding, all such agreements are subject to the 5 tests in Circular 3/2012: *Planning Obligations and Good Neighbour Agreements*. It is very clear in relation to the first test, that of necessity, that planning obligations should not be used where planning conditions would be more appropriate. The use of conditions to restrict occupancy to those employed in agriculture, forestry and farming is strongly discouraged in SPP (paragraph 81) and the use of Section 75 agreements to restrict such occupancy is also strongly discouraged in Circular 3/2012 (paragraph 51) where it is stated that their use may introduce unnecessary burdens or restrictions. Section 75 agreements should furthermore only be used where successors in title require to be bound by the required obligation. It is noted in the circular that where additional accommodation is justified by an appropriate appraisal of need with respect to the agricultural enterprise in question, which I take to include legitimate succession planning, that should be enough without the further need for any occupancy restriction or a binding agreement in title.

6. I appreciate the council's concern that in the hinterland area pressure for housing growth in the countryside could lead to resale of such houses for commuter occupation with subsequent detrimental impact on the growth of sustainable communities. However, their fear that such a sale would lead to a succession of applications for additional housing for the same agricultural enterprise is in my view unfounded. The justification for additional worker accommodation can only be used once. Its use again following disposal of such housing would be viewed sceptically when a subsequent appraisal of the need for it was considered. Taking this together with the clear guidance in Circular 3/2012 that an appraisal of need should suffice I consider that the Section 75 planning obligation does not meet the first test of Circular 3/2012 that of necessity.

7. In that context the use by the council of a planning obligation to link sale of the house to that of the adjacent farm is introducing an unnecessary burden or restriction on occupation contrary to the requirements of SPP and Circular 3/2012.

Other material considerations

8. The need for the additional house arises not from a requirement for additional capacity for on-site employment but from the accepted need for succession planning for the family business. The council recognise that the planning obligation effectively rules out a mortgage, the usual route to funding a new home. I note the council's on-going efforts to resolve the problem of obtaining mortgage finance whilst subject to one of their Section 75 planning obligation agreements. The council's main justification for refusing the application for discharge is that it is premature to do so when the recognised mortgage problem may be resolved shortly by the inclusion of a 'lenders get out clause'. There are currently discussions between the council and mortgage lenders to resolve this issue and a council report to committee expected early in 2016. There is no convincing evidence that these discussions are likely to reach a satisfactory conclusion in the near future. The appellant is left with a half-finished house and his family residing in an on-site caravan.

9. The planning obligation is in effect preventing the implementation of the permission. The council acknowledge this by accepting that it prevents access to normal domestic mortgage finance. To grant permission with a planning obligation in place which prevents implementation in this way is unreasonable and in consequence contrary to the test of reasonableness in circular 3/2012.

Conclusion

10. I therefore conclude, for the reasons set out above, that whilst the planning obligation complies with the provisions of development plan guidance it does not accord with SPP or comply with the provisions of Circular 3/2012. These considerations, in this case, outweigh the policy of the development plan. There are no other material considerations which alter my conclusion on this. The appeal is therefore allowed and the planning obligation discharged.

Don Rankin
Reporter

Advisory note

In accordance with Section 75B of the Town and Country Planning (Scotland) Act 1997 (as amended) this determination does not take effect until the date on which this notice is given is recorded in the Register of Sasines. When submitting this deed for recording/ registration it should be identified as a 'Planning notice of determination' on the relevant application form. Further information on the General Register of Sasines and the Land Register of Scotland is available from the Registers of Scotland, www.ros.gov.uk.