

Planning and Environmental Appeals Division

Planning Obligation Appeal Notice of Determination

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

- Planning obligation appeal reference: POA-270-2006
- Site address: Cul A Mhuilinn, 7 Kinbeachie, Culbokie, Dingwall, IV7 8LS
- Appeal by Ms Rhona Annand against the failure of Highland Council to determine the application
- Application (ref:15/04389/S75D) dated 27 November 2015 sought to discharge the planning obligation
- Purpose of the planning obligation: in short, to retain in the single ownership of the appellant or her successors the house granted planning permission by the council (under ref: 07/00889/FULRC) and all of the land in her ownership at 7 Kinbeachie, Culbokie
- Planning obligation details: Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 between The Highland Council and Rhona Elaine Annand, which was executed by the parties on the 1st and 16th March 2009, and was registered in the Land Register of Scotland under title number ROS7756

Date of appeal decision: 27 June 2016

Determination

I allow the appeal and determine that the planning obligation referred to above is discharged.

Background

On 29 April 2009 planning permission was granted for the erection of a house at this site. Prior to the permission being issued, the applicant had entered into a section 75 planning obligation with the council, as outlined above. The appellant is now seeking the discharge of the planning obligation.

Reasoning

1. I consider that the determining issue in this appeal is whether the planning obligation complies with all five of the tests for planning obligations which are set out in paragraphs 14-25 of Circular 3/2012: 'Planning Obligations and Good Neighbour Agreements'. These are the tests of the planning obligation's: necessity; planning purpose; relationship to the development; scale and kind; and reasonableness.



2. The basis of the application to discharge the obligation is that it is preventing the appellant from securing the financial resources to develop her small agricultural business. This is because she cannot re-mortgage her property with the Section 75 planning obligation in place, and she cannot sell some parts of her land which are not required for her own business.

3. In its initial response to the appeal, the council explained why it considered that the Section 75 planning obligation was still consistent with each of the tests set out in the circular. In particular, its necessity was confirmed by the provisions relating to planning obligations set out in the council's adopted supplementary guidance on housing in the countryside. However, the requirement for such planning obligations was due to be re-considered by the council's planning committee in May 2016.

4. In response to a request from me, the council confirmed that, following the decision of its planning committee at its May meeting, it is now no longer pursuing Section 75 planning obligations to tie a new house to the operational land upon which applications for new houses in the countryside within pressurised development areas have been justified. The appeal site is located within one of these areas. The council also confirmed that it would now discharge such a planning obligation.

5. While this planning obligation is an agreement between the council and the appellant, the council now effectively concedes that it no longer meets the test of necessity and can be discharged. Therefore, as all five tests have to be met, for the purposes of this appeal I am not required to consider the other four tests.

Conclusion

6. In these changed circumstances, I conclude that the planning obligation is not necessary and it therefore fails to meet all five of the tests set out in the circular. Accordingly, I conclude that the planning obligation should be discharged.

DAVID A. RUSSELL
Principal Inquiry 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 registered in the Land Register of Scotland. When submitting this deed for registration it should be identified as a 'Planning notice of determination' on the relevant application form. Further information on the Land Register of Scotland is available from the Registers of Scotland at www.ros.gov.uk.