

The Highland Council
Briefing Note - Housing in the Countryside - Legal Agreements (S75s)
July 2016

1. Introduction

- 1.1 The Council's current policy approach for housing in the countryside in Hinterland areas has undergone scrutiny through two recent planning appeals. This concluded that the use of legal agreements to tie a new house to the operational land that justifies the house conflicts with national policy. In taking account of these cases along with SPP and other advice from Scottish Government, the May 2016 PDI Committee was asked to consider alternative options for dealing with such cases. The Committee subsequently agreed to remove the use of such legal agreements and adopt more stringent criteria to assess housing in the countryside in Hinterland areas. This approach will apply to all undetermined planning applications as of the date of the Committee, 11 May 2016 onwards.
- 1.2 This briefing note confirms how this new approach should be implemented until we review the Housing in the Countryside and Siting and Design Supplementary Guidance (SG) which is intended to be prepared alongside the HwLDP review.

2. Applying the SG and Additional Assessment Criteria

- 2.1 From 11 May 2016 the Council will no longer use legal agreements to tie a new house to the operational land. Instead, the Council will apply all other aspects of the SG as well as the following additional assessment criteria, all of which must be fully satisfied before an application will receive officer support. Applicants are required to prepare a Planning Statement setting out an assessment of their proposal against these criteria. Where appropriate, applicants will be required to provide a plan identifying the extent of their entire land holding in order for the assessment to be completed. This will also apply to any applications to discharge legal agreement obligations to inform the decision making process and any subsequent planning application.
- 2.2 The additional assessment criteria to be applied alongside the Supplementary Guidance are:
- 1) Site Selection, Siting & Design – Applicants must demonstrate the best possible site selection including prior consideration of the scope to renovate, convert or redevelop existing domestic or non-domestic buildings. Applicants must also demonstrate an appropriate siting and design for any house proposed regardless of operational need. A sequential approach should be followed to:
- a. Identify and consider any suitable buildings which lend themselves for conversion;
 - b. Identify and consider any opportunities for infill or rounding off either

- related to existing buildings or groupings; and
- c. Identify the most suitable site available to the applicant based on land ownership.

2) Business Case/Agricultural Needs Assessment - The applicant must include a business case or agricultural needs assessment that demonstrates why the rural business/agricultural worker needs to be accommodated on site. The business case/agricultural needs assessment will be reviewed by the Council or the Council's appointed consultants. If the strength of the agricultural needs assessment has secured lending for the business this will generally be sufficient. In instances where there is doubt surrounding the strength of the business case/agricultural needs assessment, the following assessment criteria must be applied in order to determine the suitability of proposals:

- a. A review of the planning history of the land holding. This will take into account (i) the sale of property on the holding, including properties that were specifically permitted on the grounds of a rural business / agricultural needs justification which could have housed/did house workers; and (ii) the likelihood of further applications for new housing if the original farm or business premises has been sub-divided;
- b. A review of the evidence in succession cases (i.e. on retirement of the farmer/business manager or worker) that supports further housing on the holding; and
- c. For agricultural accommodation, assessment of the size of the house to ensure this remains ancillary and proportionate to the main farmhouse.

Where an applicant does not satisfy the above criteria, the appropriateness of permitting temporary accommodation on site, to allow a new business to become established, will be considered.

Croft Houses

- 2.3 For croft houses within Hinterland areas, the above approach for an agricultural / business need will apply. As set out in Section 3 of the SG, the Council recognises that there is a genuine need to promote and support crofting communities and activities. However, we must also ensure that crofting-related development does not conflict with the Council's other policies and objectives and in particular the Housing in the Countryside policy (especially those relating to the Hinterland around towns) or result in unsympathetic development in our rural areas. A careful and balanced approach must therefore be struck.
- 2.4 Proposals for houses on crofts within our Hinterland areas, other than new crofting townships, are therefore to be considered on the same basis as any other agricultural unit. This remains the Council's position until refreshed assessment criteria, informed through further dialogue with the Crofting Commission, is set out within the revised SG.

3. Implications for Decision Making

- 3.1 a) For any undetermined planning applications the case officer will apply the criteria above alongside the existing Supplementary Guidance, and a legal agreement will not be required;
- 3.2 b) For applications for the discharge of planning obligations these will be approved where the obligation relates to tying the house to land/rural business; and
- 3.3 c) In appeals against refusal of planning applications based on failure to sign a legal agreement or refusal of discharge based on desire to retain the planning obligation, these will no longer be defended.

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