

THE HIGHLAND COUNCIL

SOUTH PLANNING APPLICATIONS COMMITTEE
8 April 2014

Agenda Item	5.1
Report No	PLS/019/14

13/01279/PIP: Jake Mitchell
Land 361m NW of Wester Hardmuir, Nairn

Report by Area Planning Manager - South

SUMMARY

Description : Erection of house

Recommendation - GRANT

Ward : 19 (Nairn)

Development category : Local

Pre-determination hearing : not required

Reason referred to Committee: Additional material information since Committee determination.

1. BACKGROUND

- 1.1 This application was first considered by Committee at the meeting held on 25 June 2013 and continued for the submission of an independent Operational Needs Assessment. Consideration was resumed at the meeting held on 26 November 2013, at which time Members agreed to grant planning permission in principle subject to the prior conclusion of a Section 75 Agreement to tie the house plot to the rest of the farm and farm shop business.

2. UPDATE

- 2.1 Following Committee's decision the applicant was requested to provide copies of the title documents for the property so that Legal Services could be instructed to prepare a draft Agreement. The documents requested were an executed disposition of the house plot in the applicant's favour, as well as the title deeds to the rest of the farm.

- 2.2 The applicant's Solicitors forwarded a copy of the title to the plot only, but as the disposition contains references to the whole of the farm, Legal Services were asked to check it and confirm whether it provided sufficient information. Legal Services' response, however, pointed out that the disposition has the effect of separating the plot from the rest of the farm. The disposition is burdened with a pre-emption clause in favour of the owners of the farm, but there is no obligation on the latter to actually exercise their right to buy back the plot and the house which would stand on it.
- 2.3 Legal Services' advice was that if Committee's requirements were that the site is not sold off separately from the farm, it could not rely on the right of pre-emption to secure that – or rather, to re-secure that, since the disposition was signed and sent for Registration in October 2013, i.e. before Committee determined the application.
- 2.4 Legal Services were able to provide an example of a draft Section 75 Agreement which has been prepared for a comparable case elsewhere in the Highlands and which would have resolved the issue. If applied to Wester Hardmuir it would have involved the owners of the farm and farm shop becoming parties to the Agreement. The applicants would undertake not to sell the house independently of the sale of the farm; farm owners would undertake not to sell the farm independently of the sale of the house; and both would undertake that the house and farm could only be disposed of as a single unit. The Agreement included a specific clause providing that if the applicants were to acquire the farm by whatever means (sale or inheritance or otherwise) it would be consistent with the agreement. It also included a clause whereby a heritable creditor (i.e. mortgage lender) could sell the house separately from the farm in the event of repossession on default of mortgage payments. Banks/building societies generally consent to these types of Agreements once they realise this clause is included.
- 2.5 This option was put to the applicant but after consulting his Solicitor he has confirmed that he would not be willing to enter into the Agreement proposed. He stated that the burden proposed was "unacceptable" and reported advice from a farming mortgage specialist that such agreements drastically reduce the number of lenders available. A further issue for him is that the two lenders which Legal Services suggested that the applicant should contact would not provide mortgages for self build projects, which is the applicant's intended building process.

3. OPTIONS APPRAISAL

- 3.1 In light of these new material facts it is necessary for Members to consider the following options for disposal of the application:
- To grant permission without a Section 75 Agreement or any other form of linkage to the farm business;
 - To grant permission without a Section 75 Agreement but with some form of occupancy condition;
 - To refuse permission.

- 3.2 The options have to be considered in relation to the requirements of the relevant supplementary guidance (SG). Whether a house is justified on agricultural grounds (paras. 6.37 – 6.40) or rural business grounds (paras. 6.44 – 6.48) the SG is unequivocal: para. 6.38 states that “*Section 75 legal agreements will be used to tie the houses to operational land holdings*” and para. 6.48 states that “*Section 75 legal agreements will be required to tie the house to the business enterprise in all applications relating to the provision of housing associated with an existing or new rural business*”. The sole exception is in para 6.39 (f) of the SG, under the heading “Agriculture”, which indicates that where evidence of the need for housing for succession purposes is provided, “*the requirement for section 75 legal agreements may not apply in these instances, subject to the consideration of information provided under para. 6.40*”. (The latter relates to other housing options and previous disposals of plots, none of which apply at Wester Hardmuir). However this is usually considered relevant in relation to the development of a house for the retiring farmer.
- 3.3 Most recent Scottish Government Policy guidance to planning authorities discourages the use of Section 75 Agreements. This is in the context of a general discouragement of occupancy restrictions in the belief that “a vibrant populated countryside is a desirable objective”, but the advice concedes that “in areas where due to commuter or other pressure there is a danger of suburbanisation of the countryside or an unsustainable growth in long distance car based commuting there is a sound case for a more restrictive approach”. The latter is the basis of the Council’s Hinterland Policy.
- 3.4 Historically, Section 75 Agreements were perceived to be a more secure option than occupancy conditions but that has to a degree been undermined by the application to discharge procedures introduced by the Planning etc (Scotland) Act 2006, which include a right of appeal against refusal. However they remain more robust to the extent that, being recorded against Title, they would show up in the event of a sale of the affected property. Occupancy conditions are more difficult to monitor and enforce.
- 3.5 Occupancy conditions, like any other conditions, have to meet six tests, one of which is precision. This creates a clear difficulty for this case in defining a precise enough link to the management of the farm, given the applicant’s relatively limited time commitment to and income from his and his partner’s current involvement in the business as described in the reports and supporting information previously presented. A personal occupancy condition could be sufficiently precise.
- 3.6 Refusal of permission could be defended on the basis of Development Plan Policy and its related supplementary guidance but given that members have already accepted the case for a house the refusal would rest on the absence of a Section 75 Agreement only. Given the option of an occupancy condition a Reporter might come to the view that undue weight was being given to the requirements of the SG.

10. RECOMMENDATION

Action required before decision issued No

Notification to Scottish Ministers No

Notification to Historic Scotland	No
Conclusion of Section 75 Agreement	No
Revocation of previous permission	No

Subject to the above, it is recommended the application be **Granted** subject to the following conditions and reasons:

1. No development shall commence until all of the matters specified below have been approved on application to the Planning Authority:
 - i. a detailed layout of the site of the proposed development (including site levels as existing and proposed);
 - ii. the design and external appearance of the proposed development;
 - iii. landscaping proposals for the site of the proposed development (including boundary treatments);
 - iv. details of access and parking arrangements; and
 - v. details of the proposed water supply and drainage arrangements.

Reason : Planning permission is granted in principle only and these specified matters must be approved prior to development commencing.

2. No development shall commence on the application site until the junction of the access road leading to the site with the A96 Trunk Road has been constructed to the geometric and constructional standards specified in Transport Scotland's consultation response dated 9 May 2013, and the visibility splays and bollards specified therein provided in full.

Reason : To maintain safety for Trunk Road users and for traffic moving to and from the development.

3. Occupancy of the house shall be limited to the named applicant and his partner, and their dependants.

Reason : To ensure that the development accords with Policy 35 of the Highland-wide Local Development Plan 2012.

REASON FOR DECISION

The proposals if used in accordance with condition 3 of the planning permission will accord with the provisions of the Development Plan.

TIME LIMIT FOR THE IMPLEMENTATION OF THIS PLANNING PERMISSION IN PRINCIPLE

In accordance with Section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended), an application or applications for the approval of matters specified in conditions attached to this planning permission in principle must be made no later than whichever is the latest of the following:

- i.The expiration of THREE YEARS from the date on this decision notice;
- ii.The expiration of SIX MONTHS from the date on which an earlier application for the requisite approval was refused; or
- iii.The expiration of SIX MONTHS from the date on which an appeal against such refusal was dismissed.

The development to which this planning permission in principle relates must commence no later than TWO YEARS from the date of the requisite approval of any matters specified in conditions (or, in the case of approval of different matters on different dates, from the date of the requisite approval for the last such matter being obtained)., whichever is the later. If development has not commenced within this period, then this planning permission in principle shall lapse.

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).

Trunk Roads Authority Consent

You are informed that this consent does not carry with it the right to carry out works within the trunk road boundary and that permission must be granted by Transport Scotland. Please contact the Route Manager via 0141 272 7100 to obtain permission. The Operating Company have responsibility for co-ordination and supervision of works and after permission has been granted it is the developer's contractor's responsibility to liaise with the Operating Company during the construction period to ensure that all necessary permissions are obtained.

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.

Signature: Allan J Todd
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Background Papers: Documents referred to in report and in case file.
Minute of South PAC meetings 25/6/13 and 26/11/13