
Report To:	The Planning Board	Date:	1st February 2012 Plan 02/12
Report By:	Head of Regeneration and Planning	Report No:	11/0001/MP
Contact Officer:	David Ashman	Contact No:	01475 712416
Subject:	Application for discharge of occupancy restriction at Valley View Farm, Dougliehill Road, Port Glasgow		

BACKGROUND

Planning permission was granted in December 2004 for a free range egg production unit, the owner's temporary static home and the future owner's dwellinghouse at Valley View Farm, Dougliehill Road, Port Glasgow (the former site of the Dougliehill Road Water Treatment Works). At the time the applicant proposed to house 1,200 free range hens in the production unit. Living accommodation was to take the form of a static caravan with a dwellinghouse being constructed at a later date assuming that the egg production unit became established.

A key consideration in the acceptance of any living accommodation on the site was a consultation reply from the Scottish Agricultural College which assessed the applicant's business plan and concluded that one full time farm worker was required. The College advised that the full time worker should be readily available on site in case of an emergency that may cause serious loss of livestock.

Located within the Green Belt, the Council's then Local Plan through policies Hb and ENa supported development only where "necessary to meet rural needs, agriculture, recreation, forestry or landscape improvement." Without connection to a rural based business this application would have been contrary to the Local Plan.

As the rural based business connected to the proposed dwellinghouse had not at the time been established, to confirm this commitment the applicant agreed to enter into a Section 75 Agreement. The Agreement delayed the construction of the dwellinghouse and tied its occupancy to a person fully employed in the egg production business. Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended) facilitates an owner and the Council entering into an agreement restricting or regulating the development or use of land.

Conditional planning permission was granted on the basis that the Section 75 Agreement required the applicant to occupy a temporary static home on site for a period of 2 years from the 1,200 hens being brought on site, that construction of the dwellinghouse would not commence within 18 months of the 1,200 hens arriving on site and that occupation of the approved dwellinghouse would be limited to a person and their family being wholly employed in the egg production unit (utilising a minimum of 1,200 hens). Progress was thereafter made on the implementation of the planning permission with the introduction of chickens to the site and the occupation of the temporary static

home. Before the two year occupation period had expired the applicant sought to amend the original planning permission.

In February 2008 an amendment to the planning permission was granted which allowed a change to the design and position of the house and, through a variation to the Section 75 Agreement, allowed construction of the house to begin at an earlier date than was permitted by the original Agreement. The Agreement was varied so that matters which were no longer relevant were excluded from its terms and re-stated the restriction of occupancy of the house to a person and his family employed solely and wholly in connection with the operation of the site as an egg production facility which had, at all times, to utilise a minimum of 1,200 hens, or a dependent of such a person residing with him or her or a widow or widower of such a person. Two additional clauses were inserted into the Agreement. The first required that the Council be given notice, within 28 days, of the dwellinghouse ceasing to be occupied as above and the second entitled the Council to take appropriate procedure, if necessary by way of interdict, to prevent occupation of the dwellinghouse other than as above. The applicant willingly entered into this variation of the Agreement.

By November 2008 the applicant advised the Council that there were no hens on the site due to the need to carry out hygienic cleansing of the unit. It was also pointed out that economic circumstances meant that the viability of the business was in question but that it was hoped to re-introduce the chickens as financial circumstances improved. No chickens have been re-introduced to the site to date meaning that none have been on the site for at least 3 years. Despite this, the applicant completed construction of the dwellinghouse which has now been occupied for more than 3 years. In mid-November 2008 the Council wrote to the applicant offering to allow an agreed period of occupation of the dwellinghouse with no hens on site. No written reply was received. A verbal response to the effect that as the applicant could no longer afford the upkeep of the hens they would not be returning was indicated in February 2009.

The house is currently occupied in breach of the terms of the Section 75 Agreement.

PROPOSAL

The applicant seeks the discharge of the Section 75 Agreement. Information has been submitted by the applicant in the form of a supporting statement, a report from the Scottish Agricultural College (SAC) and a doctor's letter.

The SAC report states that the site has become unsuitable for developing a financially viable egg production facility due to factors outwith the applicant's control; to improve the financial return of the business significant financial investment would be required which the applicant cannot afford. It is also stated that even if the investment was available the site could not achieve the performance expected of a commercial unit given the level of efficiency of the business and the level of profit would be marginal to support one full-time person. The report also concludes that the site is not of suitable size or sufficient land type to make a return from an alternative agricultural production. It concludes that "viability was always going to be compromised, especially if relying on this production as a main income stream."

The doctor states that the applicant is receiving medication and her health is improving. The letter states, however, that the applicant feels that she is unable to continue working as before on the grounds that the work is too heavy. It is pointed out that she is otherwise fit and well.

THE LEGISLATIVE POSITION

The Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010 came into force on 1st February 2011. An annex to Circular 1/2010: Planning Agreements (Planning Obligations and Good Neighbour Agreements) was published in the same month. The Regulations introduced a right to apply to the Council to have a planning obligation modified or discharged. It also introduced a right of appeal to the Scottish Ministers where a

planning authority refuses an application or fails to determine it within the set time period of two months.

The Regulations allow a planning authority to approve an application or refuse it but not to determine that the obligation should be subject to any modification other than set out in the application. The planning authority is required to take into account any changes in circumstances which mean that the obligation is no longer reasonable. An application for discharge or modification of an obligation has to be assessed against the same criteria for the initiation of an obligation. These are set out in Circular 1/2010 as follows:

- Necessity
- Planning purpose
- Relationship to proposed development
- Scale and kind
- Reasonableness

These form the basis of my assessment of the proposal.

Also of relevance is a letter issued by the Scottish Government's Chief Planner and Director for the Built Environment in November 2011 relating to occupancy restrictions and rural housing. Remarkably, despite occupancy restrictions having been imposed by Scottish planning authorities over many years and in the full knowledge of the Scottish planning profession, the letter advises that occupancy restrictions are rarely appropriate and so should generally be avoided. It is also stated that Scottish Planning Policy does not promote the use of occupancy restrictions and that a vibrant populated countryside is a desirable objective. The introduction of the Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010 has to be seen in this context.

ASSESSMENT

I am satisfied that the planning obligation was originally necessary, had a planning purpose, was relevant, appropriate to the scale of the development and reasonable as the proposal was in respect of on-site occupancy in the Green Belt related to an agricultural enterprise.

Applying the same tests now to the proposed discharge of the obligation, it has to be considered if any new circumstances apply.

Policies Hb and ENa of the former Local Plan have been replaced by policies DS8 and DS10 of the current Local Plan. Without connection to a rural based business as originally proposed, the application would have been contrary to the Local Plan.

There can be no doubt that the Council entered into the Section 75 Agreement in good faith, seeking to encourage a small rural based enterprise in the Green Belt in circumstances where without the Agreement planning permission would have been contrary to Council Policy and would have most likely been refused. No matter, the Council is now faced with the application to discharge the Agreement supported by evidence of a failed business model and ill health and within the context of the letter from the Scottish Government's Chief Planner and Director for the Built Environment.

I do not consider the applicant's health position to be a justification for discharge and I am disappointed that the Scottish Agricultural College originally supported the business model but now, not unreasonably, considers matters differently.

Most crucial is the position of the Scottish Government's Chief Planner and Director for the Built Environment. In making a recommendation I have to be minded of the likelihood of success at appeal should I recommend refusal. The letter is a material consideration; it is a statement of the

current national planning policy position as of November 2011 and it will be at the forefront of any Reporter's decision. While it is clear that the discharge of the Section 75 Agreement will result in a development that is contrary to the Inverclyde Local Plan, the terms of the Agreement do not accord with the Government's new interpretation of matters to which planning agreements should apply and would likely be discharged on appeal.

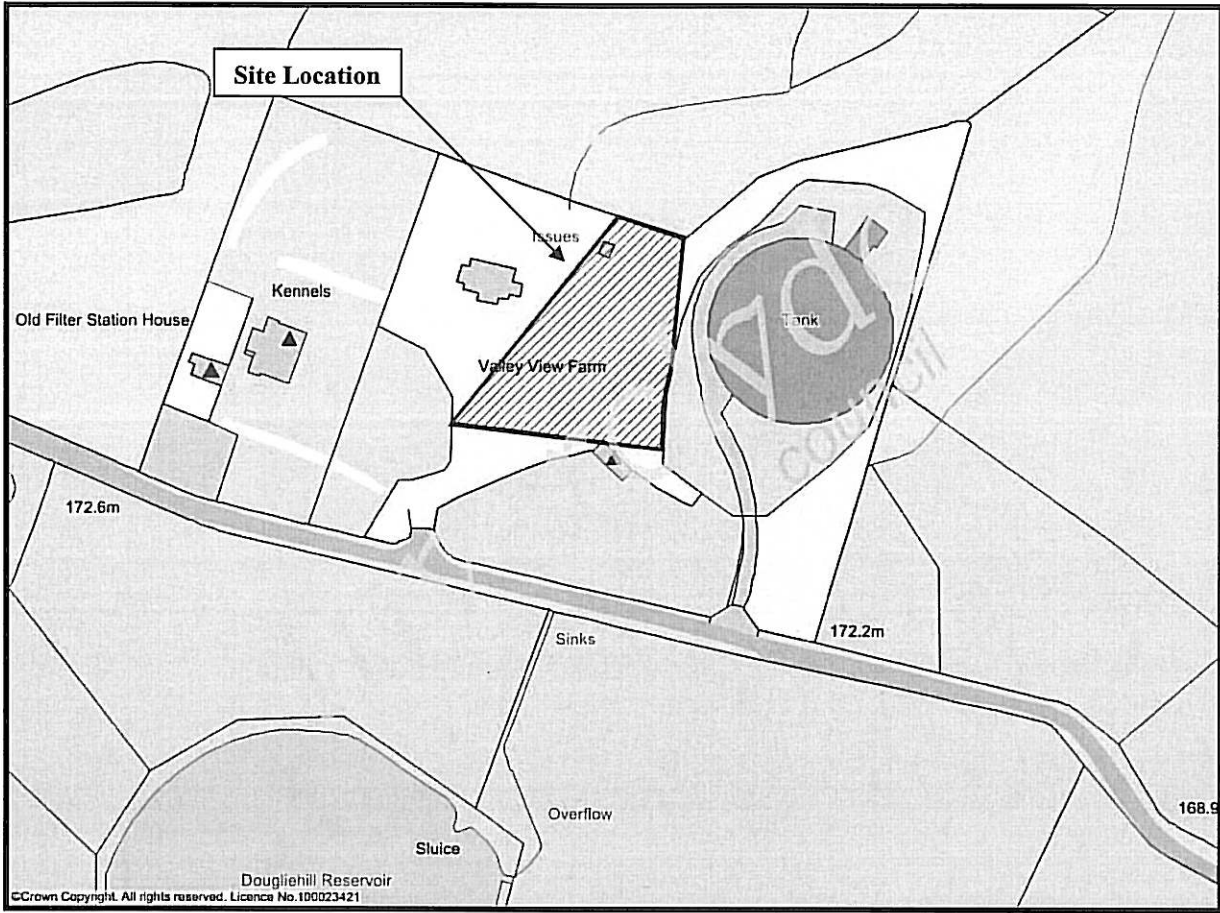
RECOMMENDATION

That the Section 75 Agreement in respect of planning permissions IC/03/446 and IC/07/272 be discharged.

Stuart Jamieson
Head of Regeneration and Planning

BACKGROUND PAPERS

1. Application form and plans.
2. Applicant's supporting statements.
3. Planning permissions IC/03/446 and IC/07/272
4. The Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010.
5. Circular 1/2010 and associated annex.
6. Letter to Heads of Planning from Scottish Government, dated 4th November 2011.



Application Number	11/0001/MP
Location	Valley View Farm Dougliehill Road Port Glasgow PA14 5XF
Proposal	Application for discharge of occupancy restriction



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