

Report To: The Planning Board **Date:** 4th April 2012

Report By: Head of Regeneration and Planning **Report No:** 11/0001/IC
Plan 04/12

**Local Application
Development**

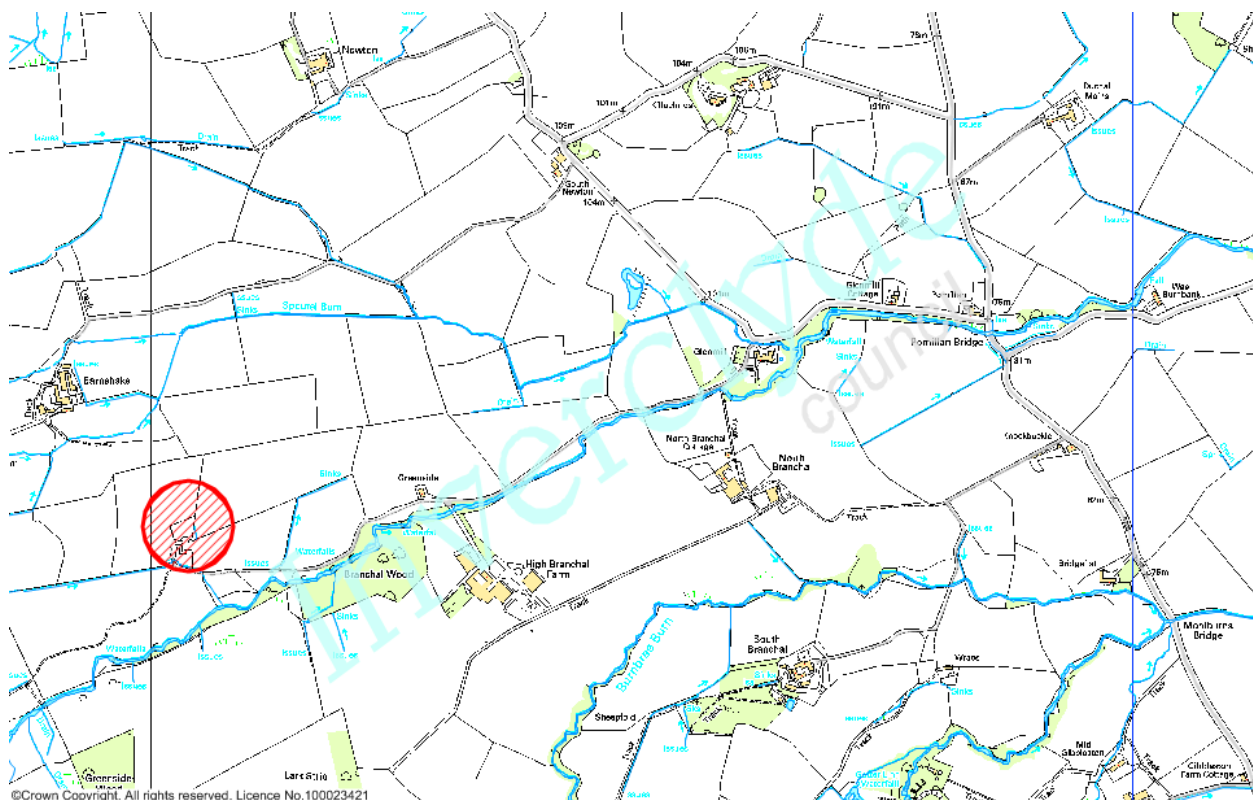
Contact Officer: Guy Phillips **Contact No:** 01475 712422

Subject: Erection of dwellinghouse with ancillary flat at
Lukeston Farm, Branchal Road, near Quarriers Village

BACKGROUND

In March 2008 the Planning Board agreed to grant planning permission for the erection of a house at Lukeston Farm subject to the applicant entering into a Section 75 Agreement under the Town & Country Planning (Scotland) Act 1997 restricting the occupancy of the house to a person employed in agriculture. The Section 75 Agreement was signed in May 2010, after which planning permission was issued.

In April 2011 the Board agreed to grant planning permission for the erection of a dwellinghouse with an ancillary flat subject to the applicant entering into a Section 75 Agreement. The agreement proposed to restrict the occupancy of the house and flat to persons employed in agriculture.



The second application is an adaptation of the design of the house previously granted planning permission and incorporates accommodation in the roofspace to form a separate flat. As matters stand the building has been erected and is unoccupied. A completion certificate has not been submitted for acceptance as is required under Building Regulations, the Section 75 Agreement has not been concluded and the planning permission has not been issued.

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 have a planning obligation modified or discharged on application to the Planning Authority. 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.

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. 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.

CONSULTATIONS

The Head of Legal & Democratic Services advises the Section 75 agreement has not yet been completed, mainly as a result of correspondence between her office and the owners' agents as to the discharge of the previous Section 75 agreement (which was completed in May 2010).

Given the contents of the Chief Planner's letter it is advised that the proposed agreement is one which the Council should not now complete. Failing that it would be difficult to resist any application to discharge the intended agreement and, if the Council were to refuse any such application, then the applicants would stand a very strong prospect of success on appeal with an attendant award of expenses against the Council.

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. Without connection to a rural based business, the proposed house and flat would have been contrary to the Local Plan.

Criterion (c) of policy H4 of the Local Plan advises that new houses in the Green Belt and countryside have to be justified by the operational needs of a farm and the applicant required to enter into a Section 75 agreement regarding occupancy criteria. The Council proposed to enter 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. The Council is now faced with the situation that the Section 75 Agreement they wished to conclude has to now be reconsidered within the context of the letter from the Scottish Government's Chief Planner and Director for the Built Environment.



Given the advice from the Head of Legal & Democratic Services that a Section 75 Agreement should not be concluded, consideration requires to be given to an alternative method of controlling occupancy to satisfy the intent of criterion (c) of policy H4. The option remains to impose a condition to similar effect on the planning permission. Circular 9/1998 advises that “conditions restricting occupancy to a particular occupier or class of occupier should only be used when special planning grounds can be demonstrated and where the alternative would normally be refusal of permission.” It goes on to inform “In many parts of Scotland planning policies impose strict controls on new residential development in the open countryside. There may, however, be circumstances where permission is granted to allow a house to be built to accommodate a worker engaged in *bona fide* agricultural or forestry employment on a site where residential development would not normally be permitted. In these circumstances, it will often be necessary to impose an agricultural or forestry worker occupancy condition. Planning authorities will wish to take care to frame agricultural occupancy conditions in such a way as to ensure that their purpose is clear. In particular, they will wish to ensure that the condition does not have the effect of preventing future occupation by retired agricultural workers or the dependants of the agricultural occupant. Where an agricultural occupancy condition has been imposed, it will not be appropriate to remove it on a subsequent application unless it is shown that circumstances have materially changed and that the agricultural need which justified the approval of the house in the first instance no longer exists.” Indeed, the annex to Circular 9/1998 provides a model planning condition to be applied in such circumstances.

RECOMMENDATION

That planning permission be granted subject to the following condition:-

Occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed in the locality in agriculture or to a widow or widower of such a person and to any dependants.

Reason

To ensure that the approval of planning permission is in compliance with policies DS10 and H4 of the Inverclyde Local Plan.

Stuart Jamieson
Head of Regeneration and Planning

BACKGROUND PAPERS

1. Application form
2. Plans
3. Inverclyde Local Plan
4. Consultation responses
5. Planning application IC/07/252
6. Chief Planner's Letter 4th November 2011
7. The Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010
8. Circular 1/2010: Planning Agreements (Planning Obligations and Good Neighbour Agreements)
9. Circular 9/1998



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