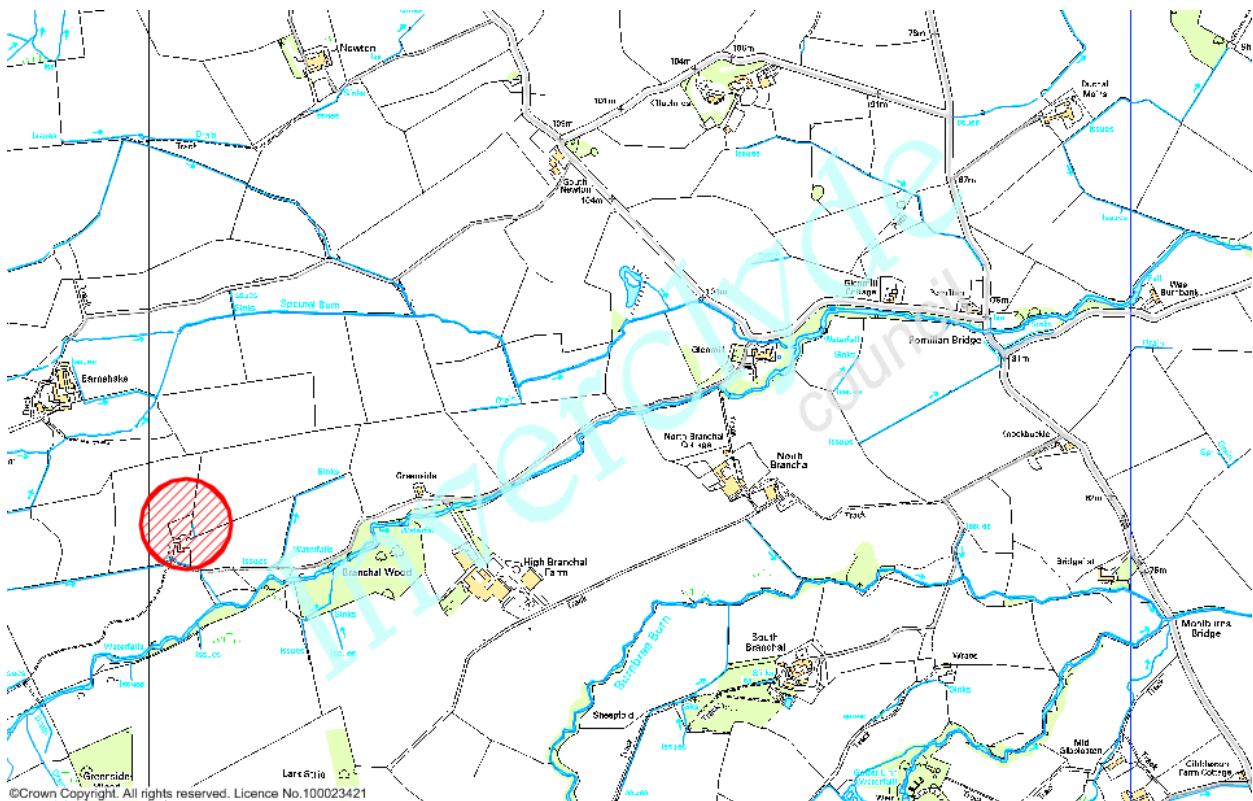


Report To:	The Planning Board	Date:	5th September 2012
Report By:	Head of Regeneration and Planning	Report No:	12/0001/MP Plan 09/12
Contact Officer:	Guy Phillips	Contact No:	01475 712422
Subject:	Discharge of the planning obligation - Section 75 Agreement at Lukeston Farm, Branchal Road, Quarriers Village		

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.



The proposal was then amended and a second application submitted, this time for a house with an ancillary flat in the roofspace. In April 2011 the Board agreed to grant planning permission 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 Section 75 Agreement was not concluded by the applicant, leading to a further report to the Planning Board in April this year. It was decided that planning permission be granted without the Section 75 Agreement previously recommended. A condition was however attached requiring occupation

of the dwelling to 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.



The Section 75 Agreement concluded in May 2010, however, remains in place on the farm's title even though it relates to a house that was not erected.

LEGISLATIVE BACKGROUND

On 1st February 2011, The Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010 came into force. 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.

In November 2011 the Scottish Government's Chief Planner and Director for the Built Environment issued a letter 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.

Following the Chief Planner's letter, the Head of Legal & Democratic Services advised that in future Section 75 Agreements should not be completed as it would be difficult to resist any application to discharge. Refusal would stand a strong prospect of success on appeal with the potential award of expenses against the Council.

PROPOSAL

The applicant seeks the discharge of the Section 75 Agreement concluded in 2010.

PUBLIC PARTICIPATION

Two written representations have been received. The objectors consider that:

1. The stance of the Scottish Government on occupancy restrictions on new houses in the Green Belt will lead to speculative new building that has nothing to do with farming requirements and lead to an erosion of the countryside.
2. Attempts to build houses in the Green Belt on the basis of agricultural justification and thereafter use them for a non agricultural purpose should be resisted.
3. Development in the Green Belt should only be permitted to promote rural economic activity.
4. Without a Section 75 Agreement there is no control over the sale of the house and future occupiers.

ASSESSMENT

I am satisfied that the 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. However, this application affords the opportunity to tidy the legal position relating to the property title at Lukeston. The Section 75 Agreement is attached to the land, but the planning application to which it relates was never and now cannot be implemented. Given that the Council accepted no Section 75 Agreement is necessary for the house and flat as erected on site under a separate planning permission, it is appropriate and consistent that this Section 75 Agreement be discharged.

I note the stance of objectors, but it falls contrary to Scottish Government policy which is not to use Section 75 Agreements to impose occupancy restrictions.

RECOMMENDATION

That the Section 75 Agreement in respect of planning permission IC/07/252 be discharged.

Stuart Jamieson
Head of Regeneration and Planning

BACKGROUND PAPERS

1. Application form and plan.
2. Planning permissions IC/07/252 and 11/0001/IC.
3. The Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010.
4. Circular 1/2010 and associated annex.
5. Letter to Heads of Planning from Scottish Government, dated 4th November 2011.



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