

Report To: The Planning Board Date: 7 October 2020

Report By: Head of Regeneration and Planning Report No: 20/0002/MP

Contact Officer: Sean McDaid Contact No: 01475 712422

Subject: Discharge of planning obligation associated with planning permission IC/03/409 that restricts the occupancy of the two dwellinghouses to persons employed in agriculture in the locality at  
North and South Hattrick Cottages, Craigbet Road, Quarriers Village



## SUMMARY

- The proposal presents no conflict with the Inverclyde Local Development Plan.
- No objections have been received.
- The recommendation is to DISCHARGE THE SECTION 75 AGREEMENT.

Drawings may be viewed at:

<https://planning.inverclyde.gov.uk/Online/applicationDetails.do?activeTab=documents&keyVal=QFNWH6IM00E00>

## **SITE DESCRIPTION**

The site comprises two semi-detached houses located at the west side of a row of six other semi-detached houses in the Green Belt to the north-west of Quarriers Village. Hatrick Farm itself is located to the east of this row of houses and the Mill Burn is located to the north of the site, with fields beyond. There are fields located to the south on the opposite side of the road. All of the houses in this row are semi-detached bungalows.

## **PROPOSAL**

The applicant seeks discharge of an Obligation in the form of a Section 75 Agreement relating to North and South Hatrick Cottages, Craigbet Road, Quarriers Village under the Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010.

Clause 2 of the Section 75 Agreement states:

*The Applicants bind and oblige themselves and agree that the dwellinghouses to be erected at the Subjects shall be occupied by persons solely or mainly or last occupied in the locality in agriculture as defined by Section 277 of the Town and Country Planning (Scotland) Act 1997 or a dependent of such as person residing with him or her or a widow or widower of such a person.*

The applicant therefore requests that the Planning Obligation is discharged because in recent times the numbers of cattle at the farm has steadily been reducing owing to the general economic pressures within the agricultural community and there is not the same requirement for agricultural workers at the farm. In addition, the applicant has referred to agricultural workers being less willing to reside in what is effectively a 'tied cottage'.

## **BACKGROUND**

Planning permission IC/03/409 was approved subject to conditions for the erection of two semi-detached bungalows at this location on 10 May 2005 following the conclusion of a Section 75 Legal Agreement (now referred to as a Planning Obligation). The applicant was willing to enter into a Section 75 Agreement to restrict the occupancy of the two bungalows. At that time it was the practice when planning permission was granted to restrict occupancy of agricultural workers houses through a Section 75 Agreement. The Section 75 Agreement in this case restricts the occupation of each bungalow to persons employed in agriculture in the locality or family members of such persons. There is no planning condition restricting occupancy of the bungalows.

At the time that IC/03/409 was being assessed the applicant worked full time and farmed 550 acres of land at Hatrick Farm and 112 acres at Mid Glen Farm with between 800 and 900 cattle. The applicant employed two full time and one part time workers and the justification for the additional houses was that the workload required additional on-site staff at Hatrick Farm.

At that time the applicant also owned East and West Hatrick Cottages as well as 2 Hatrick Cottages and each of these were rented to agricultural workers.

The two semi-detached bungalows approved under IC/03/409 were subsequently erected and occupied by agricultural workers.

## **THE LEGISLATIVE POSITION**

The Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010 introduced a right to apply to the Council to have a Planning Obligation modified or discharged. They 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 or refuse such an application 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 creation of an Obligation. These are set out in Scottish Government Circular 3/2012 as follows:

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

These form the basis of the assessment of the application.

## **DEVELOPMENT PLAN POLICIES**

### **Policy 14 - Green Belt and Countryside**

Development in the Green Belt and Countryside will only be permitted if it is appropriately designed, located, and landscaped, and is associated with:

- a) agriculture, horticulture, woodland or forestry;
- b) a tourism or recreational use that requires a countryside location;
- c) infrastructure with a specific locational need;
- d) the appropriate re-use of a redundant stone or brick building, the retention of which is desirable for its historic interest or architectural character, subject to that interest or character being retained; or
- e) intensification (including extensions and outbuildings) of an existing use, which is within the curtilage of the associated use and is of an appropriate scale and form.

Proposals associated with the uses set out in criteria a)-c) must provide justification as to why the development is required at the proposed location.

## **CONSULTATIONS**

No consultations were required.

## **PUBLICITY**

This type of application does not require advertisement.

## **SITE NOTICES**

This type of application does not require a site notice.

## **PUBLIC PARTICIPATION**

No representations were received.

## **ASSESSMENT**

The Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010 introduced a right to apply to the Planning Authority to have a Planning Obligation modified or discharged.

The applicant's agent has indicated that circumstances have changed since IC/03/409 was approved. Mid Glen Farm is no longer owned by the applicant and does not form part of the farming area. In addition it has been indicated that 200 acres of the 550 acres that comprised Hattrick Farm relating to the previous application was in fact rented. This 200 acres is no longer rented. The farm holding is therefore now 350 acres. Of the remaining 350 acres, 50 acres is held on a short term rental from Quarrier's Homes and these fields are located immediately adjacent to the built up area of the village.



There are now 400 cattle at the farm and the applicant operates the farm himself with one additional part time worker.

The applicant also no longer owns 2 Hattrick Cottages and remains the owner of East and West Hattrick Cottages, although these properties are rented out but not to agricultural workers. The two houses which are the subject of this application are currently occupied, but not by agricultural workers.

In November 2011, the then Scottish Government Chief Planner wrote to all planning authorities to clarify the Scottish Government's view on the use of conditions or obligations to restrict the occupancy of new rural housing. He confirmed that, while it may still be necessary to assess critically the justification for a proposed rural dwelling, it should not be necessary to restrict the occupancy of that dwelling. The advice was that such restrictions (which include restrictions on who may occupy a property and on how it may be disposed of) should generally be avoided, due to the difficulty they can cause for those seeking to obtain finance.

In June 2014, the Scottish Government published an updated Scottish Planning Policy (SPP). Paragraph 81 of SPP indicates that in accessible or pressurised rural areas, where there is a danger of unsustainable growth in long-distance car-based commuting or suburbanization of the countryside,

a more restrictive approach to new housing development is appropriate, and plans/decision-making should generally guide development to locations within or adjacent to settlements. SPP also indicates that plans/decision-making should generally set out the circumstances in which new housing outwith settlements may be appropriate, avoiding the use of occupancy restrictions.

This has been done in the adopted Inverclyde Local Development Plan which sets out the Spatial Development Strategy to direct residential development to existing built-up areas. Although no policies within the Local Development Plan are applicable in determination of an application of this nature, it should be noted that Policy 14 relates to development in the Green Belt and Countryside and outlines the circumstances in which such development may be acceptable. This policy however does not require the occupancy of development in such areas to be restricted through a planning obligation or a planning condition.

Scottish Government advice contained in Circular 3/2012 on planning obligations indicates that legal obligations/agreements are required to be: necessary; fulfil a planning purpose; relate to the development; be appropriate in scale and kind; and be reasonable. The Circular indicates that if a legal obligation fails any of these requirements, then generally a legal agreement would not be appropriate.

To satisfy the necessity test it must be determined that a planning obligation, rather than some other form of control, is required in order to achieve the desired objective. The current advice indicates that legal obligations should not be used where the matter can be adequately controlled by a planning condition. At the time planning application IC/03/409 was being assessed there was justification for additional houses at this location based on the amount of agricultural workers required for the farm operations. The additional houses were considered acceptable against the relevant development plan policies at that time although it was best practice to apply restrictions on occupancy through a Section 75 Agreement. It is not clear from the Report of Handling whether IC/03/409 would have been refused if there had been no Section 75 Agreement or if the applicant declined to sign the Agreement.

The planning purpose test requires the Obligation to be related to the use and development of land. It is expected that the justification for seeking an Obligation should be rooted in the development plan. At the time application IC/03/409 was considered there was no requirement in the relevant development plan policies to restrict occupancy through a legal agreement or planning condition.

The relationship to the development and scale and kind tests are considered satisfied in this instance because the effect of the Obligation does not extend beyond the houses and is proportionate to the harm (unjustified housing development in the open countryside) that the development plan policies seek to avoid.

The reasonableness test requires the Obligation to be reasonable in the particular circumstances of the case. The Circular requires regard to be had to any change in circumstances. It can now be seen from the information submitted on behalf of the applicant that the farming operations at this location have reduced both in terms of the amount of land farmed and numbers of cattle. This in turn has reduced the amount of labour at the farm with one full time and one part time agricultural worker now engaged in the farming operations. The two houses are not required at this time to be occupied by agricultural workers. Should the farm operations require additional full-time workers in the future the applicant has other houses available to accommodate them.

Both houses are also established at this location and in planning/land use terms there is no differentiation between a house occupied by an agricultural worker or occupied by someone else.

Consequently, given the above, it is considered that the Section 75 Legal Agreement would not accord with the advice in Circular 3/2012 on account of not being necessary, does not serve a planning purpose and is not reasonable.

In addition, the removal of the legal agreement would not raise any significant issues in terms of the Local Development Plan and therefore, on balance, it is considered acceptable for the planning obligation/agreement to be discharged/removed in the terms sought.

## **RECOMMENDATION**

That the Section 75 Agreement in respect of the occupancy of North and South Hattrick Cottages be discharged.

Stuart Jamieson  
Head of Regeneration and Planning

Local Government (Access to Information) Act 1985 – Background Papers. For further information please contact Sean McDaid on 01475 712422