

**REQUEST FOR DISCHARGE OF S75 AGREEMENT PERTAINING TO
ERECTION OF DWELLING
LAND AT ARDACHUPLE, GLENDARUEL
99/01652/OUT – DONALD R MCNAUGHTON**

1. SUMMARY

Outline planning permission was granted in October 2000 for the erection of a dwellinghouse on a holding of 200ha. In order to comply with the Council's Settlement Strategy policies at that time, the ownership of the dwellinghouse was tied to the associated land holding by a Section 75 legal agreement. A request under the provisions of S.75A(2) of the Act has been submitted by the owner, Mr B McNaughton, to have the S.75 agreement discharged to allow the separate sale of the land from the dwellinghouse. However, he has confirmed that he would be prepared to enter into a revised agreement to preclude the erection of another house on the remaining holding.

2. RECOMMENDATION

Recommend that the request to discharge the S.75 Agreement be granted following the completion of a revised Agreement to preclude the erection of a dwellinghouse on the remaining holding and on condition that the owner pays the costs of the Council's legal fees and outlays in relation to the proposed discharge and revised Agreement.

3. PLANNING HISTORY

The original applicant, Mr D. McNaughton, had advised that the Ardachuple Farm farm holding was left in 1993 to five brothers with the eldest brother, A. McNaughton, retaining the remainder of Ardachuple Farm including the farmhouse and outbuildings. The family decided that one of the brothers, N. McNaughton, who was engaged in farming in Perthshire, would return and take up the new holding at Ardachuple, hence the requirement for a new dwelling. It was envisaged that the Ardachuple holding would carry about approximately 200 ewes and 12 cows and, as such, on site supervision would be required.

In 1997, the Bute and Cowal Area Committee agreed to grant outline planning permission (reference 97/00108/OUT) for the erection of a dwelling on this site, but subject to a Section 75 Agreement to secure non-severance of the dwelling from the farmland. Upon further consideration of this by the applicant, he intimated that an agricultural occupancy condition was preferable to a Section 75 Agreement. Accordingly, on 14th September 1998 the Area Committee granted outline planning permission subject to 5 planning conditions, including condition 5 which restricted the occupation of the dwelling to agricultural employees. This permission was later revoked on 3 October 2000.

Application 99/01652/OUT was based on the original Bute and Cowal Area Committee decision of 2 December 1997 i.e. a planning permission with a Section 75 Agreement in respect of a non-severance agreement, but without the agricultural occupancy condition. The principle of the erection of a dwelling on the site had been established by the previous outline permission. It was considered that a Section 75 Agreement in respect of non-severance tying the dwelling to the surrounding land would ensure that a viable farm enterprise would remain, since the sale of the entire holding from the dwelling may lead to pressure for an additional dwelling in the future based on further agricultural justification. Planning permission was therefore granted on 17 October 2000, subject to conditions, after the completion of a Section 75 Agreement. Clause FIRST of the Agreement states “...*the said proposed new dwellinghouse shall not be sold, leased, disposed or otherwise alienated from the surrounding land holding amounting to some 500 acres...*”.

Reserved matters were approved for Mr Brian McNaughton on 11 April 2002 (02/00338/REM). The house was completed in 2005.

4. POLICY CONSIDERATIONS

Argyll and Bute Structure Plan 2002

STRAT DC 5 – Development in Sensitive Countryside

STRAT DC 8 – Landscape and Development Control

Argyll and Bute Local Plan 2009

LP ENV 1 – Development Impact on the General Environment

LP ENV 9 – Development Impact on National Scenic Areas

LP HOU 1 – General Housing Development

Scottish Government Circular 1/2010 – Planning Agreements

5. ASSESSMENT

The subject property is a detached house situated east of Loch Riddon on the east side of the A886, approx 2km south of its junction with the B836 Stronafian to Sandbank road.

At the time of determination of the original application (99/01652/OUT), the provisions of the Cowal Local Plan set out a general presumption against development at this location. Under POL RUR 1, the Council sought to resist prominent or sporadic development which would have an adverse environmental impact within the Kyles of Bute National Scenic Area. However, the proposal was justified under the relevant POL RUR 1 criteria on the grounds of locational/operational need. The development pattern of the area is one of widely scattered single properties and farm clusters and the proposal was considered to be consistent with this pattern but a justified locational/operational need was considered necessary to underpin the proposal and to prevent sporadic development in the area. The application was, however, supported by a valid claim for a new dwellinghouse at this location to ensure the management of livestock on an extensive holding. In order to underpin the locational/operational justification, the ownership of the dwellinghouse was tied to the associated land by means of a S.75 agreement.

The present owner, Brian McNaughton, has advised that, following purchase of the land in 2000, he rented the land to John McNaughton of Ardachuple Farm to undertake sheep and cattle grazing. He has confirmed that the land has formed part of the holding registered to John McNaughton at Ardachuple Farm, in breach of the terms of the agreement. Consequently he has never erected any agricultural buildings. He is a Railway Signalling Design Engineer and, for a number of reasons, emigrated to Australia in 2008 and has been unable to let the dwelling successfully, on either a long-term or holiday let basis. He has also had requests to purchase the land for forestry, game and farming ventures which he has had to turn down because of the S.75 Agreement. He confirms that he has made no attempt to market or sell either the house or land. He now seeks to return to the community and requests that the S.75 Agreement be revoked. However, he has confirmed that he would be prepared to enter into a revised agreement to preclude the erection of another house on the remaining holding.

The Argyll & Bute Local Plan 2009 includes this property within Sensitive Countryside and within the Kyles of Bute National Scenic Area which the provisions of policies STRAT DC 5 and LP HOU 1 advise does not have a general capacity to absorb any scale of new housing. A planning application for a new dwelling at this site would not therefore be supported by the current development plan.

However, although no evidence of any attempt to sell the house and land together has been submitted and no satisfactory case has been demonstrated which would overcome the reason for restricting the ownership of the dwellinghouse only six years after it has been completed, it has to be accepted that the premise upon which permission was originally granted never came about. Under the circumstances, little purpose would be served by retaining the restriction in its present form. In agreeing to the removal of the occupancy restriction it should be noted that there are sufficient residential properties (existing and consented) in association with the farm at Ardachuple to avoid future requirement for the provision of additional accommodation in association with the management of the holding and therefore occupation of this building for farm purposes is not essential to satisfy either current or likely future requirements. Nevertheless, it would be prudent to enter into a revised agreement to preclude the erection of another house on the remaining 200ha held by the present owner.

6. IMPLICATIONS

Policy: Consideration needs to be given to tighter scrutiny of claims for agricultural need, such as evidence of a separate registered farm holding.

Financial: None

Personnel: None

Equal Opportunities: None

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