

Delegated or Committee Planning Application Report and Report of handling as required by Schedule 2 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 relative to applications for Planning Permission or Planning Permission in Principle

Reference No: 12/00053/PP

Planning Hierarchy: Local Development

Applicant: Mr Joseph Reade

Proposal: Removal of Section 75 Agreement Relative to Planning Permission 98/01377/REM & 99/00886/VARCON

Site Address: Ceilte, Dervaig Road, Tobermory, Isle of Mull

DECISION ROUTE

(i) Local Government Scotland Act 1973

(A) DETAILS OF APPLICATION:

This application seeks permission to amend a Section 75 Agreement, (reference ED/CN/9949 S75) linked to planning permission 98/01377/REM & 99/00886/VARCON which restricts the occupation of the dwellinghouse to a person(s) employed or last employed in the management and/or operation of the Island Bakery, Lephain, Tobermory, Isle of Mull and their dependent(s) or the widow(er) of such a person in all time coming and in accordance with the conditions laid down in Planning Permission 98/01377/REM.

(B) BACKGROUND

Outline planning permission and reserved matters (reference 97/01758/OUT and 98/01377/REM) were approved by Members on 9 July 1998 and 9 November 1998 for erection of a dwellinghouse at the site.

The applicant owns and manages the Island Bakery which has its premises at Lephain, Tobermory, Isle of Mull. Members of the Committee considered that it was essential that the applicant be able to live in close proximity to the bakery, but due to the site being in an area where a new dwellinghouse would not normally be supported on policy grounds, imposed the following condition on the planning permission.

“The occupation of the proposed dwellinghouse shall be restricted to a person(s) employed, or last employed in the management and/or operation of the Island Bakery, Lephain, Tobermory, Isle of Mull and their dependant(s) or the widow(er) or such a person.”

A subsequent application reference 99/00886/VARCON was submitted which sought to have the above condition transferred to a Section 75 Agreement which would similarly restrict the occupation of the dwellinghouse to a person employed in the bakery. The reason for the request being that the applicant's bank was unwilling to lend money for the house owing to the fact that, unlike a Section 75 Agreement, there is no possibility of the bank repossessing the house without restriction.

The principle of transferring the occupancy restriction from condition to a Section 75 Agreement was considered acceptable and was approved by Members on 14 July 1999 with the Section 75 Agreement being concluded on 29 July 1999.

(C) REQUEST FOR REMOVAL OF AGREEMENT:

The applicant has stated that during the process of re-mortgaging the dwellinghouse with a new lender, the legal agreement was noted which prevented him from moving his mortgage. Accordingly, this application seeks to have the Section 75 Agreement amended to allow any mortgage lender to sell the property on the open market in the event of re-possession.

Such an amendment to the Section 75 Agreement would allow the owner of the land to exercise a power of sale in terms of the standard security by reason of the granters being in default but would still ensure that the occupancy of the dwellinghouse be limited as previously intended, in all other circumstances.

This provision was not built into the Agreement in 1999, but is now routinely included in the terms of Section 75 Agreements within the Council area. Accordingly, this request simply relates to ensuring fairness across the Council area. On this basis, this requested amendment raises no issues in planning terms and is supported by the Planning Service.

The application also enquires about the possibility of the total removal of the Section 75 Agreement as an alternative to amending its terms.

In terms of the adopted Argyll and Bute Local Plan, the dwellinghouse is situated adjacent to a Potential Development Area (PDA 6/52) which has been allocated for a mixed development of housing, business and industry. Planning permission reference 09/01599/PP was granted on 6 August 2010 for erection of a new bakery within this PDA allocation.

Given the above allocation, the applicant has stated that as the dwellinghouse no longer sits in isolation, it should be viewed as part of the adjacent PDA where such an occupancy restriction would not be appropriate.

However, the dwellinghouse is still situated within the 'Countryside Around Settlement' Zone (CAS) of Tobermory where development is only supported on an appropriate infill, rounding off and re-development basis. The dwellinghouse does not represent infill, rounding off or re-development. Whilst the dwellinghouse is located adjacent to a PDA, the PDA is not yet at a stage where it has been sufficiently developed to allow the site of the dwellinghouse to be considered as a natural extension of the said PDA.

Accordingly, whilst the applicant's assertions may gain greater weight in time, with the development of the PDA, it is not considered that this stage has been reached. Visually, the house remains in an isolated position pending wider development of the adjacent PDA. This Service does not support the total removal of the Section 75 Agreement.

(D) RECOMMENDATION:

In light of the above, it is recommended that the Section 75 Agreement is amended to provide:

“The occupation of the dwellinghouse to which planning permission relates, shall be limited to a person(s) employed, or last employed in the management and/or operation of the Island Bakery, Lephain, Tobermory, Isle of Mull. In the event that any person, company or organisation; in whose favour the owner of the land on which the dwellinghouse is built grants a Standard Security over that said land; exercises a power of sale in terms of the said Standard Security by reason of the granters [applicants] being in default, then this Section 75 Legal Agreement shall cease to apply”.

However, with regards to the total removal of the Section 75 Agreement, the terms of the current Development Plan would not normally support a dwellinghouse in this location, nor has the physical context of the site changed as the PDA has yet to be significantly developed. Therefore the removal of the Section 75 Agreement which underpinned the justification for the dwellinghouse in this location, cannot be supported by the Planning Service.

Author of Report: Fiona Scott Date: 27/02/12

Reviewing Officer: Stephen Fair Date: 06/03/12

**Angus Gilmour
Head of Planning and Regulatory Services**