

SCOTTISH BORDERS COUNCIL

PLANNING AND BUILDING STANDARDS COMMITTEE

2 OCTOBER 2017

APPLICATION FOR PLANNING PERMISSION

ITEM:	REFERENCE NUMBER: 17/00999/MOD75
OFFICER:	Mr R Dods
WARD:	Tweeddale West
PROPOSAL:	Discharge of planning obligation pursuant to planning permission 07/00524/FUL
SITE:	Cacrabank Farm, Selkirk
APPLICANT:	Mr & Mrs Martin Scott
AGENT:	Ericht Planning & Property Consultants

SITE DESCRIPTION:

Cacrabank Farm is located close to the junction of the B711 and the B709, approximately 19km south west of Selkirk and 19km south of Innerleithen. The farm sits to the south of the Ettrick Water and Cacara Hill forms most of the land holding. There are parcels of low lying land, totalling 21ha, in close proximity the steading buildings and bisected by the B711 road. The remainder of the farm comprises 244ha of rough grazing and 16ha of woodland or other non-farmed land. The majority of the farm is class 5 or 6 agricultural land as classified by the Macaulay Institute. The area is not covered by a landscape designation.

The dwellinghouse known as Cacrahope was granted permission in 2007, reference 07/00524/FUL. That was justified as being a residence for a retiring farmer associated with Cacrabank Farm and was granted subject to a section 75 agreement restricting occupancy of the property known as Cacara Cottage and restricting the sale of the land and buildings of Cacrabank Farm except as a single unit. Excluded from the terms of the agreement were Cacrahope and a small area of land to the west of Cacara Cottage.

PROPOSED DEVELOPMENT:

The application is made to discharge a section 75 agreement covering Cacrabank Farm and relative to planning permission granted on 6 November 2007, reference 07/00524/FUL.

The reasons for this discharge request are:

1. To allow the sale of approximately 233ha of land for forestry and;
2. To allow the sale or lease of 49ha, including Cacara Cottage.

PLANNING HISTORY:

07/00524/FUL

The application was made to erect a dwellinghouse and garage for the tenant farmer and his wife allowing them to retire from farming but remain in the area.

Planning permission was granted subject to conclusion of a section 75 agreement. That agreement was recorded on 22 October 2007. Clause 2 of the agreement states:

- a) The Development shall be constructed upon the Land within the area hereinafter referred to as 'the Development Site'. The Development Site is the area shown crosshatched in black on the plan annexed and signed as relative hereto ("the Plan"). The area shown outlined in green on the Plan is hereinafter referred to as the "Excluded Site". The Land, under exception of the Development Site and Excluded Site shall hereinafter be referred to as "the Remainder Land";
- b) the Remainder Land including all the buildings and erections thereon shall be held for all time as a single indivisible unit and no part of it shall ever be sold;
- c) occupation of the property known as Cacara Cottage, being the building identified as such and highlighted red on the Plan shall be limited to a person employed or last employed in agriculture as defined in section 277 of the Town and Country Planning (Scotland) Act 1997 or any dependent of such person residing with him or her (including the widow or widower of such person).

CONSULTATION RESPONSES:

Legal Services: No response.

REPRESENTATION SUMMARY

No representations received.

DEVELOPMENT PLAN POLICIES:

Local Development Plan 2016:

ED7 – Business, tourism and leisure development in the countryside

HD2 – Housing in the countryside

OTHER PLANNING CONSIDERATIONS

SBC supplementary planning guidance "New Housing in the Borders Countryside"

Scottish Planning Policy 2014

Circular 3/2012 Planning Obligations and Good Neighbour Agreements

Planning appeal POA-140-2005, Broadmeadows Farm, Hutton, 10 May 2017

KEY PLANNING ISSUES:

Whether discharging the section 75 agreement would satisfy all five tests of Circular 3/2012. Those are: Necessity; planning purpose; relationship to the development; scale and kind and; reasonableness, and whether the proposed discharge complies with the Council's established policies on housing in the countryside.

ASSESSMENT OF APPLICATION

Policy context

Planning policy has changed since the grant of the planning permission for the house in 2007. That application was assessed against the policies contained within the Scottish Borders Structure Plan 2001-2011 and the Scottish Borders Local Plan 2008. Since the proposal was not part of an established building group, it was assessed against the council's housing in the countryside policies for isolated housing which were justified under economic requirement and, in this instance, the ability to allow a retiring farmer to continue staying within the area they formerly farmed.

A similar policy, HD2 Housing in the countryside, is found within the Scottish Borders Local Development Plan 2016 (LDP). That policy, at section (F) allows for isolated housing in the countryside where there is an economic justification and subject to certain criteria being met. The policy should be read in conjunction with the supplementary planning guidance (SPG) New Housing in the Borders Countryside, dating from 2008, which gives guidance on isolated housing, at section 2c.

This SPG states that a section 75 agreement will normally be required for economically justified development proposals. It identifies the need to restrict further residential development and requires that the land unit and the dwelling house are not sold separately. It is explicit that isolated new housing is unacceptable without economic justification. The ultimate aim of council policy is to direct appropriate development of housing in rural areas, focusing on defined settlements to support services, facilities and sustainable travel patterns.

In the case under consideration, the house was accepted on the basis of an economic justification for a retiring farmer who was associated with Cacrabank Farm. Planning permission was granted subject to a section 75 agreement restricting occupancy of Cacara Cottage and preventing the sale of the farmland except as a single unit, although the new house and some land adjacent to Cacara Cottage was specifically excluded from the agreement. The effect of this is that the house granted planning permission under application 07/00524/FUL is not bound by the legal agreement.

The applicant wishes to have the section 75 agreement discharged in order to sell the majority of the land to a forestry company. Policy ED7 supports rural diversification initiatives provided they will be used for, amongst other things, forestry operations. In considering proposals, several criteria are considered. Those include: that the development must respect the character and amenity of the surrounding area; it should not have a significant adverse impact on nearby uses and; where an intensification of use is proposed, those are appropriate to the rural character of the area.

There is currently a small area of land (16ha) on the farm which is woodland. The proposal to release the land from the section 75 agreement would allow the applicant to sell 233ha of land to a forestry company, of which up to 200ha could be planted. The planting of forestry on this area of land would represent an intensification of use. There are several parcels of commercial forestry in the area, with significant plantations to the south and southwest. It would not, therefore, be out of keeping with the area and is unlikely to have a significant adverse impact on nearby uses.

Circular 3/2012

It is necessary for all five tests set out in Circular 3/2012 to be met for a planning obligation to be competent. Those are: Necessity; planning purpose; relationship to the development; scale and kind and; reasonableness. The existing agreement raises no issues in respect of the first four tests.

The fundamental issue here is, whether or not it is reasonable to continue to bind the land from being sold other than as a single unit.

The material circumstances have changed in the 10 years since planning permission was granted. The tenancies of two additional farms were relinquished in late 2007 thereby reducing the farm area from 1009ha to 281ha. The reduced size of the farmed land has called into question the economic viability of the farm. This position is backed by a report submitted by the applicants on the financial viability of the unit. The report concludes that: The farm is not viable as a stand-alone unit; improving the sheep flock would not support one full time worker; the size of holding and land classification (5 or 6) is not sufficient to sustain a sheep or beef enterprise and; a viable option would be to plant approximately 150-200ha of timber on the lower slopes of Cacara Hill.

The sale of approximately 233ha of land to a forestry company would leave 49ha of farmland. That would not be a viable unit on its own and the applicants wish to have the option to sell that land as a separate lot or lease it to a neighbouring farm.

Clearly the reduction in tenanted land has reduced the land available for the farming business and, in turn, the viability of that business. This is backed up by evidence submitted by the applicants, the conclusion of which is summarised above. Selling all the land holding of Cacrabank Farm is currently the only option permitted by the terms of the section 75 agreement. It seems unlikely that a forestry operator would wish to purchase the entire farm, including low lying land and the farm buildings. On balance, it appears that it is reasonable to lift the restriction on the sale of the land governed by clause 2(b) given the farm business appears to be unviable.

The applicants' son continues to live in Cacara Cottage but wishes to move away from the farm and leave the agriculture industry. The occupancy of the cottage is restricted by clause 2(c) to someone employed or last employed in agriculture. The Scottish Government's Chief Planner issued advice in November 2011 that occupancy restrictions are rarely appropriate and should generally be avoided. The letter sets out that Scottish Planning Policy promotes a positive approach to rural housing. It states that development plans should support more opportunities for small scale housing development in all rural areas, including housing which is linked to rural businesses. It does not promote the use of occupancy restrictions. The letter is categorical in setting out that the Scottish Government believes that occupancy restrictions are rarely appropriate and so should generally be avoided. It goes on to advise that where the authority is satisfied that an adequate case has been made, it should not be necessary to use formal mechanisms to restrict occupancy.

This advice was reinforced in Circular 3/2012. The advice from the Scottish Government does not rule out the use of occupancy restrictions but allows for a degree of latitude in considering whether or not they should be used. Due to the change in circumstances between the granting of 07/00524/FUL and now, it is unlikely that an occupancy restriction would be deemed appropriate if that application was to be considered today.

It would now appear that clause 2 (b) and (c), set out above, do not meet the test of reasonableness. It is therefore appropriate to discharge the section 75 agreement.

It should also be noted that the use of occupancy restrictions in planning obligations has been tested at several appeal throughout the country. Reporters have followed the advice from the Chief Planner and have upheld the appeals. It is unlikely that the council would be able to defend successfully an appeal against the refusal of the current application to discharge the planning obligation on Cacrabank Farm.

It is unlikely that the discharge of this agreement will set a precedent in this locality and any future proposals for residential development at Cacrabank will be assessed against prevailing development plan policies covering new housing in the countryside. In light of the above, the proposed discharge is appropriate.

CONCLUSION

The proposal to discharge this section 75 agreement is accepted as it no longer satisfies the terms of Circular 3/2012 relating the test of reasonableness. The sale of the land associated with Cacrabank Farm in either one or more lots is acceptable and any future proposed housing development would be subject to the normal requirements of planning. Such proposals would be assessed against the prevailing development plan and material considerations. No deficiencies in infrastructure and services will be created or exacerbated as a result of this discharge.

RECOMMENDATION BY CHIEF PLANNING OFFICER:

I recommend discharge of the section 75 agreement is approved.

DRAWING NUMBERS

Location Plan

Approved by

Name	Designation	Signature
Ian Aikman	Chief Planning Officer	

The original version of this report has been signed by the Chief Planning Officer and the signed copy has been retained by the Council.

Author(s)

Name	Designation
Ranald Dods	Planning Officer



17/00999/MOD75

Cacrabank Farm
Selkirk

