



APPLICATION 16/00268/LA TO DISCHARGE A PLANNING OBLIGATION ASSOCIATED WITH PLANNING PERMISSION (656/89) TO CONVERT A STABLE BUILDING INTO ANCILLARY RESIDENTIAL ACCOMMODATION AT FIRTHWELL, OLD WOODHOUSELEE ROAD, FIRTH FIELD, ROSLIN.

Report by Head of Communities and Economy

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1 The application is for the discharge of a planning obligation associated with a grant of planning permission to convert a stable building into ancillary residential accommodation associated with Firthwell, Old Woodhouselee Road, Firth Field, Roslin. There have been three representations. The relevant policies are DP1 and RP1 of the Midlothian Local Plan. The recommendation is to discharge the planning obligation.**

2 LOCATION AND SITE DESCRIPTION

- 2.1** The site to which this application relates is at Firth Field which comprises a group of five dwellinghouses with a further dwelling in the advanced stages of construction. The site is located between Auchendinny and Loanstone and access is from the B7026. The application property is a two storey stable building with domestic storage at first floor level within a complex of single storey stable buildings, a yard and a gravel quadrangle for the exercising of horses. The building is separated from Firthwell, North House and Firth Mill House by a narrow private lane which provides access to the group of houses. Beyond the stable building and on the same side of the lane a new house is currently under construction. The site is within the countryside.

3 PROPOSAL

- 3.1** The application is to discharge a section 50 agreement (the predecessor to the current section 75 agreements) which relates to a planning permission dating from 1992. The effect of the agreement was that the building subject to the change of use application could not be sold separately from the rest of the planning unit and should only be used as temporary guest accommodation ancillary to the main house.

- 3.2 The applicants submitted a supporting statement which outlines the following:
- The legal agreement and the condition imposed in the 656/89 permission are an outdated planning requirement and would not be entered into today;
 - Removal of the agreement would remove a burden from the property but would not result in any material changes in the nature of the way that the building is used or its impacts on others;
 - An application for the ancillary building as a standalone unit would be likely supported if it were to come forward now without the need for a condition restricting its occupation, use or sale separately from the main house;
 - In respect of other similar planning decision elsewhere across Scotland, where there have been occupancy restrictions their removal has been supported.

Following the submission of representations from interested parties the applicant's agent has submitted an additional statement outlining the following:

- The building the subject of the application is a refurbishment rather than a new build;
- There is no intention by the applicants to sell the stable building and adjoining pasture – the applicants need to retain them in order to access the new house built under the 2011 permission (see paragraph 4.4);
- The applicants wish to sell the original host dwellinghouse which they currently reside in to their daughter and her fiancé. Under the provisions of the current obligation/condition they would also be required to part with the stable building which is tied to the host dwelling. The applicants themselves wish to occupy the new house being constructed under the 2011 permission, however to access this property it is necessary to do so through the stable yard and associated land, otherwise the new house would be landlocked as access from the private road would not be possible;
- The representors letter assumes that a legal obligation would be the pre requisite for a new dwellinghouse, yet the 2011 consented dwellinghouse was not subject to a planning obligation. Furthermore the representors reiterates that the variations sought are tantamount to erecting a new house which does not take cognisance of the nuances of policy in relation to new build and conversion;
- New building in the countryside is not the same as the conversion of an existing building and is assessed under different planning policy criteria;
- An additional benefit of having the applicant's daughter and fiancé in the ownership of Firthwell is that it would provide a net increase in the number of people contributing to the upkeep of the private road; and

- The provisions of Midlothian Local Plan 2008 Policy DP1 paragraph 1.3 – Redundant Farm Steadings and Other redundant Non residential, buildings in the Countryside are a consideration.

4 BACKGROUND

- 4.1 Planning application 656/89 for change of use of stable to form guest accommodation at Firthwell, Roslin was granted planning permission subject to a Section 50 agreement and a condition restricting the residential use of the stable to a private use, ancillary to Firthwell. The application subject to this report is to discharge the legal agreement. It is currently unclear whether this permission was implemented and it would be appropriate to request the applicant apply for a Certificate of Lawful Development if it is their intention to use the property for residential purposes.
- 4.2 Planning application 16/00101/S42 to remove the restrictive planning condition referenced above (in paragraph 4.1) was withdrawn.
- 4.3 Planning application 12/00821/DPP for the extension and alterations to the roof height of the stable building, the subject of the current application, was granted permission. This planning permission has been implemented.
- 4.4 Planning application 11/00581/PPP for planning permission in principle for the erection of a single dwellinghouse on the land adjoining the application site was granted permission. The associated Matters Specified by Conditions applications providing the detailed aspects of the dwellinghouse (application references 13/00697/MSD 14/00375/MSD) were approved in 2013 and 2014 respectively.
- 4.5 The application has been called to Committee for consideration by Councillor Parry.

5 CONSULTATIONS

- 5.1 All parties to the original Section 50 agreement were notified of the application as required by the legislation. No comments were received from the signatories of the original agreement.

6 REPRESENTATIONS

- 6.1 A letter of objection has been received from an agent acting on behalf of the proprietors of Firth Mill House and North House. The objection draws the Council's attention to what they consider to be relevant sections of the Planning Acts, relevant case law and relevant local plan policies in relation to the determination of the application. It is suggested that the practical effect of granting permission for the application would be that the guest accommodation may fall within Class 9 of the Town and Country Planning Use Classes Order, the

same class as a private dwelling house and therefore if unrestricted could be used marketed and sold as a standalone dwellinghouse separate to Firthwell. It is referenced that the provision of Policy DP1 of the Midlothian Local Plan 2008 and therefore in their view approving the application potentially provides for an additional dwelling in this location would be contrary to Policy DP1.

6.2 The details of the objection are as follows:

- Policy DP1 1.2(c) requires that new units are located close to local services and/or has access to a regular public transport service, but in this location that would not be the case and therefore the application are contrary to that requirement;
- Policy DP1 1.2(d) requires that new units fit the landscape and are of a character and scale appropriate to the existing units. However in this case the stables are designed primarily for use as an agricultural building not a dwellinghouse. An agricultural use places different requirements on a building that may not be consistent with those requirements for the permanent use as a dwellinghouse;
- Policy DP1 at 1.2 (g) requires that new units incorporate sustainable building design. The Planning Application is to remove a planning restriction and no works to the stable are proposed that would promote sustainable building design;
- Policy DP1 at 1.2 (h) requires new units to enhance the landscape and appearance of the existing group of buildings. No external works are proposed to achieve this ambition.

6.3 The proprietors of Firth Mill House and North House have also written individually. The main thrust of those representations being that the removal of the obligation would potentially provide for an additional dwelling which would be contrary to Midlothian Local Plan Policy.

7 PLANNING POLICY

7.1 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan (June 2013) and the Midlothian Local Plan, adopted in December 2008. The following policies are relevant to the proposal:

Midlothian Local Plan (MLP)

7.2 **Policy RP1:** Protection of the countryside, states that development in the countryside will only be permitted if it is required for the furtherance of a countryside activity or it accords with policy DP1.

7.3 **Policy DP1** is divided into sections entitled New Housing, Design of New Housing, House Extensions, Replacement Houses and Appearance of all Buildings. The section on New Housing is divided into four subsections: Single Houses (not related to Housing Groups/Farm Steadings); Housing Groups; Redundant Farm Steading's and Other Redundant Non-Residential Buildings in the Countryside; and Rural

Buildings of Value. These sections give guidance on acceptable housing proposals in the countryside.

- 7.4 The section on Housing Groups states that where there are clearly identifiable groupings of five or more houses in close proximity, already located in the countryside and outwith village envelopes, it may be possible to supplement these with a limited number of additional dwellings subject to the following criteria:
- the location is outwith the Green Belt;
 - the new units are restricted to a maximum of 1 new unit per 5 existing units within the Local Plan period;
 - the location is close to local services (schools, shops) and/or has access to a regular public transport service giving access to such facilities;
 - the new units fit in the landscape and are of a character and scale appropriate to the existing units;
 - the new units are capable of being served by an adequate and appropriate access;
 - the new units are capable of being provided with drainage and a public water supply at reasonable cost, or an alternative private water supply, and avoid unacceptable discharge to water courses;
 - the new units incorporate sustainable building design;
 - the new units enhance the landscape and appearance of the existing group of buildings; and
 - the new units will not result in ribbon development and the plot size/width should be similar to other units within the group.
- 7.5 Supplementary Planning Guidance (SPG) 'Development in the Countryside: Policy DP1, Section 1.2 Housing Groups' was adopted on 6 October 2009. This SPG allows some flexibility for policy DP1 to enable limited growth within housing groups whilst ensuring that any development as a result of this be of an appropriate scale to the locality, cause minimal adverse impact to the landscape and character of the area and has appropriate access to public transport and/or local facilities. This guidance states that gap sites within the group will generally take precedence over other locations, such as sites which adjoin the group and have a physical or visual feature which provides containment. Where there are no gap sites at present, sites which adjoin the group are preferable. Normally a site will be preferred if at least two sides adjoin the boundaries of existing properties. In addition, all proposals which adjoin a group should meet the following standards: there is an existing physical or visual feature which provides containment of the group or there is potential for such a feature to be provided so long as it is in character with the scale and appearance of the group. Proposals in open fields adjoining a group, which have no physical features to provide containment, will not be acceptable.
- 7.6 The housing group at Firth Field has been identified as consisting of 5 dwellings and as such one additional unit is potentially acceptable, if

the proposals comply with the criteria detailed in policy DP1 section 1.2. The SPG gives advice on acceptable plots for new houses within groups. This guidance states that gap sites within the group will generally take precedence over other locations, such as sites which adjoin the group, and have a physical or visual feature which provides containment.

National Planning Policy

- 7.7 Current **Scottish Government Policy** is contained within the **Scottish Planning Policy (SPP)**. The SPP states:

The character of rural areas and the challenges they face vary greatly across the country, from remote and sparsely populated regions to pressurised areas of countryside around town and cities.

Development plans should support more opportunities for small scale housing development in all rural areas, including new clusters and groups, extensions to existing clusters and groups, replacement housing, plots on which to build individually designed houses, holiday homes and new build or conversion housing which is linked to rural businesses or would support the formation of new businesses by providing funding.

- 7.8 Circular **03/2012 (Planning Obligations and Good Neighbour Agreements)** sets out six tests which planning obligations must comply with, these are:

- Necessary to make the proposed development acceptable in planning terms;
- Serve a planning purpose and, where it is possible to identify infrastructure provision requirements in advance, should relate to development plans;
- Relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of the development in the area;
- Fairly and reasonably relate in scale and kind to the proposed development; and
- Be reasonable in all other respects.

- 7.9 The necessity test states that planning conditions are generally preferable to a planning or legal obligation. The circular states: *Imposing restrictions on use are rarely appropriate and so should generally be avoided. They can be intrusive, resource-intensive, difficult to monitor and enforce and can introduce unnecessary burdens or constraints. In determining an application, it may be appropriate for the planning authority to consider the need for the development in that location, especially where there is the potential for adverse impacts. In these circumstances, it is reasonable for decision-makers to weigh the justification against potential impacts, for example on road safety, landscape quality or natural heritage, and in such circumstances it may be appropriate for applicants to be asked to make a land management or other business case. Where the authority is satisfied that an*

adequate case has been made, it should not be necessary to use a planning obligation as a formal mechanism to restrict occupancy or use.

8 PLANNING ISSUES

- 8.1 The main planning issue to be considered in determining this application is whether the planning obligation attached to planning permission 656/89 still meets the five tests of Ministerial Circular 03/2012 as set out in paragraph 7.8 of this report.
- 8.2 In granting planning permission (656/89) in 1992 for the charge of use of the stable building to a residential use the Council imposed both a planning condition and a planning obligation to restrict the use of the premises to prevent an additional independent dwelling in this countryside location. The partially converted stable building was to remain as ancillary accommodation to the main house.
- 8.3 Since the grant of planning permission (656/89) Scottish Government guidance has changed by way of Circular 03/2012 and as a consequence it is considered no longer necessary to have both a planning obligation and a planning condition to regulate the occupation of the partially converted stable (if planning permission 656/89 was implemented). General practice in Midlothian and across Scotland is to now regulate the occupation of ancillary residential units by condition, if regulation is required.
- 8.4 The objections relate to the concern that if the planning obligation is discharged it will give rise to an additional dwellinghouse contrary to the Midlothian Local Plan. An additional dwellinghouse could be a potential consequence had both the application the subject to this report (16/00268/LA) and the withdrawn application to remove the condition regulating the occupation of the stable building (16/00101/S42) as originally submitted been approved by the Council. An additional dwelling in this location would be contrary to local development plan policies. However, this is not the assessment. The assessment is whether the planning obligation still meets the tests of Circular 03/2012, in particular, is it necessary – it is considered that the planning obligation does not meet the tests of Circular 03/2012 and is not necessary.

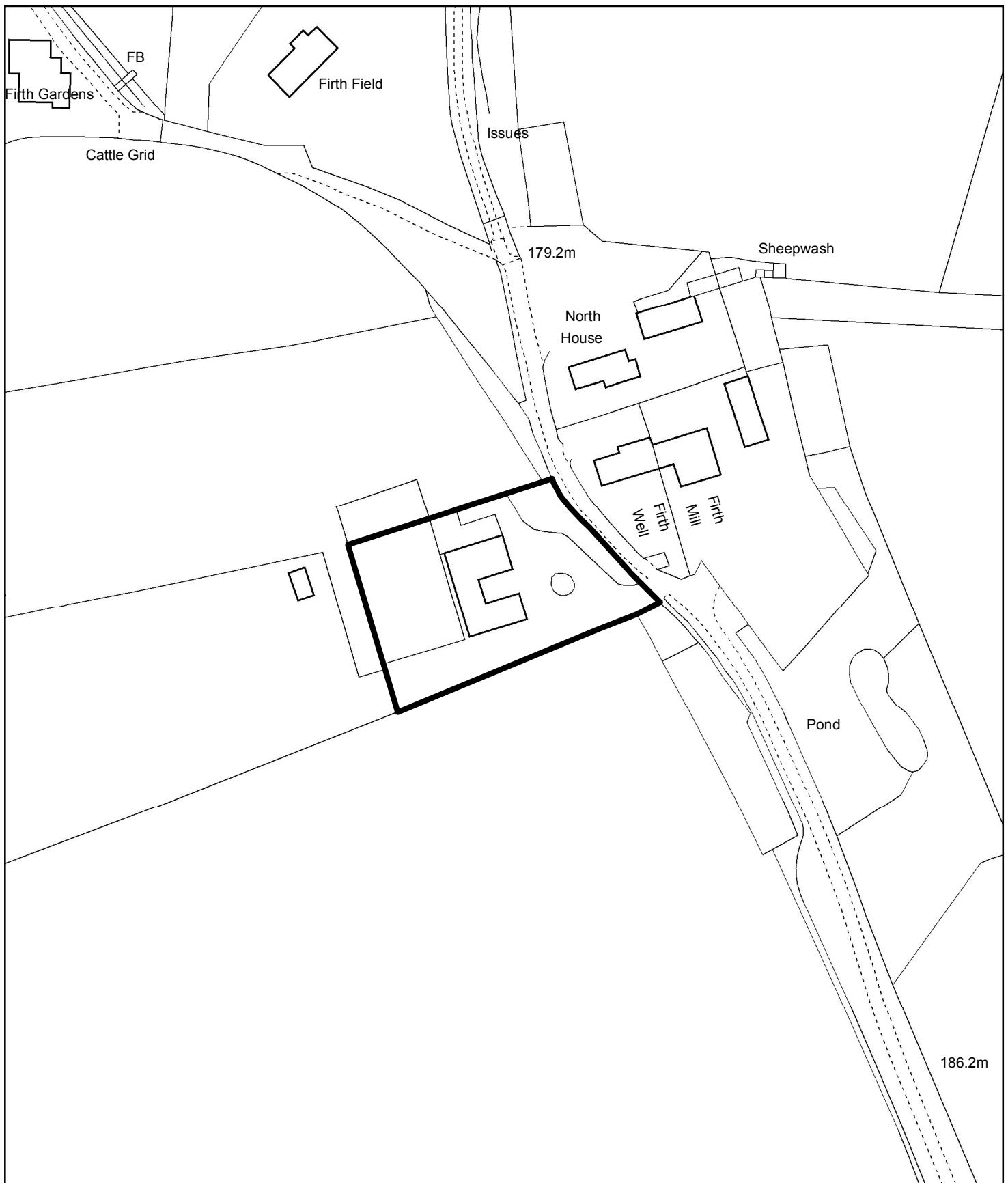
9 RECOMMENDATION

- 9.1 It is recommended that the Planning Obligation be discharged for the following reason:

The Planning Obligation does not meet the tests of necessity and reasonableness as required by Circular 03/2012 and its discharge accords with Policies DP1 and RP1 of the Midlothian Local Plan 2008.

Ian Johnson
Head of Communities and Economy

Date:	23 August 2016
Application No:	16/00268/LA
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Background Papers:	16/00268/LA



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Application to discharge a planning obligation within a legal agreement (associated with planning permission 656/89) at Firthwell, Roslin

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