

Signed (authorised Officer(s)):

THE ENDRIG, AUCHLEA FARM,  
KINGSWELLS

THE REMOVAL OF CONDITION NO.1 AND  
CONDITION NO. 4 OF CONDITIONAL  
PLANNING PERMISSION REF:92/0424

For: Mr Alexander Clark

Application Type : Section 42 Variation  
Application Ref. : P131646  
Application Date : 13/11/2013  
Advert : Can't notify  
neighbour(s)  
Advertised on : 27/11/2013  
Officer : Jane Forbes  
Creation Date : 10 July 2014  
Ward: Kingswells/Sheddocksley/Summerhill  
(L Ironside/S Delaney/D Cameron)  
Community Council: No response received

## **RECOMMENDATION:**

**Refuse**

## **DESCRIPTION**

The application site is located within the Green Belt, and lies at a distance of approximately 1000 metres to the south-west of the A944 Aberdeen to Alford Road. The site comprises a single storey dwellinghouse which lies at some 40 metres to the north of Auchlea Farm, a mixed dairy/arable farm of some 200 acres. The site is accessed along a single width, rough track which leaves the A944 at some 1000 metres to the east of its junction with the B9119 Aberdeen to Tarland Road.

## **RELEVANT HISTORY**

Ref: 92/0424 – Conditional planning consent was granted in April 1992 for the erection of a dwellinghouse and integral garage within a site of some 0.19h located directly to the north of the agricultural buildings and farmhouse associated with Auchlea Farm, and accessed off the farm road. Conditions applied included limiting the occupation of the dwelling to a person solely or mainly employed in agriculture on Auchlea Farm, and prohibiting the sale of the dwellinghouse separately from Auchlea Farm.

## **PROPOSAL**

This application is submitted under the provisions of Section 42 of the Town and Country Planning (Scotland) Act 1997, and seeks removal of Condition 1 and Condition 4 of planning permission 92/0424.

Condition 1 states “that the occupation of the dwelling shall be limited to a person solely or mainly employed in the locality (ie Auchlea Farm) in agriculture as defined in Section 275 of the Town and Country Planning (Scotland) Act 1972 - in order to safeguard the amenity of this Green Belt location”.

Condition 2 states “that the dwellinghouse hereby approved shall at no time be sold off or separated in any manner from the farm known as Auchlea without the prior approval of the planning authority – in order to preserve the amenity of this Green Belt location”.

### **Supporting Documents**

All drawings and the supporting documents listed below relating to this application can be viewed on the Council’s website at - <http://planning.aberdeencity.gov.uk/PlanningDetail.asp?ref=131646>

On accepting the disclaimer enter the application reference quoted on the first page of this report.

- Written Statement submitted by the agent on behalf of the applicant outlining the reason for seeking removal of conditions – lodged on 13 November 2013 along with the planning application.
- Letters from Planning Consultant – dated 29 March 2014 and 23 June 2014.

### **CONSULTATIONS**

**Roads Project Team** – No observations.

**Environmental Health** - No observations.

**Enterprise, Planning & Infrastructure (Flooding)** – No observations.

**Community Council** – No response received.

### **REPRESENTATIONS**

None

### **PLANNING POLICY**

#### **National Policy and Guidance**

Scottish Planning Policy 2014 (SPP) – states that where planning authorities consider it appropriate, development plans may designate a green belt around a city or town to support the spatial strategy by:

- directing development to the most appropriate locations and supporting regeneration;
- protecting and enhancing the character, landscape setting and identity of the settlement; and
- protecting and providing access to open space.

SPP outlines that local development plans should describe the types and scales of development which would be appropriate within a green belt. These may include:

- development associated with agriculture, including the reuse of historic agricultural buildings;
- development associated with woodland and forestry, including community woodlands;
- horticulture, including market gardening and directly connected retailing;
- recreational uses that are compatible with an agricultural or natural setting;
- essential infrastructure such as digital communications infrastructure and electricity grid connections;
- development meeting a national requirement or established need, if no other suitable site is available; and
- intensification of established uses subject to the new development being of a suitable scale and form.

#### **Aberdeen City and Shire Strategic Development Plan 2014**

Provides a spatial strategy for development, and outlines the vital role which the green belt plays in protecting the character and landscape setting of the city. The Plan acknowledges the need for growth across the city, but states that development must be guided to appropriate places whilst protecting the most important areas.

#### **Aberdeen Local Development Plan**

Policy NE2 (Green Belt) – States that no development will be permitted in the green belt for purposes other than those essential for agriculture, woodland and forestry, recreational uses compatible with an agricultural or natural setting, mineral extraction or restoration or landscape renewal.

Proposals for development associated with existing activities in the green belt will be permitted but only if all of the following criteria are met:

- The development is within the boundary of the existing activity.
- The development is small-scale.
- The intensity of activity is not significantly increased.
- Any proposed built construction is ancillary to what exists.

#### **Other Relevant Material Considerations**

Occupancy Restrictions & Rural Housing – A letter issued by the Chief Planner in November 2011 sought to clarify the Scottish Government's view on the use of conditions or planning obligations to restrict occupancy of new rural housing. It stated that a number of issues had arisen with the use of occupancy restrictions, some of which had been exacerbated by the economic situation at that time. Some people had found it difficult to obtain a mortgage, others to sell the house, or have the restriction lifted, when they were forced by necessity to move, noting

that the use of occupancy restrictions introduced an additional level of complexity (a potential expense) in the process of gaining planning permission for a new house.

The letter stated that the Scottish Government believed that occupancy restrictions were rarely appropriate and so should generally be avoided. However, the letter continued to state that in areas, including Green Belts, where...there was a danger of suburbanisation of the countryside or an unsustainable growth in long distance car-based commuting, there was a sound case for a more restrictive approach.

## **EVALUATION**

Section 42 of the Town and Country Planning (Scotland) Act 1997 (as amended) requires the planning authority in determining the application only to consider the question of the condition(s) subject to which the previous planning permission should be granted. The planning authority has the option to approve the permission subject to new or amended conditions or to approve planning permission unconditionally. Alternatively the planning authority can refuse the application, which would result in the conditions on the original application remaining.

### Background

Planning permission was granted on 30 April 1992 for the erection of a dwellinghouse at Auchlea Farm. Although a previous application for a similar proposal had been refused in 1991, this was as a result of the proposed siting of the dwelling being deemed inappropriate, given that it would have been remote from the existing agricultural buildings and farmhouse. The revised proposal (Ref 92/0424) addressed this issue and was subsequently approved with conditions applied which included tying any future occupation of the dwelling to agricultural workers and restricting any independent sale of the property from Auchlea Farm. This was in accordance with relevant policy at that time, where there was a restriction on any residential development taking place within the green belt unless “applicants can satisfy the council that it is required to provide residential accommodation for essential agricultural workers, who are needed to be housed immediately adjacent to their place of employment and where there is a proven local need”. It was accepted by the planning authority that an additional house was required to support the agricultural business, and conditions were applied to the planning permission on that basis.

### Supporting Documents/Statement

The agent submitted the following statement on behalf of the applicant, Mr Alexander Clark, and in support of the application for the removal of Conditions 1 and 4:

“Due to advanced age and health issues, Mr & Mrs Alexander Clark have had to downsize and have been allocated a flat in a sheltered housing complex. Mr

Clark, who owns Endrig, wishes to sell the property but is prevented from doing so by the planning restriction. A grandson of Mr Clark's who works at Auchlea Farm would be interested in buying the property, but would be unable to obtain a mortgage given the present restriction".

A supporting statement was submitted by Planning Consultants Archial, dated 29 March 2014, and this included a written statement from a financial consultant advising that as a result of the restriction incurred by Condition 1 of planning consent ref 92/0424, which tied the occupation of the dwelling to a person solely or mainly employed on Auchlea Farm, the applicant's grandson would not be in a position to secure a mortgage to purchase the property in question and this would also apply were a Section 75 legal agreement to be entered into, with that same restriction. The statement re-iterated that the applicant's grandson would be employed at Auchlea Farm, in accordance with Condition 1, and also stated that whilst local plan policy on green belt supported residential development in association with agricultural business, it did not mention a requirement for attaching any condition which would restrict the occupancy of such development . Finally, it was stated that the Chief Planner, in his correspondence of 4 November 2011 to all Heads of Planning, advised that occupancy conditions introduce an additional level of complexity and potentially expense to the planning process, very often leading to problems associated with obtaining a mortgage. The supporting statement finished by quoting the Chief Planner, in saying "The Scottish Government believes that occupancy restrictions are rarely appropriate and so should generally be avoided".

A further supporting statement, again from Planning Consultants Archial, was received on 23 June 2014. This letter referred to the new Scottish Planning Policy and quoted from the section entitled "Promoting Rural Development", specifically outlining the following text: "paragraph 81 states that in pressurised areas, such as green belts, then development plans and planning decisions should avoid the use of occupancy conditions". The statement also referred to Circular 3/2012 on Planning Obligations and Good Neighbour Agreements and the limited role which it sees for the obligations restricting the use of buildings, with paragraph 50 recognising that such restrictions have historically been used in respect of housing in rural areas.

#### Comments with regards to the Supporting Statements/Documentation

The supporting statement from the agent gives a relatively brief outline of the reasons behind the application, and the need for the removal of the condition.

The 1<sup>st</sup> of the supporting statements from Archial includes correspondence from a financial consultant who advises that lenders who have been approached and from whom finance has been sought for the property at Endrig, have indicated they would not be willing to provide a mortgage to the applicant's grandson to purchase the property were Condition 1 to remain, nor would they be in a position to provide a mortgage on the basis of the applicant entering into a Section 75

Agreement. However, it is unclear from the correspondence submitted, as to the exact number and nature of financial institutions which were approached, and to what extent they were made aware that a Section 75 Agreement could include a clause which would allow for the discharge of any restriction of sale, were a lending bank or building society to be faced with the agricultural business going into bankruptcy.

Specific reference is made in the 2<sup>nd</sup> supporting statement submitted by planning consultants Archial, to Scottish Planning Policy (SPP) 2014, which was issued on 23 June 2014, and specifically to the section which relates to "Promoting Rural Development". However, this section clearly refers to rural areas and not green belt designated land. The application site lies within the green belt, and therefore any reference and link to policy which supports 'rural development' or 'development in rural locations' as suggested, is irrelevant and perhaps misleading. On this same issue, the supporting statement refers to paragraph 81 and claims that it states "that in pressured areas, such as green belts, then development plans and planning decisions should avoid the use of occupancy conditions". This quote is inaccurate, as paragraph 81 does not refer to green belt areas. Rather, under the heading "Promoting Rural Development, and against paragraph 82, SPP does state "In some most pressured areas, the designation of green belts may be appropriate." This further emphasises the fact that SPP has made a differentiation between rural areas and green belt. Finally, reference to Circular 3/2012 on Planning Obligations and Good Neighbour Agreements and the manner in which restrictions have historically been used in respect of housing in rural areas has little relevance in this instance, given the context of the application site.

Whilst it is highlighted in the 1<sup>st</sup> supporting statement submitted by the planning consultant Archial that in assessing any development proposal against Green Belt Policy (NE2), there is no direct reference to any requirement to apply conditions which would restrict the occupation of a proposed dwellinghouse development to agricultural workers, it should be noted that this clearly does not remove the ability to apply this condition, or any other, if deemed appropriate.

### Discussion

Scottish Planning Policy (2014) clearly distinguishes between development in green belt and rural areas. Against the heading "Promoting Rural Development", SPP discourages development in rural areas which are easily accessible from Scotland's towns and cities in an attempt to try and protect against an unsustainable growth in car-based commuting and the suburbanisation of the countryside. It advises that plans and decision making should guide most new development to locations within or adjacent to settlements and sets out the circumstances in which new housing outwith settlements may be appropriate, stating that in such circumstances occupancy restrictions should be avoided. In terms of green belt policy, and as already outlined above, whilst SPP does state that in some most pressured rural areas, the designation of green belts may be

appropriate, in terms of green belt policy itself, it makes absolutely no reference to the need to avoid occupancy restrictions.

In terms of the guidance issued by the Chief Planner in November 2011, again, whilst it was emphasised that occupancy restrictions in relation to houses in the countryside were rarely appropriate and therefore should generally be avoided, it nevertheless clearly stipulated that in green belt locations, where, due to commuter or other pressure, there is a danger of suburbanisation of the countryside or an unsustainable growth in long distance car-based commuting, there is a sound case for a more restrictive approach. The letter from the Chief Planner therefore acknowledges that a restrictive approach can be considered appropriate where significant pressure for housing development exists. Whilst Policy NE2 (Green Belt) permits a limited range of development types within the green belt, and this includes development for agricultural use, there is without question considerable and ongoing pressure for housing within the green belt surrounding Aberdeen, and it is invariably individual dwellings which are seen to cause the suburbanisation and increase in car borne commuting which is judged unsustainable.

Although supporting information which has been submitted advises of the importance of removing the occupancy condition due to difficulties encountered in obtaining a mortgage to purchase the property, it is worth reiterating at this point that the dwellinghouse was originally granted planning permission specifically as a direct result of the requirements of an agricultural business, and it was only on the basis of the house being essential for the agricultural business, with the occupancy of the property restricted to someone directly employed within that business, that the proposal for a dwellinghouse in this location was deemed acceptable and justifiable in terms of green belt policy. Based on the supporting information which has been submitted on behalf of the applicant, it is apparent that the circumstances are now such that the dwelling would be occupied by the grandson of the original applicant, and given that he would be employed at Auchlea Farm, there would be no valid reason for the removal of condition 1 which was applied in order to ensure the occupancy of the dwellinghouse remained with someone directly employed in agriculture at the farm. It should be noted that the financial issues which the applicant's grandson appears to be encountering in terms of securing a mortgage for the property at Endrig could be addressed through entering into an appropriate Section 75 Legal Agreement. Whilst it would appear that this option has been discounted on the advice of a financial consultant, it is of particular relevance that whilst not all lenders may be willing to accept the security which can be offered by the applicant and planning authority entering a Section 75 Agreement which would specifically allow for the occupancy condition to be discharged should the lending bank or building society, as heritable creditor, seek to exercise a power of sale, this option has operated successfully in similar circumstances and by other planning authorities in Scotland, and on that basis is considered a valid solution in this instance.

Although the aforementioned letter from the Chief Planner accepts that the use of occupancy restrictions introduces an additional level of complexity in the process of gaining planning permission for a new house, it is nevertheless apparent that if the Planning Authority were to agree to the removal of Condition 1 it would result in there being no tie between the occupant of the dwelling to the agricultural farm, and whilst it may be possible to remove Condition 4, which relates to the actual sale of the house independently of the farm business, this in itself would not preclude future occupancy of the dwelling to remain linked to the farm business, and as such could be deemed acceptable. The original application was granted consent on the basis of a direct need for additional residential accommodation in support of the farm business, and based on the detail provided in the supporting statement, which states that the use of the dwelling would remain for an agricultural worker, it would appear that Condition 1 would remain entirely valid.

#### Does an occupancy condition meet the tests set out in Circular 4/1998.

Circular 4/1998 sets six tests which all planning conditions should meet. Conditions should only be imposed where they are necessary; relevant to planning; relevant to the development to be permitted; enforceable; precise and reasonable in all other respects.

Conditions may be appropriate where there are sound planning reasons to justify them, and this would apply in circumstances where a dwelling has been allowed on a site where permission would not normally be granted. In such instances, granting an unconditional permission would mean that not only could the dwelling be sold for general residential use, but there would be no restriction on the occupation of the owner, and this could well be contrary to development plan policy for the locality.

Planning conditions which tie the occupation of properties to a business are commonly used by planning authorities where otherwise they could not be supported. In 1992, when the original application for a residential dwelling at Endrig was determined, Condition 1 was deemed relevant to planning, given that it was required to control the use of the land, it was relevant to the development permitted, was enforceable, precise and considered to be reasonable in all other respects. On this basis the condition met the six tests, and based on current national and local planning policy, the condition would still be relevant and applicable today, as it ensures compliance with the Development Plan, whilst allowing the needs of the farm business to be met.

#### Conclusion

Given the advice from the Chief Planner, and based on the requirements of both Scottish Planning Policy and Policy NE2 (Green Belt), it is considered that whilst Condition 4 could be removed, Condition 1 remains necessary, as it ensures occupancy of the house is tied to someone employed in agriculture at Auchlea Farm. Planning policies within the green belt seek to protect its integrity and in particular seek to avoid the granting of individual planning permissions to prevent



its cumulative erosion. In the absence of specific individual requirements of the farm business in the first instance, the dwelling which was granted conditional consent would not have complied with green belt planning policy, and this has not changed since consent was granted and therefore removal of Condition 1 would not be appropriate.

## **RECOMMENDATION**

**Refuse**

### **REASONS FOR RECOMMENDATION**

Whilst the removal of Condition 4 of planning permission 92/0424 would be deemed acceptable in this instance, the proposed removal of Condition 1 which relates to occupancy, is contrary to Scottish Planning Policy (SPP) and Policy NE2 (Green Belt) of the Aberdeen Local Development Plan, and would appear contrary to advice provided by the Chief Planner in 2011. SPP and Policy NE2 seek to protect the integrity of green belts and to prevent their cumulative erosion. In this instance, if it were not for the original requirements of the farm business, the dwellinghouse which is the subject of this application would not have complied with green belt planning policy and would ultimately have been refused. Current policy seeks to safeguard against unsustainable development and suburbanisation of the green belt area and the removal of Condition 1 would undermine such policies. It is judged that Condition 1 continues to meet the tests set out in Circular 4/1998. Taking all of the above into consideration, the proposal to delete Condition 1 is deemed unacceptable in planning policy terms.