

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

SUBMISSIONS to the DMRC

On behalf of Clova Farms Limited

re

Planning permission 22/00463/PPPL

1. Background

This statement relates to a non-material variation sought to the above planning permission in principle (the permission) for the demolition of redundant farm buildings and erection of 4 dwellinghouses at Carlungie Farm Carlungie Carnoustie for Clova Farms Limited.

Since obtaining permission, the applicant wishes to simply demolish the redundant farm buildings and sell on the application site to a developer who will then be in a position to erect the 4 dwelling houses allowed by the permission.

At present they are unable to do so because they cannot comply with the wording of condition 3. The condition has been set out in full in the planning authority's opinion further to the request of the DMRC at its meeting on 27 September 2023.

In essence, it requires that before any work at all is carried out, detailed plans must be submitted to and approved by the planning authority. These matters relate to siting, design, layout, landscaping, drainage and ground levels. These are all standard requirements for new housing developments and unexceptional in themselves.

However, the applicant has taken legal opinion and it is their position that the condition may be lawfully varied in a way which permits them to carry out demolition while still securing planning authority control over the development which it quite properly seeks to retain and at the same time in compliance with section 59 of the 1997 Act.

2. Circular 4/1998 Use of Conditions in planning permissions

The Circular sets out the following tests that should be met by planning conditions. They require to be:

- necessary
- relevant to planning
- relevant to the development to be permitted
- enforceable
- precise
- reasonable in all other respects.

It is not being suggested that condition 3 is in the abstract anything other than appropriate and lawful. However, since the applicant intends merely to demolish the redundant farm buildings and then sell on to another developer to complete the development, it is now impossible for it to comply with condition 3 and therefore not in accordance with the last of the conditions set out. This is for the simple reason that prior to sale, the applicant cannot know what the subsequent developer might wish to do by way of siting, design, layout etc of the development plot.

4. Suggested variation

It is suggested that both the aims of the planning authority and those of the applicant may be served allowing a non-material variation of condition 3. This could be achieved by the insertion of the words in brackets and in bold script as follows:

“No work (**other than demolition of the redundant buildings**) shall begin until the written approval of the authority has been given and the development shall be carried out in accordance with that approval. The matters are...”

If the above variation were to be permitted, it would still mean that any subsequent developer holding the permission would be obliged to comply with the requirements to obtain approval regarding the siting, design, layout and the other matters covered by condition 3.

Section 59(1) of the Planning Act would also be complied with because the permission would still be:

“subject to a condition, imposed under section 37(1)(a), that the development in question will not be begun until certain matters (which may, but need not be, particularised in the application) have been approved by the planning authority”.

5. Further evidence of lawfulness of the proposed variation

If the variation were not permitted, it would be open to the applicant to exercise permitted development rights to demolish. Under Class 70 of the General Permitted Development Order 1992, deemed planning permission is granted for “A building operation consisting of the demolition of a building.”

Demolition does not include partial demolition. There is a prior approval procedure where the building is a qualifying (residential) building. Since a total demolition of the redundant farm buildings is proposed and since they are not qualifying buildings, it would be open to the applicant to simply demolish the farm buildings in exercise of its Permitted Development Rights without any recourse to the Council.

Reverting again to section 59, the development would be begun, but only to the extent already permitted by the 1992 Order by way of deemed planning permission without the need for planning authority approval.

The likelihood then might be that any future developer would require to seek a fresh planning permission to mirror that which has already been granted. The principle of development already having been established by the permission would, however, mean that such an application would be very likely to be granted.

What the above scenario does, however, represent is an unnecessary duplication of time, effort and Council resources which could simply be obviated by granting the non-material variation sought.

6. Conclusion

The Committee is therefore respectfully requested to grant the non-material variation sought to condition 3 so that the applicant may demolish the redundant farm buildings, leaving a subsequent developer to comply with its substantive requirements.

It is submitted that to do so would be lawful, in accordance with planning legislation and would also benefit from being administratively expedient and a saving of unnecessary expense for both parties.

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