

SCOTTISH BORDERS COUNCIL

PLANNING AND BUILDING STANDARDS COMMITTEE

26 JUNE 2017

APPLICATION FOR PLANNING PERMISSION

ITEM:	REFERENCE NUMBER: 17/00463/MOD75
OFFICER:	Mr E Calvert
WARD:	Kelso and District
PROPOSAL:	Modification of planning application pursuant to planning permission 06/00929/FUL
SITE:	Land North Of Easter Softlaw Farm, Kelso
APPLICANT:	Mr G Scott-Watson
AGENT:	FBR Ltd per Mrs Sarah Mason

SITE DESCRIPTION:

Easter Softlaw is 3km south east of Kelso. The B6396, leading to Wooler, passes the road end of the farmhouse; 8no semi-detached of farm cottages (four pairs) and the junction for a minor road. The Farm Holding is set to the south of this minor road and has progressively developed on land north and east of the Farmhouse. Portions of traditional agricultural ranges are still visible today however the character of the holding is now dominated by steel/ concrete framed sheds, silos and corrugated steel sheet cladding. New Softlaw House is on the opposite side of the minor road (north east of the farm), set within a large private garden and canted at an angle to the road.

PROPOSED DEVELOPMENT:

Modification or discharge of a section 75 agreement is sought relating to New Softlaw House granted permission on 05 June 2007, 06/00929/FUL.

The reason for this modification or discharge request is three fold:

1. The Agent notes that the s.75 is erroneous in that New Softlaw Farmhouse is held in different title to the land.
2. The applicant wishes to modify the s.75 to transfer (ownership) of five fields farmed by another family member.
3. The applicant wishes to modify the s.75 to dispose of the eight Farm Cottages currently restricted by the s.75.

PLANNING HISTORY:

06/00929/FUL

The applicant, Douglas Scott-Watson, was a partner in the Farm business and son of the Farm owner. He sought accommodation on-site to oversee the farming enterprise.

Approval was granted subject to conclusion of a s.75 agreement registered on 30 March 2007, signed by George Scott Watson, owner of the land and father of the applicant, thereby restricting:

1. The whole farm and houses to be held as a single property
2. No part to ever be sold or otherwise disposed
3. No further dwellings to be erected or otherwise without consent of the Planning Authority.

CONSULTATION RESPONSES:

Legal Services: No response.

REPRESENTATION SUMMARY

No representation received.

DEVELOPMENT PLAN POLICIES:

Local Development Plan 2016:

HD2 New Housing in the Countryside
Circular 3/2012 Planning Obligations and Good Neighbour Agreements

OTHER PLANNING CONSIDERATIONS

"New Housing in the Borders Countryside" SPG, 2008
SPP 2014.

Scottish Government Chief Planner's letter to Planning Authorities, November 2011,
"Use of conditions or obligations to restrict the occupancy of new rural housing".

KEY PLANNING ISSUES:

Whether a s.75 agreement amendment or discharge would satisfy the 5 tests of Circular 3/2012: Necessity; planning purpose; relationship to the development; scale and kind; and reasonableness.

ASSESSMENT OF APPLICATION

Policy context

Planning policy has changed since the grant of permission. The application was assessed against Scottish Borders Local Plan: Finalised December 2005, Policy D2 – Housing in the Countryside. This policy prescribed a requirement to legally tie the proposed house to the business and to restrict occupancy.

The Local Development Plan 2016, HD2 Housing in the Countryside, no longer prescribes this requirement although it is read in conjunction with;

"New Housing in the Borders Countryside", Supplementary Planning Guidance, 2008.

This Guidance states that a s.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. It is against this background that the proposals (business, house and land) must be held as a single indivisible unit.

The ultimate aim is to direct appropriate development of housing in rural areas, focusing on defined settlements to support services, facilities and sustainable travel patterns.

Necessity

A legal agreement was necessary at the time of decision as a Planning Condition (restricting further development) would not have been competent legally. The overriding material consideration was economic requirement for the house, as the siting and relationship would not have otherwise been supported by housing in the countryside policy. The house has been constructed on what was considered a site disparate from the building group. The Committee Report from the time confirmed that “the applicants are willing to enter into a section 75 agreement precluding further houses being built on farm land unless they are agriculture occupancy related”.

Under current Policy (LDP 2016, HD2) and SPG, a legal agreement would still be required. Siting and relationship of this dwelling was only acceptable in terms of being directly for the use and development of associated land for agriculture. The siting appears a direct relationship to the farm for security, oversight of livestock or animal husbandry reasons.

Whether New Softlaw Farmhouse now sits within the building group of Softlaw under LDP Policy HD2 on building group policy would be for an application to test.

In the meantime, necessity of agreement is accepted.

Planning Purpose

It transpires that New Softlaw Farmhouse has never been governed by restrictions placed by the s.75 agreement. At the time of the application, New Softlaw Farmhouse was transferred to a different title by Douglas Scott-Watson, and register in the Sasines on 05 April 2007. Thus New Softlaw Farmhouse has always been held in different title to land restricted by the s.75 agreement. Technically, the house could be disposed on the open market, separate to the farm lands, which would be rather at odds with the planning purpose of the s.75 agreement.

The effect, however, is that the house is not governed by an occupancy restriction and the agent has offered a draft modification.

The proposed modification would tie occupancy of New Softlaw Farmhouse and would seek to tie a portion of agricultural land. The land area would be commensurate to the operation of a business (181.26 ha.) whilst excluding 8no Cottages and 5no fields mentioned above.

However, Scottish Planning Policy (SPP) of 2011 provides policy framework on the appropriate use of occupancy controls and states explicitly that occupancy restrictions should be avoided.

Recent Scottish Government Planning appeals in Scottish Borders and East Lothian have generally concluded that legal agreements restricting occupancy or further development conflict with latest planning advice by the Scottish Government's Chief Planning Officer.

A clear message is being sent by Scottish Government that legal agreements should not be relied upon to deliver housing in the countryside policy. Scottish Government wish planning policy and evidenced based Supplementary Guidance to be relied upon to deliver efficient land use planning and not legal agreements. This Scottish Government stance raises significant issues in regard to how development is managed and restricted in areas under intense pressure.

It is the Officer's recommendation that discharge (rather than modification) of this agreement will not set a precedent in this locality. Any application for new residential development would be assessed against the terms of the prevailing local development plan 2016.

It is noted that New Housing in the Countryside SPG, 2008 holds limited weight in this issue. The SPG predates Central Government Policy, which is a significant material factor. There remains development pressure in Scottish Borders for economically justified housing.

Officers therefore consider that this is a legitimate case and that discharge is appropriate.

Relationship to development; Scale and kind

The existing agreement raises no issues in these regards.

Reasonableness

The s.75 agreement sought to achieve that:

1. The whole farm and houses to be held as a single property.
2. No part to ever be sold or otherwise disposed.
3. No further dwellings to be erected or otherwise without consent of the Planning Authority.

It is now considered that Point 1 is can be afforded little weight that given farm land and New Softlaw Farmhouse have never been held as a single indivisible property.

Officers are minded to consider that Point 2 is unreasonable owing to changes in circumstances. The Applicant wishes to dispose of 8no cottages and five fields which are part of the title lands restricted by this agreement. The applicant is being unreasonably restricted from making changes to the business and therefore there is an argument that this burden should be relaxed.

Point 3 has limited purpose, given that the means for testing this issue is more properly through a fresh planning application, which could then be assessed against the prevailing policy of the time.

It is demonstrated that discharge of agreement does not materially affect the principle which was established in 2007. New Softlaw Farmhouse continues to be used in relation to the operation of an agricultural business over a commensurate area of

surrounding land. The s.75 agreement is therefore considered to have limited purpose and, given the inconsistency with recent national guidance, is considered difficult to argue for its retention.

CONCLUSION

The proposal to discharge this s.75 agreement is accepted as it no longer satisfies Circular 3/2012: planning purpose and reasonableness tests. The house is now separate to the land holding although it remains a direct operational requirement of the business. Any proposed development would be assessed against Local Development Plan 2016 and any forthcoming Supplementary Planning Guidance on New Housing in the Countryside. 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 s.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
Euan Calvert	Assistant Planning Officer



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Land North Of Easter Softlaw Farm
Kelso

