



*Planning and
Economic Development*

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Town and Country Planning (General Development Procedure) (Scotland) Order 1992

Application for Planning Permission

Reference : 08/01460/FUL

To : Simon Gibbs 29 Mortonhall Park Avenue Edinburgh EH17 8BP

With reference to your application received on **21st August 2008** for planning permission under the Town and Country Planning (Scotland) Act 1997 for the following development :-

Proposal : Erection of ten holiday chalets, formation of new access road, associated services and landscaping

at : Land South West Of Milkieston Toll House Eddleston Scottish Borders

The Scottish Borders Council hereby **refuse** planning permission for the **reason(s)** stated on the attached schedule.

**Dated 24th November 2008
Planning and Economic Development
Council Headquarters
Newtown St Boswells
MELROSE
TD6 0SA**



Signed


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Head of Planning & Building Standards



Application reference : 08/01460/FUL

REASONS FOR REFUSAL

- 1 The proposed development would be contrary to Policy D1 – Business, Tourism and Leisure Development in the Countryside of the Scottish Borders Local Plan 2008 in that the timber chalets would have a harmful effect on the amenity and character of the area. The erection of 10 holiday chalets at this location would set an unacceptable precedent for development in River Valley Landscape types.
- 2 The proposed development would be contrary to Policy D1 – Business, Tourism and Leisure Development in the Countryside of the Scottish Borders Local Plan 2008 in that adequate access arrangements cannot be met. A tourism related development in this location would result in significant levels of traffic generation and reliance on private cars to the detriment of road safety and the free flow of traffic on the A703 public road.
- 3 The proposed development would be contrary to Policy I15 – Flood Risk Areas of the Scottish Borders Structure Plan 2001-2011 and Policy G4 – Flooding of the Scottish Borders Local Plan 2008 in that the site is at significant risk of flooding. The erection of chalets and associated works would place people and buildings at risk of flooding and would materially increase the probability of flooding elsewhere.

FOR THE INFORMATION OF THE APPLICANT

If the applicant is aggrieved by the decision of the Planning Authority, an appeal may be made to the Scottish Ministers under Section 47 of the Town and Country Planning (Scotland) Act 1997, within six months from the date of this notice. The appeal should be addressed to the Chief Reporter, Scottish Executive Inquiry Reporter's Unit, 4 The Courtyard, Callendar Business Park, Callendar Road, Falkirk, FK1 1XR.

If permission to develop land is refused or granted subject to conditions, whether by the Planning Authority or by the Scottish Ministers, and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner may serve on the Planning Authority a purchase notice requiring the purchase of his interest in the land in accordance with the provisions of Part V of the Town and Country Planning (Scotland) Act, 1997.

Directorate for Planning and Environmental Appeals

Appeal Decision Notice

T: 01324 696 400

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Decision by Philip G Hutchinson, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: P/PPA/140/427
- Site address: Land southwest of Milkieston Toll House, Eddleston, EH45 8PL
- Appeal by Mr S Gibbs against the decision by Scottish Borders Council
- Planning application 08/01460/FUL dated 28 August 2008, refused by notice dated 24 November 2008
- The development proposed: 10 holiday chalets, new access road, landscaping and ancillary works
- Date of site visit by Reporter: 21 July 2009

Date of appeal decision: 6 August 2009

Decision

I dismiss the appeal and refuse to grant planning permission for the above development.

Reasoning

1. The key issues are (1) whether the proposal is consistent with the development plan and (2) if not, whether other material considerations justify a development plan departure. Although others have also been drawn to my attention the most relevant parts of the development plan are policy I15 in the Scottish Borders Structure Plan and policies G4 and D1 in the Scottish Borders Local Plan. In summary the first two guard against development which would be at risk from - or which could exacerbate - flood risks, the latter policy going into much detail. The third policy conditionally supports tourism development in the countryside requiring, among other things, that it respects the character and amenity of the surroundings and can be satisfactorily accessed. The other material considerations are (i) the balance of the policy background which has been mentioned (ii) the characteristics of the site and its surroundings and (iii) whether planning conditions or other controls can resolve any difficulties which arise.

2. Starting with the stated flood risk, I note that the south-western and western parts of the site appear generally marshy as evidenced by the type of vegetation present. This is consistent with the fact that the Scottish Environment Protection Agency [SEPA] has identified the western part of the site as being at risk of a 1-in-200 flood, and the fact that both SEPA and the council's Flood Protection Officer still await a flood risk assessment [FRA]. SEPA has stated that on present information the flood risk may be "high". In addition Scottish Planning Policy 7 - *Planning and Flooding* [SPP7] notes in paragraph 37 that the calculated possibility of flooding occurring should be regarded as a best estimate and not a precise forecast - and that planning decisions should therefore err on the side of



caution. The appellant has held back from commissioning an FRA until a conditional planning permission is released. While I understand that position from an economic angle I cannot reconcile it with the caution expressed in SPP7.

3. Although deferral was requested to allow further discussion with SEPA the application was by then 3 months old and other concerns had also emerged. Moreover paragraph 45 in SPP7 advocates pre-application discussion to help identify whether flooding is an issue. If this emerges it expects developers to commission FRAs at that point to help avoid abortive expenditure. In this case such an exercise would usefully have preceded architectural and other work. In this appeal I am being asked to speculate over potential flood prevention and alleviation measures and to hope that these will be successful. SEPA has indicated that it may withdraw its objection if an FRA or other information demonstrates that the proposed development accords with the principles of SPP7. As matters stand the possibility remains that a planning permission granted at this point may prove to be at odds with those principles.

4. I find the caution adopted by planning officers wholly in tune with those principles. I cannot attach decisive weight to the flood risk map produced for the appellant due to its extremely general resolution. There remains a strong likelihood of land raising within the functional flood plain. A professional FRA, based on accurate topographical information, should be a pre-requisite of planning permission - had flooding been the only problem.

5. The pragmatic comments in the appeal decision for a site near Selkirk (P/PPA/140/409) clearly arose from the comfort which was taken from the particular geographical context. They do not readily apply to the present site which extends into a flood plain on a valley floor and where the lowest parts lie shortly upstream of a bridge. I accordingly find the proposal as it stands to be at odds with the first two development plan policies mentioned above.

6. A second serious problem concerns the access. Although visibility splays of 4.5m x 2.15m can be achieved this part of the A703 has no special speed limit. Along with that serving the Cringlethie House Hotel, this new access would be one of the more heavily used in the vicinity, the principal users being visitors. Transportation officials state that there is a general presumption against new minor accesses onto principal roads in such situations in the interests of road safety and the free flow of traffic. Those concerns cannot be easily brushed aside in this case, since the above visibility provides more spirited drivers with overtaking opportunities. This view was first based on my early impressions but it is strongly corroborated by someone well-placed to do so - i.e. the occupier of Milkieston Toll House (see his letter of 1 September 2008). Although this is not the most serious problem in this appeal, I find that it generates a degree of conflict with part 3 of local plan policy Inf 11. Policy D1 expects tourism proposals to be largely reconciled with Inf 11.

7. I also have a background concern about the appellant's separate parcel of land directly to the south where a steep access has apparently been recently upgraded. It was suggested on site that this was to be occupied by a new agricultural building. However, if the appeal proposal was to proceed that parcel would be denied any adjacent agricultural land. I am *in any case* concerned about the alternative futures of that parcel - and about cumulative effects on the free flow of traffic - should the proposed development take place. However, this is very much a background concern upon which I do not rely given the weight of other factors.

8. A more serious concern surrounds the likely visual impact alongside the A703. Many would perceive this as an example of ribbon development on an exposed valley floor - despite parts of the local landscape being relatively enclosed. I recognise that the shape of the site predetermines the layout, but it would take many years for the development to successfully mature into this largely agricultural scene. It is a serious exaggeration to describe the site as "semi-derelict". The impact would be moderated a little by the fact that the development would lie below the level of the A703. However, this would not come close to disguising it since eaves levels would approximate to that of the A703 carriageway. The visual impact of 10 chalets in a row parallel to the A703 tourist route would cause an unacceptable degree of adverse visual impact in this largely unblemished agricultural valley. A large proportion of those frequenting the locality, including overseas visitors to the hotel, can be counted among the most sensitive of receptors. In this particular case it matters little that planning officers formed their own views without involving Scottish Natural Heritage or relying upon corresponding internal sources of advice.

9. Although the council has not founded upon the matter I have an additional concern. The topography would demand significant and potentially eye-catching up-filling work to reconcile site levels with an access junction of 1-in-20 gradient and with a throat width of 5.5m. The absence of a submitted section along the line of the access makes me approach this with great caution. The amount of engineering work involved would significantly exacerbate the visual impact - irrespective of any additional likelihood of entrance signage.

10. My findings in paragraphs 2 - 9 overpower the fact that the development could well be reconciled with several development plan policies which are not mentioned on the refusal notice. I have considered all the other proposals and developments which have been mentioned, although not all would have emerged in the present policy climate. These other cases do not help me reconcile the current proposal with the above development plan policies. The most relevant part of the policy background outside the development plan is SPP7 but self-evidently this calls for great caution over flooding issues. Planning conditions and other controls cannot resolve any of the problems discussed in paragraphs 2 - 9, since these are largely the product of the topography, location and shape of the site.

11. Drawing together the above reasoning I conclude that the proposal is inconsistent with the development plan and that other material considerations also support the case for refusal. Careful account has been taken of all the other matters which have been raised but they do not outweigh those considerations on which this decision is based.

PHILIP G HUTCHINSON
Reporter

