

Public Document Pack



LOCAL REVIEW BODY MONDAY, 6 JUNE, 2016

A MEETING of the LOCAL REVIEW BODY will be held in the COUNCIL CHAMBER, COUNCIL HEADQUARTERS, NEWTOWN ST BOSWELLS, TD6 0SA on MONDAY, 6 JUNE, 2016 at 10.00 AM

J. J. WILKINSON,
Clerk to the Council,
30 May 2016

BUSINESS		
1.	Apologies for Absence.	
2.	Order of Business.	
3.	Declarations of Interest.	
4.	<p>Consider request for review of refusal of planning consent in respect of erection of dwellinghouse and upgrade access track at redundant water treatment works, north east of Broughton Cottage, Broughton. 15/00890/PPP 16/00010/RREF</p> <p>Copies of the following papers attached:-</p>	
	<p>(a) Notice of Review</p> <p>Including Decision Notice (page 43) Officer's Report (page 45)</p>	(Pages 1 - 52)
	(b) Papers referred to in report	(Pages 53 - 72)
	(c) Consultations	(Pages 73 - 78)
	(d) Objections	(Pages 79 - 88)
	(e) Additional representations	(Pages 89 - 92)
	(f) List of Policies	(Pages 93 - 100)
5.	<p>Consider request for review of refusal of application to remove Condition 3 of planning consent 04/02011/FUL pertaining to occupancy of dwellinghouse at Craigie Knowe, Earlston. 16/00041/FUL 16/00011/RREF</p>	

	Copies of the following papers attached:-	
	(a) Notice of Review Including Decision Notice (page 106)	(Pages 101 - 130)
	(b) Officer's report	(Pages 131 - 138)
	(c) Papers referred to in report	(Pages 139 - 150)
	(d) List of Policies	(Pages 151 - 156)
6.	Consider request for review of refusal of planning consent in respect of change of use from Class 4 (Office) to Class 2 (Beauty Therapy Salon) at Block 2, Unit 6, Cherry Court, Cavalry Park, Peebles. 15/01498/FUL 16/00013/RREF	
	Copies of the following papers attached:-	
	(a) Notice of Review Including Decision Notice (page 177) Officer's report (page 179) Consultation – Roads planning service (page 184)	(Pages 157 - 184)
	(b) Papers referred to in report	(Pages 185 - 206)
	(c) Consultation - Economic Development	(Pages 207 - 208)
	(d) List of Policies	(Pages 209 - 214)
7.	Any Other Items Previously Circulated	
8.	Any Other Items which the Chairman Decides are Urgent	

NOTES

1. Timings given above are only indicative and not intended to inhibit Members' discussions.
2. Members are reminded that, if they have a pecuniary or non-pecuniary interest in any item of business coming before the meeting, that interest should be declared prior to commencement of discussion on that item. Such declaration will be recorded in the Minute of the meeting.

Membership of Committee:- Councillors R. Smith (Chairman), J. Brown (Vice-Chairman), M. Ballantyne, J. Campbell, J. A. Fullarton, I. Gillespie, D. Moffat, S. Mountford and B White

Please direct any enquiries to Fiona Walling 01835 826504
email fwalling@scotborders.gov.uk



Newtown St Boswells Melrose TD6 0SA Tel: 01835 825251 Fax: 01835 825071 Email: ITSystemsAdmin@scotborders.gov.uk

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100009777-001

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

Applicant or Agent Details

Are you an applicant or an agent? * (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

Applicant Agent

Agent Details

Please enter Agent details

Company/Organisation:	Suzanne McIntosh Planning Limited		
Ref. Number:	<input type="text"/>	You must enter a Building Name or Number, or both: *	
First Name: *	Suzanne	Building Name:	<input type="text"/>
Last Name: *	McIntosh	Building Number:	12-14
Telephone Number: *	01316560303	Address 1 (Street): *	Lochrin Buildings
Extension Number:	<input type="text"/>	Address 2:	Gilmore Place
Mobile Number:	<input type="text"/>	Town/City: *	Edinburgh
Fax Number:	<input type="text"/>	Country: *	United Kingdom
		Postcode: *	EH3 9NB
Email Address: *	smcintoshplan@gmail.com		

Is the applicant an individual or an organisation/corporate entity? *

Individual Organisation/Corporate entity

Applicant Details

Please enter Applicant details

Title:	<input type="text" value="Mr"/>	You must enter a Building Name or Number, or both: *	
Other Title:	<input type="text"/>	Building Name:	<input type="text" value="Green Farm Steading"/>
First Name: *	<input type="text" value="Stewart"/>	Building Number:	<input type="text"/>
Last Name: *	<input type="text" value="Kane"/>	Address 1 (Street): *	<input type="text" value="Broughton"/>
Company/Organisation	<input type="text"/>	Address 2:	<input type="text"/>
Telephone Number: *	<input type="text"/>	Town/City: *	<input type="text" value="Broughton"/>
Extension Number:	<input type="text"/>	Country: *	<input type="text" value="Scotland"/>
Mobile Number:	<input type="text"/>	Postcode: *	<input type="text" value="ML12 6HF"/>
Fax Number:	<input type="text"/>		
Email Address: *	<input type="text"/>		

Site Address Details

Planning Authority:	<input type="text" value="Scottish Borders Council"/>
Full postal address of the site (including postcode where available):	
Address 1:	<input type="text"/>
Address 2:	<input type="text"/>
Address 3:	<input type="text"/>
Address 4:	<input type="text"/>
Address 5:	<input type="text"/>
Town/City/Settlement:	<input type="text"/>
Post Code:	<input type="text"/>

Please identify/describe the location of the site or sites

<input type="text" value="Redundant Treatment Works North East of Broughton Place Cottage Broughton Scottish Borders"/>

Northing	<input type="text" value="637090"/>	Easting	<input type="text" value="311612"/>
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Description of Proposal

Please provide a description of your proposal to which your review relates. The description should be the same as given in the application form, or as amended with the agreement of the planning authority: *
(Max 500 characters)

Appeal against the refusal of planning permission 15/00890/PPP for the Erection of a Dwellinghouse and upgrade access track

Type of Application

What type of application did you submit to the planning authority? *

- Application for planning permission (including householder application but excluding application to work minerals).
- Application for planning permission in principle.
- Further application.
- Application for approval of matters specified in conditions.

What does your review relate to? *

- Refusal Notice.
- Grant of permission with Conditions imposed.
- No decision reached within the prescribed period (two months after validation date or any agreed extension) – deemed refusal.

Statement of reasons for seeking review

You must state in full, why you are seeking a review of the planning authority's decision (or failure to make a decision). Your statement must set out all matters you consider require to be taken into account in determining your review. If necessary this can be provided as a separate document in the 'Supporting Documents' section: * (Max 500 characters)

Note: you are unlikely to have a further opportunity to add to your statement of appeal at a later date, so it is essential that you produce all of the information you want the decision-maker to take into account.

You should not however raise any new matter which was not before the planning authority at the time it decided your application (or at the time expiry of the period of determination), unless you can demonstrate that the new matter could not have been raised before that time or that it not being raised before that time is a consequence of exceptional circumstances.

Please see attached grounds of appeal document and the supporting documents, some of which are of a private, medical, confidential nature

Have you raised any matters which were not before the appointed officer at the time the Determination on your application was made? *

Yes No

If yes, you should explain in the box below, why you are raising the new matter, why it was not raised with the appointed officer before your application was determined and why you consider it should be considered in your review: * (Max 500 characters)

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review. You can attach these documents electronically later in the process: * (Max 500 characters)

Please see attached document list

Application Details

Please provide details of the application and decision.

What is the application reference number? *

15/00890/PPP

What date was the application submitted to the planning authority? *

29/07/2015

What date was the decision issued by the planning authority? *

19/01/2016

Review Procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Can this review continue to a conclusion, in your opinion, based on a review of the relevant information provided by yourself and other parties only, without any further procedures? For example, written submission, hearing session, site inspection. *

Yes No

Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may select more than one option if you wish the review to be a combination of procedures.

Please select a further procedure *

By means of inspection of the land to which the review relates

Please explain in detail in your own words why this further procedure is required and the matters set out in your statement of appeal it will deal with? (Max 500 characters)

A site visit is required in order that the LRB gets a sense of the context of the site within the building group which is under contention. It is also required in order for them to appreciate the brownfield nature of the site.

In the event that the Local Review Body appointed to consider your application decides to inspect the site, in your opinion:

Can the site be clearly seen from a road or public land? *

Yes No

Is it possible for the site to be accessed safely and without barriers to entry? *

Yes No

If there are reasons why you think the local Review Body would be unable to undertake an unaccompanied site inspection, please explain here. (Max 500 characters)

The barriers to entry are unlocked field gates. The LRB could access the site. In the interests of the appeal procedure being a public, quasi judicial process the applicant should be given the opportunity to witness the proceedings; especially as there will be a representative from the decision making department there. It would be against the interests of fairness in quasi-judicial processes if the appellant were not afforded the opportunity to witness the LRB process in full.

Checklist – Application for Notice of Review

Please complete the following checklist to make sure you have provided all the necessary information in support of your appeal. Failure to submit all this information may result in your appeal being deemed invalid.

Have you provided the name and address of the applicant? *

Yes No

Have you provided the date and reference number of the application which is the subject of this review? *

Yes No

If you are the agent, acting on behalf of the applicant, have you provided details of your name and address and indicated whether any notice or correspondence required in connection with the review should be sent to you or the applicant? *

Yes No N/A

Have you provided a statement setting out your reasons for requiring a review and by what procedure (or combination of procedures) you wish the review to be conducted? *

Yes No

Note: You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. You may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

Please attach a copy of all documents, material and evidence which you intend to rely on (e.g. plans and Drawings) which are now the subject of this review *

Yes No

Note: Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice (if any) from the earlier consent.

Declare – Notice of Review

I/We the applicant/agent certify that this is an application for review on the grounds stated.

Declaration Name: Mrs Suzanne McIntosh

Declaration Date: 16/04/2016

LIST OF APPELLANT DOCUMENTS

**IN RESPECT OF THE APPEL AGAINST REFUSAL OF
PLANNING PERMISSION IN PRINCIPLE 15/00890/PPP**

FOR A

DWELLINGHOUSE ON

AT LAND AT

THE FORMER WATER TREATMENT WORKS,

BROUGHTON PLACE, BROUGHTON, BIGGAR

SCOTTISH BORDERS

On behalf of Mr S Kane and Ms J Denson

SUZANNE MCINTOSH PLANNING LIMITED

15.4.16

LIST OF APPELLANT DOCUMENTS (APP)

- 1. Grounds of Appeal Document**
- 2. Planning Application Form**
- 3. Grounds of Appeal**
- 4. Location Plan**
- 5. Indicative Drawings**
- 6. Supporting Planning Statement**
- 7. Supporting Medical Statement**
- 8. Scottish Borders Local Plan – proposed plan 2016**
- 9. Planning Application Decision Notice**
- 10. Planning Application Report of Handling**

GROUNDS OF APPEAL

**IN RESPECT OF THE REFUSAL OF
 PLANNING PERMISSION IN PRINCIPLE 15/00890/PPP
 FOR A
 DWELLINGHOUSE ON
 AT LAND AT
 THE FORMER WATER TREATMENT WORKS,
 BROUGHTON PLACE, BROUGHTON, BIGGAR
 SCOTTISH BORDERS**

On behalf of Mr S Kane and Ms J Denson

SUZANNE MCINTOSH PLANNING LIMITED

15.4.16

1. INTRODUCTION

1.1 Planning permission in principle was refused on 19th January 2016 by delegated authority to the Chief Planning Officer. The reasons for refusal were as follows:

1. The proposal is contrary to Policy D2 – Housing in the Countryside and Supplementary Planning Guidance on new Housing in the Borders Countryside and Policy HD2 – Housing in the Countryside of the proposed Local Development Plan in that the site for the new house is not within the recognisable building group at Broughton Place and it does not relate well to this group.

2. The proposal would be contrary to Policies D2 and G8 of the Scottish Borders Consolidated local plan 2011 and policies HD2 and PMD4 of the Proposed Local Development Plan in that the state need for the dwellinghouse would not justify the proposed development in this specific location.

3. The proposed dwellinghouse would be contrary to Policy D2 of the Scottish borders Consolidated Local Plan 2011 and Policy HD2 of the Proposed Local Development Plan in that satisfactory access and other road requirements cannot be met.

1.2 This grounds of appeal document accompanies the appeal to the LRB of Scottish Borders Council. Each of the documents submitted with the planning application in principle are submitted; including those which were itemised as confidential as they are of a private medical nature concerning a minor.

1.3 The original planning application in principle was for the erection of a dwellinghouse to accommodate the Kane family. The primary function of the house was to be purpose built to suit the family's complex physical needs including being fully wheelchair accessible but also other needs relating to the care of a disabled family member.

1.4 A search of site's for suitable locations started around 10 years ago and was restricted to brownfield land and within settlements around the catchment area of Broughton given this is where the family have lived for many years. A suitable site, within the Broughton Place building group was found and purchased and

forms the land that was the former water treatment works, Broughton Place, Broughton, Biggar.

- 1.5 The house is essential to the growing needs of the family which are not being met in the current home and cannot be met in any other home that has not been specifically designed for them. A house specifically design for them will take into account their complex physical needs, be located close to where they need to be ie within a reasonable locality of Broughton where they currently reside. It is necessary for the family to stay in Broughton as a result of school, work and personal commitments.
- 1.6 The application is for Planning Permission in Principle and as such an OS base plan and site plan defining the desired location for the house are provided. The Supporting Planning Statement and a confidential document detailing the specific medical circumstances relevant to this case were also provided for the assistance of the Planning Officer in considering the proposal. A pre-application consultation has been undertaken with Dorothy Amyes and a representation had been made to the Local Development Plan regarding the issues relating to this proposal.
- 1.7 The appellant seeks to provide a reasoned justification as to why this proposal should be considered as an exception to the rule. In addition, the appellant requested that the LRB considered this application and the potential impacts of refusing the application in the light of the requirements under Equalities legislation in addition to Planning legislation. This is something that has not been done adequately by the Planner and requires to be done by the Local Review Body with guidance from the council's solicitor.

2 SITE LOCATION AND DESCRIPTION

- 2.1 The appeal site is located outwith the Broughton settlement boundary around 400m from the village confines. The appeal site is however within the context of a building group located at Broughton Place comprising a number of different types of dwellings within a scattered building group accessed from a single point of access and located within a distinct pattern around the access route. These dwellings comprise Broughton Place Farm, Broughton Place and Shepherds Cottage. All buildings are located off the access track which runs around the central field, enclosed by stone dykes. Some are residential, some commercial in use. There is clearly a lot of activity in the locale.

2.2 A water treatment facility was located at the site until 2005 and discussions in the past have taken place as to whether the site is brownfield given its former use. The applicant advises that there was a building on site for 30 years. The site is contained by boundary fencing and has tree planting within it. It sits comfortably within the landscape and enjoys long views to the west. Looking back from the west towards the site, it is contained by the levels and planting around the site. The access road into the site, formerly used by the water board still exists, under the grass which has grown over it in the past decade.

3 BACKGROUND

3.1 The site has been the subject of previous planning applications and an appeal. There are some critical differences between this appeal and that which was considered by the Reporter 8 years ago. In addition, there are a number of fundamental reasons why the application should and could be supported now and why the LRB should revisit these issues in the light of their other decisions they have made over the past few years. This statement seeks to convey these.

3.2 The last planning application which went to appeal, SBC reference 07/01075/FUL was considered on the basis of the case put before the Reporter at the time. That Reporter did not give sufficient consideration to the issue of the specific need for the house and was not provided with the evidence to substantiate the claim. Had he had the letters of support and this information before him he may well have come to a different conclusion at that time.

3.3 These are critical elements that require full consideration now, especially in the light of recent SBC planning committee and LRB decisions on similar cases and the intervening changes in equalities legislation. In addition, the last appeal decision was many years ago. Planning policy, particularly in relation to development in the countryside and building groups has changed over that time, Scottish Borders planning policy and development plan has changed and LRB as a result of all of these changes is able now to reconsider the issues afresh.

3.4 In addition, although each case is considered on its own merits the council is bound to consider proposals in the light of the relevant legislation. In this case, the specific requirements of this family, as fully demonstrated in the supporting confidential documents, illustrate exactly why the house is required, the implications of not approving the house, the implications of not being able to accommodate this family elsewhere and the conflicts with equalities legislation in failing to address the needs of this family all require to be considered. In other

cases the council's solicitor has advised the LRB on the issue of the impact of decisions where the Equalities Act comes into play; I would request that her advice be sought in relation to this proposal also.

4 PROPOSAL

- 4.1 This appeal seeks to challenge the refusal of planning permission in principle by Scottish Borders Council under delegated powers for a single dwellinghouse for occupation by Stewart Kane, his partner Jeanette Denson their two daughters and a son.
- 4.2 The setting of the site is within the Broughton Place group of loosely arranged buildings around the central green field set on a hillside in open countryside. It could reasonably be determined to be a loose building group formation.
- 4.3 The site plan illustrates a single storey house being located in the centre of the plot, accessed from the existing track. Limited re-grading is required in order to provide a wheelchair accessible sensory garden around the dwelling. The proposal would not involve large areas of re-engineering of the site and would sit comfortably in its landscape, enjoying long views to the west. It would be designed to a high architectural standard and reflect the character of its surroundings vernacular. The purpose of the house is to be specifically designed for the needs of a disabled person, fully wheelchair accessible and to have sufficient space to accommodate all the required equipment and circulation needed by the family now and in the future. It is essential that the long term needs of the family are addressed. The house presents the opportunity to be able to bring in overnight and respite care by making provision for an additional bedroom. It would also allow level, wheelchair access to the garden – something no other property that hasn't been designed or built as DDA compliant can achieve based on the research done by the family and Eildon Housing Association to find an appropriate house. The specifically designed house would provide what the family need to provide permanence to their housing situation and a quality of life that every family should be entitled to.
- 4.4 Since the application was lodged last year the family have moved to another Eildon HA rented house in the village, which by no means meets their requirements in terms of size, circulation, access to the outside of the house, being dry and not damp and having sufficient space for all of the equipment required for a person with the specific disabilities as detailed in the supporting confidential medical reports. Their previous accommodation had been in a two

storey property which had proven very difficult to use given there was no possibility of modification or including a stair lift etc. The space constraints in both properties are evident. The current property is single storey but still does not meet all of the needs and requirements a purpose built house would as stated above. It is very limited in terms of outside space, access to the outside, internal circulation and storage space for all the equipment required. The only improvement it has brought is not having to negotiate a staircase but all other barriers to a full life still exist. The Planning Officer did not ask the family about this or ask for them to have the medical reports updated. The support network around the family can of course update their comments. This is something that is in hand at the time of lodging the appeal and is anticipated as being available for the LRB.

5 PLANNING POLICIES

- 5.1 Section 25 of the Town and Country Planning (Scotland) Act 1997 (as Amended) requires that planning decisions are made in accordance with the development plan unless material considerations indicate otherwise.
- 5.2 At the time of the submission of the application the development plan comprised the Scottish Borders Structure Plan and the consolidated Scottish Borders Local Plan 2011. The proposed Local Development Plan was a material consideration as is the Supplementary Planning Guidance and any relevant information as to the personal circumstances of the applicant.
- 5.3 The determining issues are whether the proposal would be in accordance with the development plan and if not whether there are any material justifications that would support a departure from the policies.
- 5.4 Since the decision notice reasons for refusal were issued the Scottish Borders LDP has moved on to the stage of being the 'proposed plan'. The Reporters' report has been issued, the council has endorsed the modifications and the plan is ready to be printed and adopted. It is as close to being adopted as it can possibly get. The most relevant, up to date statement of council policy in the determination of this appeal are therefore those policies of the new local development plan, as detailed below. The LRB are asked to consider this point in looking at the reasons for refusal.
- 5.5 An out of date plan, the consolidated Scottish Borders Local Plan 2011 should not be the focus of the determination or reasons for refusal, at this time and may well have been superseded by the time a decision is taken on this appeal. The

LRB is asked to disregard policies D2 and G8 of the consolidated Scottish Borders Local Plan in their deliberations.

- 5.6 The most relevant proposed local development plan policies relating to this site and proposal therefore now are as follows:

HD2 – Housing in the countryside

The Council wishes to promote appropriate rural housing development:

- a) in village locations in preference to the open countryside where permission will only be granted in special circumstances on appropriate sites,*
- b) associated with existing building groups where this does not adversely affect their character or that of the surrounding area, and*
- c) in dispersed communities in the Southern Borders housing market area.*

- 5.7 The plan also advises that within building groups an increase in housing of up to a total of 2 additional dwellings or a 30% increase of the building group, whichever is the greater, associated with existing building groups may be approved provided that a number of criteria are met. This policy is supported by Scottish Government's Scottish Planning Policy (SPP) and Planning Advice Note (PAN) 44 which set out development control criteria for expansions to existing settlements and guidance on fitting new housing development into the landscape.

- 5.8 **Policy PMD4: Development Outwith Development Boundaries:** Where Development Boundaries are defined on Proposals MapsDevelopment should be contained within the Development Boundary and proposals for new development outwith this boundary, and not on allocated sites identified on the proposals maps, will normally be refused. The plan advises that *Exceptional approvals may be granted provided strong reasons can be given that are specified on a list.* The most important of those on the list is *d) it is a development that it is considered would offer significant community benefits that outweigh the need to protect the Development Boundary.*

- 5.7 The specific medical needs of the applicant's family are the most significant material consideration which must, in this case, outweigh any planning policy objection to this proposal. The confidential medical statement clearly details the first hand professional medical evidence and assessments relating to this case. It identifies the needs of the family concerned and gives an indication of the future needs of the family. Given the medical needs the council is clearly requested to have significant regard to the requirements of the Equalities Act 2010. The council is also required to have regard to the harm resulting from not approving

this application and giving sufficient weight to the Equalities Act 2010 requirements.

- 5.8 The detriment to the family of not being able to accommodate their needs in terms of space and equipment required, nor alter their existing dwelling to such an extent as to accommodate the needs of the family is considerable; and is enough to outweigh any planning policy objection to the proposal. This is specifically the case where the life of a disabled person is impacted upon to the extent that it would be if the appeal were rejected.
- 5.9 In reviewing another case that I was involved in which raised similar issues the Scottish Borders Local Review Body was persuaded that, *in these specific circumstances, this information submitted by the appellant was material to the consideration of the appeal. The LRB concluded that a refusal of permission would cause the appellant extreme hardship. It concluded that this fact, together with the provisions of Section 149 of the Equality Act, enabled it to grant an exceptional approval of the application; to grant planning permission to the appellant to erect a new house specifically designed to improve his quality of life and to allow him to remain in an area with which he is familiar and to retain a connection to his existing small holding and equestrian operations.*
- 5.10 In that case the LRB determined that while the development was contrary to the Development Plan there were substantial and overriding material factors in this instance that outweighed the presumption in favour of the Development Plan.
- 5.11 Aside from being in a countryside location, albeit in a loose building group formation, the proposal has previously been in use as a water treatment works and as such its restoration in health, safety and landscape impact terms is important. With suitable conditions the proposal can be sensitively accommodated on the site with very limited impact on the landscape.

6 DELEGATED REPORT

- 6.1 The delegated report advises that Six letters of representation had been received objecting to the application on the following grounds:

- *proposal is contrary to local plan policy for Housing in the Countryside*
- *the site does not relate well to other nearby buildings including the A listed Broughton Place*
- *it is not part of a building group*
- *it is outwith the settlement boundary of Broughton*
- *it is not a brown field site*
- *access to A701 is difficult*

- unsuitable access from Broughton Place Cottage through agricultural land
- impact of extra traffic on existing shared access road
- no indication given as to how site will be connected to public water supply
- question whether septic tank and soakaway can be accommodated within the site
- located in a National Scenic Area and site will be very visible and have an adverse impact on the landscape
- other building sites within the village
- difficult for emergency vehicles to access the site
- the development would interfere with the agricultural activity of the farm
- development at the site would be an historical injustice compromising one of the first enclosed and settled farms in southern Scotland which, unlike most farms, has been managed to remain largely intact for well over 200 years.
- impact of the development on an adjacent tree belt
- the family have recently moved to accommodation adapted for disabled use in the village

6.2 The Planning Officer comments that *As this is an application for planning permission in principle the design of the proposed house is not being considered at this stage. The issues raised regarding access rights and wayleaves are a legal rather than a planning issue. The loss of view is not a material planning issue.*

6.3 The applicant makes the following contribution regarding the representations made:

The LRB will be aware that people object to planning applications for very different reasons and their motivations ought to be questioned. In this case the objections are not as straightforward as they seem at first glance. One of the objectors named on the web site as is the co-owner of Broughton Place. Both her and her husband are now running a business renting out holiday homes at Broughton Place. In doing so they actively encourage holiday makers to come to Broughton Place in their cars and once here encourage them to walk across the hillside. This person has made comments on the appellants' existing accommodation yet has never been there or conversed with the appellant about their needs. In the interests of clarity the appellant requires more than just a specially adapted bathroom to accommodate the needs to their disabled child. For someone to express an knowledge of the personal circumstances of another without being fully conversant in the facts is astonishing and something that the LRB should be mindful of.

In addition, there appear to be many with vested interests in this land. There are tenants making claims of the new house destroying the landscape yet they themselves are content to erect unsightly shacks and buildings without gaining the appropriate consents. Some of the same people have made disparaging remarks about the appellant placing his son in a 'gilded cage' – which the appeal Reporter actually agreed with – this was discriminatory at best – again people who are ignorant of the facts making unfounded assumptions. They ask that the LRB do not repeat this behaviour.

In the last 10 years there have been new builds and the main access road coped with extra traffic. There are various vehicles from cars to tractors which use this road on a daily basis. The addition of one house will not be of such significant detriment that it would present a hazard that should be refused.

Finally, the issue with a lot of the people making comments is and always has been historically linked to the previous land owner and the way the sale of the land to Scottish Water was handled. There was a building there for over 30 years yet they say the site is not brownfield when clearly it is.

- 6.4 Roads: At the last appeal the Reporter accepted that two vehicles could not pass on the bridge and that one would have to wait on the main road, but due to the forward visibility available to traffic on the main road, they did not see this as a flaw in the application. The council's Roads Dept argue that *whilst the visibility available should make drivers aware of any vehicle sitting on the main carriageway, the same visibility also makes overtaking on that stretch of the road available to drivers who may be frustrated at sitting behind slow vehicles. This in itself could cause a danger should an approaching driver not be aware the vehicle in the middle of the road is waiting to turn, or even that it is there.* The appellant would comment that it is unlikely that someone approaching the village would take the decision to overtake someone waiting to turn left and this scenario is being exaggerated to the detriment of their application. The LRB is asked to consider this point and examine the access in situ.
- 6.5 In addition, the access exists to the site, as it always has – it is overgrown. The access has always been through grazing land even when the site was in use as a water treatment works.
- 6.6 Regarding Education and the proposed requirement for a financial contribution of £1383, the applicant would be content with this.
- 6.7 Environmental Health comments that this land use is potentially contaminative and it is the responsibility of the developer to demonstrate that the land is suitable for the use they propose. This would be the subject of a condition on the application and an undertaking that the applicant would address in preparing the detail on the site. The appellant would be content to comply with the condition recommended *that development is not be permitted to start until a site investigation and risk assessment has been carried out, submitted and agreed upon by the Planning Authority.*
- 6.8 Upper Tweed Community Council Objected to the application and stated that: *If it is approved, it would be very difficult to resist other applications to build houses in the countryside, and a proliferation of new houses outside existing settlements would be detrimental to this rural and agricultural area. The proposed house would not be part of an existing building grounds and as far as we are aware is not required for rural or agricultural use. The objections stated on 30 May 2008 by the Reporter of the Scottish Government would appear to have equal force today. The Local Plan already makes provision for new houses in Broughton and we do not consider that additional provision is needed.*

- 6.9 While respecting their view, it must be corrected. Each application is considered on its merits and the provision exists to allow LRBs to take cognisance of other material considerations which allow planning policies to be set aside where there are over-riding reasons that something should be approved. The community council were not aware at the time of writing of the personal, medical needs associated with the application or the requirements of the Equalities Act.
- 6.10 The also comment on the design of the house, yet the proposals are indicative only and has been designed to take account of its setting. There is no policy in the SBC that requires traditional architecture – that is clearly a personal taste issue expressed by the community council and not one founded in policy. It is clear from the wording that the objectors have asked them to make these points. In other communities, where a family has a distinct need for a house on the basis of the needs of a disabled child the community has rallied support for the proposal. One such proposal was the Ramp House, designed by Chambers McMillan Architects situated in the heart of the conservation area in Portobello, Edinburgh. The community supported the needs of the family and the highly contemporary design of the house has since won various architectural awards and is held in high esteem as an example of good contemporary architecture in a highly sensitive setting.
- 6.11 Re: Building group the planning officer comments that: *The existing dispersed group of buildings at Broughton Place includes Broughton Place Farm, Broughton Place Cottage, The Potting Shed, Broughton Place (now divided into flats) and two existing dwellings on the north side of the main access road. The group of buildings is defined by the location of the existing residential units relative to each other and the relationship they have as a group of buildings to the landscape setting. The group is located within a mature woodland setting defined on the south side by a significant belt of mature woodland.*
- 6.12 *In his Appeal decision the Reporter was not convinced that the group of houses as noted above formed a recognisable building group. He noted that ' If it is a group, it is a very scattered one, with a small number of dwellings occupying an extensive area. If the boundary of the group is transient then it could be extended time and time again and the loss of countryside character would, as a consequence be very considerable.'*
- 6.13 She notes that *There is a 'sense of place' created by the main buildings, the Broughton Place farm house and steading, Broughton Place and the ancillary properties, Garage House and Stables Cottage, the latter three are included in the 'A' listing for Broughton Place. These are all accessed along a tree lined road up to Broughton Place. The Potting Shed is a conversion and extension of a former outbuilding located adjacent to the walled garden at Broughton Place. Broughton Place Cottage is a traditional cottage which was more than likely built for one of the workers on the estate. All of these properties reflect and are related to the historical development of the Broughton Place land over time.*
- 6.14 The appeal site is located adjacent to all of these and clearly has a relationship with them and is located on the fourth side of the square in which they are all

situate; as can be seen on the map. It can therefore be considered to be within that loose building group relationship.

- 6.15 She notes that the proposal does not have an economic justification as noted above and states *it is acknowledged that the applicant does require special needs housing to cater for the needs of the son. However, it is understood that the applicant's have recently moved into a single storey property on the A701 in Broughton. This property is rented from the Eildon Housing Association and has been adapted for disabled persons. The supporting statement which was submitted at the beginning of November notes that the new house is essential to meet the needs of the family which are not being met in the current home and cannot be met in any other home within a reasonable locality of Broughton. It is unclear if this relates to the new accommodation or the previous accommodation in the village which was two storey. It appears that the supporting medical statements relate to the previous accommodation.*
- 6.16 The opinions of the medical professionals can be updated to take account of the new accommodation. The supporting statement related to the current accommodation. The appellants do not have a fully wheelchair accessible house – the only benefit from the new house is the converted bathroom. The appellants still require to manually lift their son around the house. This is clearly a health and safety issue.
- 6.17 She also states that: *Whilst the need for a house for this particular family is understood, the current development would not offer significant community benefits.* The appellant would comment that the significant benefit to the community would be being able to retain this family within the community where they have lived for many years, where the children go to school and where the family operate their business from.
- 6.18 Regarding the proposed LDP and the representations made in respect of this issue. The Reporter's comments are noted to the representation made to the Reporter in the Examination of the new Local development Plan relating to changes being made to the policy PMD4 - Development Outwith Development Boundaries. The Reporters commented as follows:
- I do not believe that further changes are required to the circumstances set out. I agree with the council that possible additional exceptions, such as a need to retain families/retirees within a community where no other suitable housing stock is available, can reasonably be dealt with as a material consideration at the development management stage. Furthermore, it may also be possible to deal with such cases under circumstance (b) relating to affordable housing, or circumstance (d) relating to community benefits.*
- 6.19 Therefore no modifications to policy were undertaken - Development outwith Development Boundaries'
- 6.20 The Planning Officer comments on the original Supporting Statement *'The detriment to the family of not being able to accommodate their needs in terms of space and equipment required, nor alter their existing dwelling to such an extent*

as to accommodate the needs of the family is considerable; and is enough to outweigh any planning policy objection to the proposal.' Furthermore, the statement maintains that if Reporter had had all medical evidence in front of him when he assessed the previous application he may well have come to a different conclusion. She advises that *this is purely speculation and is not material to the current application.* I could comment that **It is a point that must at least be considered.**

- 6.21 She concludes that *Given the assessment of the application against the prevailing policies and the land available for new housing in the vicinity of Broughton (not taking account of any properties which may currently be on the market) it is considered that the needs of the family do not outweigh these policy considerations and the proposals cannot be supported.*
- 6.22 In respect of the Equalities Legislation she advises that *When taking any decisions the Council must have regard to the Equalities Act 2010 - section 149 which states that a public authority must, in the exercise of its functions, have due regard to a number of factors including to the need to consider the steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.*
- 6.23 Yet she does not state how the Planning Department assessed this application in respect of that requirement. It is known that in the past they have resisted taking cognisance of this legislation and have left it to the elected members to take that decision. The differences referred to between this and another example are not correct. The primary hardship in this case are the health and safety implications for the appellants who are required to carry their son around the house. In addition, if the appellants are forced to move the uprooting of their family from schools and work are additional hardships. In this case, as in the Lovatt's Selkirk case there is no viable alternative. The appellants have been looking for one for nearly a decade.
- 6.24 The Local Review Body have the ability to consider all of the material considerations and draw their own conclusions. It is considered that in the case of the current application, taking into account the requirements of the Equalities legislation, the needs of the family do not outweigh the policy considerations and that by refusing the application for a house on this particular site, the family will not be severely disadvantaged.
- 6.25 Years of searching for an appropriate site in the locale has revealed nothing. The site is the only site that it is possible to purchase and build on. There is an existing access and the site itself is level and sits well in the landscape. The house can be sensitively introduced into the site without impacting adversely on the landscape and other occupiers. The family will be severely disadvantaged as set out in the medical statement.

6.26 In addition, what other uses can the site potentially have if the council do not accept that it could have an acceptable use as a family home – well designed, low impact on the landscape and non-intrusive for neighbours.

7 CONCLUSION

7.1 There is a clearly robust and justifiable need for the house for this family. This is the only available brownfield site that could accommodate their needs within the Broughton locality. It is in the interests of the family and the local community to retain this family within this area.

7.2 In summary the need justification is based on the following:

- The applicant and his family require the house to accommodate the specific medical, accessibility and spatial needs of one of their children (all evidence to support this is provided in a separate confidential document given the sensitive nature of the personal information);
- No other accommodation in the locality or within a reasonable distance has been found in the 8 years since the appeal decision.
- No other location is likely to be found and the existing home cannot be altered or extended to accommodate the family's needs.

7.3 Similar other decisions with the Scottish Borders Council area have found in favour of the families with specific needs relating to the disabled. This case requires the same sensitive consideration. The applicant respectfully requests that you approve this application, as an exception to the rule, with the appropriate conditions attached.

Suzanne McIntosh BA(Hons)MRTPI



THIS IS THE DRAWING REFERRED TO IN THE APPLICATION FOR BUILDING WARRANT DATED 15/05/2017

SCALE

NAME	S. KANE & J. DENISON	GORDON HILLIARD	MCINTYRE
PROJECT	PROPOSED HOUSE BRIGHTON PLACE BRIGHTON	BUILDING DESIGN	MCINTYRE
NO.	LOCATION PLAN	6 MARKET PLACE	
		SELWICK	
		BORDERS	
		TD7 4BT	

051105/LOC

T. 01753 721333
F. 01753 721444
E. s.kane@shirburnhilldesign.co.uk
www.shirburnhilldesign.co.uk

- ADJACENT NEIGHBOURS:**
- (A) Mr & Mrs. G. Buchan-Dunlop
The Farning Place
Broughton ML12 6HJ
 - (B) Andrew K. Elliot
Broughton Place Farmhouse
Broughton ML12 6HS
 - (C) Bruce L. Fraser
Broughton Place Cottage
Broughton ML12 6HS

Scottish Borders Council
Town And Country
Planning (Scotland) Act
1989

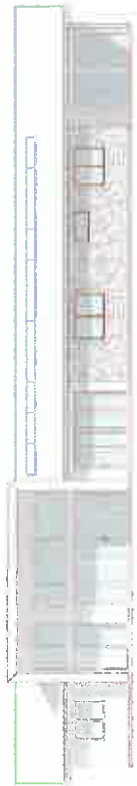
subject to the
requirements of the
associated Decision
Notice



FLOOR PLAN



NORTH EAST ELEVATION



SOUTH WEST ELEVATION



NORTH WEST ELEVATION



SOUTH WEST ELEVATION

EXTERNAL MATERIALS
 All external walls, roof, and ground surfaces shall be finished with the following materials:
 Walls: Light grey stone or concrete blockwork with a light grey render finish.
 Windows & Doors: Dark grey or black frames with white internal linings.
 Roof: Dark grey slate or equivalent.
 Ground: Light grey paving stones or concrete.



VISUAL FROM SOUTH



VISUAL FROM SOUTH WEST



VISUAL FROM WEST

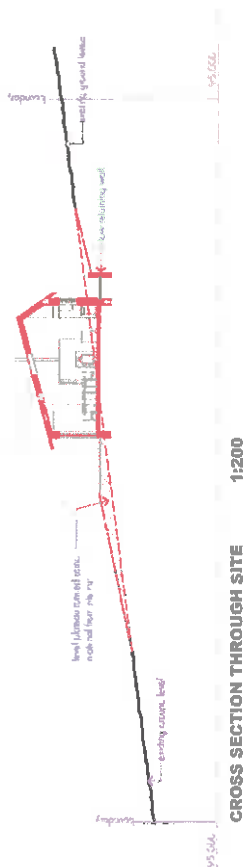
BSI
 BRITISH STANDARD
 BS 1191:2019
 Code of practice for
 the preparation of
 planning submissions
 BSI
 389 Chiswick Park Avenue
 Uxbridge, Middlesex UB8 3PH
 UK
 Tel: +44 (0)1875 910000
 Fax: +44 (0)1875 910001
 Email: bs@bsi.com
 www.bsi.com

15/00890/PPP

Scottish Borders Council
Town And Country
Planning (Scotland) Act
1987

REFUSED

subject to the
requirements of the
associated decision
NO/PP



CROSS SECTION THROUGH SITE 1:200



SITE PLAN : SCALE 1:200



PLANNING SUBMISSION

Client: G. MAINE & BRIDGON
Project: PROPOSED HOUSE
BROUGHTON PLACE
BROUGHTON
Date: 21.08.2011



GORDON HARRISON ARCHITECTS
11 MARSH BANK
LEITH
LEITH
T: 01779 225200
F: 01779 225444
E: gordonh@broughtonplace.co.uk

14/112/PP/02

This drawing shall not be used for any other purpose, and shall not be relied upon, without the written consent of the author.



Newtown St Boswells Melrose TD6 0SA

Tel: 01835 825251

Fax: 01835 825071

Email: itsystemadmin@scotborders.gov.uk

Applications cannot be validated until all necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 000127524-001

The online ref number is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the Planning Authority about this application.

Type of Application

What is this application for? Please select one of the following: *

We strongly recommend that you refer to the help text before you complete this section.

- Application for Planning Permission (including changes of use and surface mineral working)
- Application for Planning Permission in Principle
- Further Application, (including renewal of planning permission, modification, variation or removal of a planning condition etc)
- Application for Approval of Matters specified in conditions

Description of Proposal

Please describe the proposal including any change of use: * (Max 500 characters)

Erection of a Dwellinghouse

Is this a temporary permission? *

Yes No

If a change of use is to be included in the proposal has it already taken place?
(Answer 'No' if there is no change of use.) *

Yes No

Have the works already been started or completed? *

No Yes - Started Yes - Completed

Applicant or Agent Details

Are you an applicant, or an agent? * (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

Applicant Agent

Agent Details

Please enter Agent details

Company/Organisation:	Suzanne McIntosh Planning
Ref. Number:	
First Name: *	Suzanne
Last Name: *	McIntosh
Telephone Number: *	07792230979
Extension Number:	
Mobile Number:	01316560303
Fax Number:	
Email Address: *	smcintoshplan@gmail.com

You must enter a Building Name or Number, or both:*

Building Name:	
Building Number:	12-14
Address 1 (Street): *	Lochrin Buildings
Address 2:	Gilmore Place
Town/City: *	Edinburgh
Country: *	UK
Postcode: *	EH3 9NB

Is the applicant an individual or an organisation/corporate entity? *

Individual Organisation/Corporate entity

Applicant Details

Please enter Applicant details

Title: *	Mr
Other Title:	
First Name: *	Stewart
Last Name: *	Kane
Company/Organisation:	
Telephone Number:	
Extension Number:	
Mobile Number:	
Fax Number:	
Email Address:	

You must enter a Building Name or Number, or both:*

Building Name:	
Building Number:	39
Address 1 (Street): *	Hawdene
Address 2:	
Town/City: *	Broughton
Country: *	Scotland
Postcode: *	ML12 6FW

Site Address Details

Planning Authority:

Scottish Borders Council

Full postal address of the site (including postcode where available):

Address 1:

Address 5:

Address 2:

Town/City/Settlement:

Address 3:

Post Code:

Address 4:

Please identify/describe the location of the site or sites.

Northing

637090

Easting

311612

Pre-Application Discussion

Have you discussed your proposal with the planning authority? *

Yes No

Pre-Application Discussion Details

In what format was the feedback given? *

Meeting Telephone Letter Email

Please provide a description of the feedback you were given and the name of the officer who provided this feedback. If a processing agreement [note 1] is currently in place or if you are currently discussing a processing agreement with the planning authority, please provide details of this. (This will help the authority to deal with this application more efficiently.) * (Max 500 characters)

Pre- app email exchanges and supporting info submitted in 2014.

Title:

Mrs

Other title:

First Name:

Dorothy

Last Name:

Amyes

Correspondence Reference Number:

Date (dd/mm/yyyy):

25/03/14

Note 1. A processing agreement involves setting out the key stages involved in determining a planning application, identifying what information is required and from whom and setting timescales for the delivery of various stages of the process.

Site Area

Please state the site area:

200.00

Please state the measurement type used:

Hectares (ha) Square Metres (sq.m)

Existing Use

Please describe the current or most recent use: (Max 500 characters)

Water Treatment Works

Access and Parking

Are you proposing a new or altered vehicle access to or from a public road? *

Yes No

If Yes please describe and show on your drawings the position of any existing, altered or new access points, highlighting the changes you propose to make. You should also show existing footpaths and note if there will be any impact on these.

Are you proposing any changes to public paths, public rights of way or affecting any public rights of access? *

Yes No

If Yes please show on your drawings the position of any affected areas highlighting the changes you propose to make, including arrangements for continuing or alternative public access.

Water Supply and Drainage Arrangements

Will your proposal require new or altered water supply or drainage arrangements? *

Yes No

Are you proposing to connect to the public drainage network (eg. to an existing sewer)? *

- Yes – connecting to public drainage network
- No – proposing to make private drainage arrangements
- Not Applicable – only arrangements for water supply required

What private arrangements are you proposing? *

- New/Altered septic tank.
- Treatment/Additional treatment (relates to package sewage treatment plants, or passive sewage treatment such as a reed bed).
- Other private drainage arrangement (such as chemical toilets or composting toilets).

What private arrangements are you proposing for the New/Altered septic tank? *

- Discharge to land via soakaway.
- Discharge to watercourse(s) (including partial soakaway).
- Discharge to coastal waters.

Please explain your private drainage arrangements briefly here and show more details on your plans and supporting information: * (Max 500 characters)

The application is in principle and the detail has not been established at this stage

Do your proposals make provision for sustainable drainage of surface water? (e.g. SUDS arrangements) *

Yes No

Note: -

Please include details of SUDS arrangements on your plans

Selecting 'No' to the above question means that you could be in breach of Environmental legislation.

Are you proposing to connect to the public water supply network? *

- Yes
 No, using a private water supply
 No connection required

If No, using a private water supply, please show on plans the supply and all works needed to provide it (on or off site).

Assessment of Flood Risk

Is the site within an area of known risk of flooding? *

Yes No Don't Know

If the site is within an area of known risk of flooding you may need to submit a Flood Risk Assessment before your application can be determined. You may wish to contact your Planning Authority or SEPA for advice on what information may be required.

Do you think your proposal may increase the flood risk elsewhere? *

Yes No Don't Know

Trees

Are there any trees on or adjacent to the application site? *

Yes No

If Yes, please mark on your drawings any trees, known protected trees and their canopy spread close to the proposal site and indicate if any are to be cut back or felled.

All Types of Non Housing Development - Proposed New Floorspace

Does your proposal alter or create non-residential floorspace? *

Yes No

Schedule 3 Development

Does the proposal involve a form of development listed in Schedule 3 of the Town and Country Planning (Development Management Procedure (Scotland) Regulations 2013? *

Yes No Don't Know

If yes, your proposal will additionally have to be advertised in a newspaper circulating in the area of the development. Your planning authority will do this on your behalf but will charge you a fee. Please check the planning authority's website for advice on the additional fee and add this to your planning fee.

If you are unsure whether your proposal involves a form of development listed in Schedule 3, please check the Help Text and Guidance notes before contacting your planning authority.

Planning Service Employee/Elected Member Interest

Is the applicant, or the applicant's spouse/partner, either a member of staff within the planning service or an elected member of the planning authority? *

Yes No

Certificates and Notices

CERTIFICATE AND NOTICE UNDER REGULATION 15 – TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND) REGULATIONS 2013

One Certificate must be completed and submitted along with this application form. This is most usually Certificate A, Form 1, Certificate B, Certificate C or Certificate E.

Are you/the applicant the sole owner of ALL the land? *

Yes No

Is any of the land part of an agricultural holding? *

Yes No

Certificate Required

The following Land Ownership Certificate is required to complete this section of the proposal:

Certificate A

Land Ownership Certificate

Certificate and Notice under Regulation 15 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Certificate A

I hereby certify that –

(1) - No person other than myself/the applicant was an owner (Any person who, in respect of any part of the land, is the owner or is the lessee under a lease thereof of which not less than 7 years remain unexpired.) of any part of the land to which the application relates at the beginning of the period of 21 days ending with the date of the accompanying application.

(2) - None of the land to which the application relates constitutes or forms part of an agricultural holding.

Signed: Suzanne McIntosh

On behalf of: Mr Stewart Kane

Date: 29/07/2015

Please tick here to certify this Certificate. *

Checklist - Application for Planning Permission

Town and County Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Please take a few moments to complete the following checklist in order to ensure that you have provided all the necessary information in support of your application. Failure to submit sufficient information with your application may result in your application being deemed invalid. The planning authority will not start processing your application until it is valid.

a) If this is a further application where there is a variation of conditions attached to a previous consent, have you provided a statement to that effect? *

Yes No Not applicable to this application

b) If this is an application for planning permission or planning permission in principle where there is a crown interest in the land, have you provided a statement to that effect? *

Yes No Not applicable to this application

c) If this is an application for planning permission, planning permission in principle or a further application and the application is for development belonging to the categories of national or major developments (other than one under Section 42 of the planning Act), have you provided a Pre-Application Consultation Report? *

Yes No Not applicable to this application

Town and County Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

d) If this is an application for planning permission and the application relates to development belonging to the categories of national or major developments and you do not benefit from exemption under Regulation 13 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, have you provided a Design and Access Statement? *

Yes No Not applicable to this application

e) If this is an application for planning permission and relates to development belonging to the category of local developments (subject to regulation 13. (2) and (3) of the Development Management Procedure (Scotland) Regulations 2013) have you provided a Design Statement? *

Yes No Not applicable to this application

f) If your application relates to installation of an antenna to be employed in an electronic communication network, have you provided an ICNIRP Declaration? *

Yes No Not applicable to this application

g) If this is an application for planning permission, planning permission in principle, an application for approval of matters specified in conditions or an application for mineral development, have you provided any other plans or drawings as necessary:

- Site Layout Plan or Block plan.
- Elevations.
- Floor plans.
- Cross sections.
- Roof plan.
- Master Plan/Framework Plan.
- Landscape plan.
- Photographs and/or photomontages.
- Other.

Provide copies of the following documents if applicable:

- | | |
|--|--|
| A copy of an Environmental Statement. * | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A |
| A Design Statement or Design and Access Statement. * | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A |
| A Flood Risk Assessment. * | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A |
| A Drainage Impact Assessment (including proposals for Sustainable Drainage Systems). * | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A |
| Drainage/SUDS layout. * | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A |
| A Transport Assessment or Travel Plan. * | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A |
| Contaminated Land Assessment. * | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A |
| Habitat Survey. * | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A |
| A Processing Agreement * | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A |

Other Statements (please specify). (Max 500 characters)

Supporting Planning Statement and Medical Statement

Declare - For Application to Planning Authority

I, the applicant/agent certify that this is an application to the planning authority as described in this form. The accompanying plans/drawings and additional information are provided as a part of this application.

Declaration Name: Suzanne McIntosh
Declaration Date: 29/07/2015
Submission Date: 29/07/2015

Payment Details

Cheque: Suzanne McIntosh Planning Limited, 000010

Created: 29/07/2015 18:06

REFUSED

subject to the
requirements of the
associated Decision
Notice

SUPPORTING STATEMENT

APPLICATION FOR PLANNING PERMISSION IN PRINCIPLE

FOR A

DWELLINGHOUSE ON

AT LAND AT

THE FORMER WATER TREATMENT WORKS,

BROUGHTON PLACE, BROUGHTON, BIGGAR

SCOTTISH BORDERS

On behalf of Mr S Kane and Ms J Denson

SUZANNE MCINTOSH PLANNING LIMITED

1.11.15

1. INTRODUCTION

- 1.1 This Supporting Planning Statement accompanies a planning application that has been lodged with Scottish Borders Council. The application is for the erection of a dwellinghouse to accommodate the Kane family within a purpose built and designed fully wheelchair accessible dwelling on land at the former water treatment works, Broughton Place, Broughton, Biggar.
- 1.2 The house is essential to the growing needs of the family which are not being met in the current home cannot be met in any other home within a reasonable locality of Broughton where they currently reside.
- 1.3 The application is for Planning Permission in Principle and as such an OS base plan and site plan defining the desired location for the house are provided. The Supporting Planning Statement and a confidential document detailing the specific medical circumstances relevant to this case are also provided for the assistance of the Planning Officer in considering the proposal. A pre-application consultation has been undertaken with Dorothy Amyes and a representation has been made to the Local Development Plan regarding the issues relating to this proposal.
- 1.4 The applicant seeks to provide a reasoned justification as to why this proposal should be considered as an exception to the rule. In addition, the appellant requests that the council considers this application and the potential impacts of refusing the application in the light of the requirements under Equalities legislation in addition to Planning legislation.

2 SITE LOCATION AND DESCRIPTION

- 2.1 The application site is located outwith the Broughton settlement boundary around 400m from the village confines. The appeal site is within the context of a building group located at Broughton Place comprising a number of different types of dwellings within a scattered building group accessed from a single point of access and located within a distinct pattern around the access route. These dwellings comprise Broughton Place Farm, Broughton Place and Shepherds Cottage. All buildings are located

off the access track which runs around the enclosed central field. Some are residential, some commercial in use.

- 2.2 A water treatment facility was located at the site until 2005 and discussions in the past have taken place as to whether the site is brownfield given its former use. The site is contained by boundary fencing and has tree planting within it. It sits comfortably within the landscape and enjoys long views to the west. Looking back from the west towards the site, it is contained by the levels and planting around the site. The access road into the site, formerly used by the water board still exists, under the grass which has grown over it in the past decade.

3 BACKGROUND

- 3.1 The site has been the subject of previous planning applications and an appeal. I do not propose to go into each of these however there are some critical differences between this application and those that have come before. In addition, there are a number of fundamental reasons why the application should and could be supported now and why the council should revisit these issues in the light of their other decisions over the past few years. This statement seeks to convey these.
- 3.2 The last planning application which went to appeal, SBC reference 07/01075/FUL was considered on the basis of the case put before the Reporter at the time. The Reporter did not give sufficient consideration to the issue of the specific need for the house and was not provided with the evidence to substantiate the claim. Had he had the letters of support and this information before him he may well have come to a different conclusion at that time. These are critical elements that require full consideration now, especially in the light of recent SBC planning decisions and the intervening changes in equalities legislation.
- 3.3 In addition, although each case is considered on its own merits the council is bound to consider proposals in the light of the relevant legislation. In this case, the specific requirements of this family, as fully demonstrated in the supporting confidential documents, illustrate exactly why the house is required, the implications of not approving the house, the implications of

not being able to accommodate this family elsewhere and the conflicts with equalities legislation in failing to address the needs of this family all require to be considered.

4 PROPOSAL

- 4.1 This application seeks planning permission in principle for a single dwellinghouse for occupation by Stewart Kane, his partner Jeanette Denson their two daughters and a son.
- 4.2 The setting of the site is within the Broughton Place group of loosely arranged buildings around the central green field set on a hillside in open countryside. It could reasonably be determined to be a loose building group formation.
- 4.3 The site plan illustrates a single storey house being located in the centre of the plot, accessed from the existing track. Limited re-grading is required in order to provide a wheel chair accessible sensory garden around the dwelling. The proposal would not involve large areas of re-engineering of the site and would sit comfortably in its landscape, enjoying long views to the west. It would be designed to a high architectural standard and reflect the character of its surroundings vernacular. The purpose of the house is to be fully wheelchair accessible and to have sufficient space to accommodate all the required equipment and circulation needed by the family now and in the future. It is essential that the long term needs of the family are addressed.

5 PLANNING POLICIES

- 5.1 Section 25 of the Town and Country Planning (Scotland) Act 1997 (as Amended) requires that planning decision are made in accordance with the development plan unless material considerations indicate otherwise.
- 5.2 The development plan comprises the Scottish Borders Structure Plan and the consolidated Scottish Borders Local Plan 2011. The proposed Local Development Plan is a material consideration as is the Supplementary

Planning Guidance and any relevant information as to the personal circumstances of the applicant.

- 5.3 The determining issues are whether the proposal would be in accordance with the development plan and if not whether there are any material justifications that would support a departure from the policies.
- 5.4 The relevant development plan policies relating to this site and proposal are as follows: Policy EP1 National Scenic Area which states that development in the NSA will only be permitted where firstly the objectives of the NSA and overall landscape value will not be compromised; and secondly where any significant adverse effects on the qualities for which the site has been designated are clearly outweighed by social or economic benefits of national importance.
- 5.5 Policy EP2 Area of Great Landscape Value is also relevant and advises that the council will seek to safeguard landscape quality and will have particular regard to the landscape impact of the proposal. Proposals which will have a significant adverse impact will only be permitted where the impact is clearly outweighed by social or economic benefits of local importance.
- 5.6 Also relevant is the policy H8 in the Scottish Borders Structure Plan–Housing in the Countryside. H8 advises that *Isolated Housing Proposals for housing in the countryside outwith settlements identified in the Local Plan, and unrelated to building groups, will not be supported unless its location is essential for the needs of an agricultural business etc... All such development must be on well located and designed sites with a low environmental impact. Proposals must meet sustainable construction requirements particularly in relation to energy efficient design and connection to the public transport network.*
- 5.7 Other relevant policies relating to the detailed design, access, sustainability, landscape, biodiversity etc but the policies above are considered the biggest hurdles to overcome.
- 5.8 The specific needs of the applicant are the most significant material consideration which must, in this case, outweigh any planning policy objection to this proposal. The confidential medical statement clearly details the first hand professional medical evidence and assessments

relating to this case. It identifies the needs of the family concerned and gives an indication of the future needs of the family. Given the medical needs the council is clearly requested to have significant regard to the requirements of the Equalities Act 2010. The council is also required to have regard to the harm resulting from not approving this application and giving sufficient weight to the Equalities Act 2010 requirements.

- 5.9 The detriment to the family of not being able to accommodate their needs in terms of space and equipment required, nor alter their existing dwelling to such an extent as to accommodate the needs of the family is considerable; and is enough to outweigh any planning policy objection to the proposal.
- 5.10 In reviewing another case raising similar issues the Scottish Borders Local Review Body was persuaded that, *in these specific circumstances, this information submitted by the appellant was material to the consideration of the appeal. The LRB concluded that a refusal of permission would cause the appellant extreme hardship. It concluded that this fact, together with the provisions of Section 149 of the Equality Act, enabled it to grant an exceptional approval of the application; to grant planning permission to the appellant to erect a new house specifically designed to improve his quality of life and to allow him to remain in an area with which he is familiar and to retain a connection to his existing small holding and equestrian operations.*
- 5.11 In that case the LRB determined that *while the development was contrary to the Development Plan there were substantial and overriding material factors in this instance that outweighed the presumption in favour of the Development Plan.*
- 5.12 Aside from being in a countryside location, albeit in a loose building group formation, the proposal has previously been in use as a water treatment works and as such its restoration in health, safety and landscape impact terms is important. With suitable conditions the proposal can be sensitively accommodated on the site with very limited impact on the landscape.

6 CONCLUSION

- 6.1 There is a clearly robust and justifiable need for the house for this family. This is the only available brownfield site that could accommodate their needs within the Broughton locality.
- 6.2 In summary the need justification is based on the following:
- The applicant and his family require the house to accommodate the specific medical, accessibility and spatial needs of one of their children (all evidence to support this is provided in a separate confidential document given the sensitive nature of the personal information);
 - No other accommodation in the locality or within a reasonable distance has been found in the 7 years since the appeal decision.
 - No other location is likely to be found and the existing home cannot be altered or extended to accommodate the family's needs.
- 6.3 Similar other decisions with the Scottish Borders Council area have found in favour of the families with specific needs relating to the disabled. This case requires the same due consideration. The applicant respectfully requests that you approve this application with the appropriate conditions.

Suzanne McIntosh BA(Hons)MRTPi

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Application for Planning Permission

Reference : 15/00890/PPP

**To : Mr Stewart Kane per Suzanne McIntosh Planning 12-14 Lochrin Buildings Gilmore Place
Edinburgh EH3 9NB**

With reference to your application validated on **18th September 2015** for planning permission under the Town and Country Planning (Scotland) Act 1997 for the following development :-

Proposal : Erection of dwellinghouse and upgrade access track

**at : Redundant Water Treatment Works North East Of Broughton Place Cottage Broughton
Scottish Borders**

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

**Dated 19th January 2016
Regulatory Services
Council Headquarters
Newtown St Boswells
MELROSE
TD6 0SA**

Signed



.....
Chief Planning Officer

APPLICATION REFERENCE : 15/00890/PPP
Schedule of Plans and Drawings Refused:

Plan Ref	Plan Type	Plan Status
051105/LOC	Location Plan	Refused
141412/PL/01	Planning Layout	Refused
Supporting Statement	Other	Refused
141412/PL/02	Site Plan	Refused

REASON FOR REFUSAL

- 1 The proposal is contrary to Policy D2 - Housing in the Countryside and Supplementary Planning Guidance on New Housing in the Borders Countryside and Policy HD2 - Housing in the Countryside of the proposed Local development Plan in that the site for the new house is not within the recognisable building group at Broughton Place and it does not relate well to this group.
- 2 The proposal would be contrary to Policies D2 and G8 of the Scottish Borders Consolidated Local Plan 2011 and Policies HD2 and PMD4 of the Proposed Local Development Plan in that the stated need for the dwellinghouse would not justify the proposed development in this specific location.
- 3 The proposed dwellinghouse would be contrary to Policy D2 of the Scottish Borders Consolidated Local Plan 2011 and Policy HD2 of the Proposed Local development Plan in that satisfactory access and other road requirements cannot be met.

FOR THE INFORMATION OF THE APPLICANT

If the applicant is aggrieved by the decision of the Planning Authority to refuse planning permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under Section 43A of the Town and Country Planning (Scotland) Act 1997 within three months from the date of this notice. The notice of review should be addressed to Corporate Administration, Council Headquarters, Newtown St Boswells, Meirose TD6 OSA.

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 5 of the Town and Country Planning (Scotland) Act 1997.

SCOTTISH BORDERS COUNCIL

**APPLICATION TO BE DETERMINED UNDER POWERS DELEGATED TO
CHIEF PLANNING OFFICER**

PART III REPORT (INCORPORATING REPORT OF HANDLING)

REF : 15/00890/PPP
APPLICANT : Mr Stewart Kane
AGENT : Suzanne McIntosh Planning
DEVELOPMENT : Erection of dwellinghouse and upgrade access track
LOCATION: Redundant Water Treatment Works
North East Of Broughton Place Cottage
Broughton
Scottish Borders

TYPE : PPP Application

REASON FOR DELAY:

DRAWING NUMBERS:

Plan Ref	Plan Type	Plan Status
051105/LOC	Location Plan	Refused
141412/PL/01	Planning Layout	Refused
SUPPORTING STATEMENT		Other Refused
141412/PL/02	Site Plan	Refused

NUMBER OF REPRESENTATIONS: 6

SUMMARY OF REPRESENTATIONS:

Representations

Six letters of representation have been received objecting to the application on the following grounds:

- proposal is contrary to local plan policy for Housing in the Countryside
- the site does not relate well to other nearby buildings including the A listed Broughton Place
- it is not part of a building group
- it is outwith the settlement boundary of Broughton
- it is not a brown field site
- access to A701 is difficult
- unsuitable access from Broughton Place Cottage through agricultural land
- impact of extra traffic on existing shared access road
- no indication given as to how site will be connected to public water supply
- question whether septic tank and soakaway can be accommodated within the site
- located in a National Scenic Area and site will be very visible and have an adverse impact on the landscape
- other building sites within the village
- difficult for emergency vehicles to access the site
- the development would interfere with the agricultural activity of the farm
- development at the site would be an historical injustice compromising one of the first enclosed and settled farms in southern Scotland which, unlike most farms, has been managed to remain largely intact for well over 200 years.
- impact of the development on an adjacent tree belt

- the family have recently moved to accommodation adapted for disabled use in the village

As this is an application for planning permission in principle the design of the proposed house is not being considered at this stage. The issues raised regarding access rights and wayleaves are a legal rather than a planning issue. The loss of view is not a material planning issue.

Consultation Responses

Roads Planning

A planning application for a dwelling on this site, 07/01075/FUL, was submitted to the Council in 2007. This application was recommended for refusal by the relevant officer at that time and was subsequently refused by the Tweeddale Area Committee. An appeal against that decision was submitted to the Scottish Government and the reporter upheld the decision of the Council and refused the application for various reasons.

During consideration of the previous application, this section had recommended refusal on the grounds of road safety given that the geometry of the access to the site off the A701 did not permit two vehicles to pass. Should two vehicles meet at the access, and the provision of this property would increase that possibility, this would result in a vehicle having to sit on the main A701 whilst the second vehicle left the site. It was the opinion of this section at that time that this was not a satisfactory situation.

As part of the reasoning behind their decision, the reporter accepted that two vehicles could not pass on the bridge and that one would have to wait on the main road, but due to the forward visibility available to traffic on the main road, they did not see this as a flaw in the application. Whilst I accept his support for the passing situation, I would argue that whilst the visibility available should make drivers aware of any vehicle sitting on the main carriageway, the same visibility also makes overtaking on that stretch of the road available to drivers who may be frustrated at sitting behind slow vehicles. This in itself could cause a danger should an approaching driver not be aware the vehicle in the middle of the road is waiting to turn, or even that it is there.

Furthermore, it is currently not the practice of this service to support development which would require access via a working farm.

Notwithstanding the above, there are also issues with the access track to the site which would all have to be resolved to the Council's satisfaction should the application be approved. It is not clear whether the applicant has enough control to resolve these issues and, until such times that all of the above issues can be resolved to the Council's satisfaction, I would have to recommend against this application in the interest of road safety.

Education

The proposed development is located within the catchment area for Broughton Primary School and Peebles High School.

A contribution of £1383 is sought for the High School.

Environmental Health

Contaminated Land

The above application appears to be proposing the redevelopment and change of use of land which was previously operated as a water treatment works. This land use is potentially contaminative and it is the responsibility of the developer to demonstrate that the land is suitable for the use they propose.

It is recommended that planning permission should be granted on condition that development is not be permitted to start until a site investigation and risk assessment has been carried out, submitted and agreed upon by the Planning Authority.

Any requirement arising from this assessment for a remediation strategy and verification plan would become a condition of the planning consent, again to be submitted and agreed upon by the Planning Authority prior to development commencing.

Upper Tweed Community Council

Object to this application. If it is approved, it would be very difficult to resist other applications to build houses in the countryside, and a proliferation of new houses outside existing settlements would be detrimental to this rural and agricultural area. The proposed house would not be part of an existing building grounds and as far as we are aware is not required for rural or agricultural use. The objections stated on 30 May 2008 by the Reporter of the Scottish Government would appear to have equal force today. The Local Plan already makes provision for new houses in Broughton and we do not consider that additional provision is needed.

Moreover, we consider that the design of the house would not fit in well with its surrounding environment. The site is up on a hill and any house built there would be visible from a wide area around. Other houses in prominent positions are largely of traditional types and we would be much happier with a house which conformed to this standard, rather than one of a more modern design as is proposed. The site is in a National Scenic Area and the adverse impact which the house, as currently designed, would have on the landscape is unacceptable.

We note that a number of close neighbours of the site have expressed concerns about water supply and drainage, the unsuitability of the proposed access near Broughton Place Cottage for more traffic, the difficult access from the A701 and the impact on the working of the farmland over which access would be required. We recommend that full weight should be placed on these concerns.

PLANNING CONSIDERATIONS AND POLICIES:

Scottish Borders Consolidated Local Plan

G1 - Quality Standards For New Developments

G2 - Contaminated Land

D2 - Housing in the Countryside

H2 - Protection of Residential Amenity

BE1 - Listed Buildings

EP1 - National Scenic Areas

G5 - Developer Contributions

G8 - Development outwith Development Boundaries

NE4 - Trees, Woodlands and Hedgerows

INf2 - Protection of Access Routes

INf4 - Parking Provision and Standards.

SPG - New Housing in the Borders Countryside

Proposed Local Development Plan 2013

PMD1 - Sustainability

PMD2 - Quality Standards

PMD4 - Development Outwith Development Boundaries

HD2 - Housing in the Countryside

EP4 - National Scenic Areas

EP7 - Listed Buildings

EP13 - Trees, Woodlands and Hedgerows

IS2 - Developer Contributions

IS5 - Protection of Access Routes

IS7 - Road Adoption Standards

IS13 - Contaminated Land

Recommendation by - Dorothy Amyes (Planning Officer) on 12th November 2015

The application site is a former water treatment facility and is accessed from the A701 via the existing private road serving Broughton Place Farm and Broughton Place. The site would be accessed along the line of a former track to the water treatment facility which would be upgraded. There is a mature belt of trees to the north of the site and open farmland to the south and east. There are no longer any buildings on the site.

The application seeks planning permission in principle for a new detached dwellinghouse. An indicative design has been submitted with the application but details of this will not be considered as part of this assessment. The applicant has submitted a supporting statement and medical reports, the latter is treated as confidential information and has not been placed on the public file.

A previous application (07/01075/FUL) by the same applicant for a dwellinghouse on this site was refused for the following reasons:

1 The proposed dwellinghouse would be contrary to Policy H5 of the Scottish Borders Structure Plan 2001-2011, Policy D2 of the Finalised Scottish Borders Local Plan 2005 and Policy 7 of the Tweeddale Local Plan 1996 in that it would constitute housing development in the countryside that is not well related to an existing building group.

2 The proposal would be contrary to Policy H6 of the Scottish Borders Structure Plan 2001-2011, Policy D2 of the Finalised Scottish Borders Local Plan 2005 and Policy 8 of the Tweeddale Local Plan 1996 in that the stated need for the dwellinghouse would not justify the proposed development in this specific location.

3 The proposed dwellinghouse would be contrary to Policies H5 and H6 of the Scottish Borders Structure Plan 2001-2011, Policy D2 of the Finalised Scottish Borders Local Plan 2005 and Policies 7 and 8 of the Tweeddale Local Plan 1996 in that satisfactory access and other road requirements cannot be met.

A subsequent appeal was dismissed. The Reporter considered that the lack of connection with any rural use coupled with the lack of connection to a recognised building group meant that the proposal would be inconsistent with the development plan in relation to the principles of the proper location of new development in the countryside.

Assessment

Policy

The application site is located some distance to the North East of the defined settlement boundary of Broughton and it must therefore be assessed against the Council's Local Plan policy D2 - Housing in the Countryside and the Supplementary Planning Guidance on New Housing in the Countryside, also Policy G8 - Development outwith Development Boundaries. The draft Local Development Plan policies for housing in the countryside and outwith settlement boundaries as also material considerations. The Structure Plan policies and the Tweeddale Local Plan no longer apply.

Policy D2 notes that the council wishes to promote appropriate rural housing development in:

- 1) village locations in preference to open countryside
- 2) associated with existing building groups where this does not adversely affect their character or that of the surrounding area and,
- 3) in dispersed communities in the Southern Borders Housing Market area.

As noted above the site is not located within the village of Broughton, and it is not with the Southern Housing Market Area. This leaves the association with an existing building group. In the previous application this was assessed as follows:

'Limited new housing development in the countryside will be encouraged within or adjacent to recognised building groups where those building groups are identifiable by a sense of place which is contributed to by natural boundaries such as water courses, trees or enclosing land forms or man-made boundaries such as existing buildings, roads, plantations or other means of enclosure. The existing dispersed group of buildings at Broughton Place includes Broughton Place Farm, Broughton Place Cottage, The Potting Shed, Broughton Place (now divided into flats) and two existing dwellings on the north side of the main access road. The group of buildings is defined by the location of the existing residential units relative to each other and the relationship they have as a group of buildings to the landscape setting. The group is located within a mature woodland setting defined on the south side by a significant belt of mature woodland.'

In his Appeal decision the Reporter was not convinced that the group of houses as noted above formed a recognisable building group. He noted that 'If it is a group, it is a very scattered one, with a small number of dwellings occupying an extensive area. If the boundary of the group is transient then it could be extended time and time again and the loss of countryside character would, as a consequence be very considerable.'

There is a 'sense of place' created by the main buildings, the Broughton Place farm house and steading, Broughton Place and the ancillary properties, Garage House and Stables Cottage, the latter three are included in the 'A' listing for Broughton Place. These are all accessed along a tree lined road up to Broughton Place. The Potting Shed is a conversion and extension of a former outbuilding located adjacent to the walled garden at Broughton Place. Broughton Place Cottage is a traditional cottage which was more than likely built for one of the workers on the estate. All of these properties reflect and are related to the historical development of the Broughton Place land over time. Broughton Place is located on the site of a former house which was destroyed by fire in 1773. The current house is considered to be a rare and excellent example of an interwar (1935-38) Scottish country house set within a designed landscape by the internationally renowned architect Sir Basil Spence.

The current application site is located on the south side of an existing woodland belt within farmland and it has no connection to or relationship with the 'sense of place' created by the above. It is therefore considered to be outwith the identifiable limits of the building group and therefore contrary to the building groups policies contained within the development plan. The site would be contrary to Policy D2 (A) Building Groups of the Consolidated Local Plan.

Policy D2 (E) Economic Requirement allows for housing with a location essential for business needs. The Council must be satisfied that the housing development is a direct operational requirement of an agricultural, horticultural, forestry or other enterprise which is itself appropriate to the countryside or the housing development would help support a business that results in a clear social or environmental benefit to the area, including the retention or provision of employment or the provision of affordable or local needs housing. There are no business needs associated with this proposal as the stated justification for the proposed dwelling house is that it is necessary to be fit for purpose to support the applicant's son who suffers from profound developmental and physical disability. As there is no established business at this location which requires a dwellinghouse to be essential for the running of that business, the proposal also fails to comply with the provisions of Policies D2.

The application also needs to be assessed against Local Plan Policy G8 -Development outwith Development Boundaries. This states that proposals for new development outwith development boundaries and not on allocated sites identified in the proposals maps will normally be refused although exceptional approvals provided that strong reasons can be given. These exceptions are : a job generating development that has an economic justification, affordable housing as noted under Local Plan policy H1 or a shortfall in the housing land supply, and the site represents a logical extension of the built-up area, is of an appropriate scale in relation to the size of the settlement, does not prejudice the character, visual cohesion or natural built up edge of the settlement and does not cause a significant adverse effect on the landscape setting of the settlement or the natural heritage of the surrounding area.

The proposal does not have an economic justification as noted above. It is acknowledged that the applicant does require special needs housing to cater for the needs of the son. However, it is understood that the applicant's have recently moved into a single storey property on the A701 in Broughton. This property is rented from the Eildon Housing Association and has been adapted for disabled persons. The supporting statement which was submitted at the beginning of November notes that the new house is essential to meet the needs of the family which are not being met in the current home and cannot be met in any other home within a reasonable locality of Broughton. It is unclear if this relates to the new accommodation or the previous accommodation in the village which was two storey. It appears that the supporting medical statements relate to the previous accommodation.

Whilst the need for a house for this particular family is understood, the current development would not offer significant community benefits.

New Local Development Plan

The agent submitted comments to the Reporter in the Examination of the new Local development Plan relating to changes being made to the policy PMD4 - Development Outwith Development Boundaries. The Reporters commented as follows:

'I do not believe that further changes are required to the circumstances set out. I agree with the council that possible additional exceptions, such as a need to retain families/retirees within a community where no other suitable housing stock is available, can reasonably be dealt with as a material consideration at the development management stage. Furthermore, it may also be possible to deal with such cases under circumstance (b) relating to affordable housing, or circumstance (d) relating to community benefits.

No modifications to policy - Development outwith Development Boundaries'

Local Plan Policy H1 - Affordable Housing relates primarily to larger developments which requires a proportion of the development to be affordable housing and/or special needs housing. There are currently two sites allocated for housing within the settlement boundary in both the Consolidated Local Plan and the Draft Local Development plan. Both of these sites have been identified as having a capacity for 10 housing units. In addition to this planning permission in principle was granted (on appeal) in 2014 for a housing development, part of which is within the development boundary. There is a legal agreement in place requiring 25% of any housing built on the site to be affordable. There is therefore adequate land available within the settlement boundary for the development of new affordable/special needs housing and for individual dwellinghouses adapted to meet the individual needs of the family.

The Supporting Statement states: 'The detriment to the family of not being able to accommodate their needs in terms of space and equipment required, nor alter their existing dwelling to such an extent as to accommodate the needs of the family is considerable; and is enough to outweigh any planning policy objection to the proposal.' Furthermore, the statement maintains that if Reporter had had all medical evidence in front of him when he assessed the previous application he may well have come to a different conclusion. This is purely speculation and is not material to the current application.

Given the assessment of the application against the prevailing policies and the land available for new housing in the vicinity of Broughton (not taking account of any properties which may currently be on the market) it is considered that the needs of the family do not outweigh these policy considerations and the proposals cannot be supported.

Equalities Legislation

When taking any decisions the Council must have regard to the Equalities Act 2010 - section 149 which states that a public authority must, in the exercise of its functions, have due regard to a number of factors including to the need to consider the steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

The agent makes reference to another application where the Equalities Act was taken into consideration and which has an 'intention to approve' notice (subject to the completion of a legal agreement) by the LRB (ref 12/01191/PPP) As with this application there were specific medical conditions which either required adaptations to an existing dwelling or a new house. There are differences between the current application and this application in that the land in question was also close to the applicant's smallholding and the house would enable him to continue with this business. As noted below it was considered that any refusal would cause the appellant extreme hardship.

As part of the consideration of the application the LRB Members debated at length the applicant's personal medical circumstances and whether they were a material consideration. They also considered the implications of the Equality Act 2010. The applicant's submissions had stressed that his circumstances had changed in recent years and that a new dwellinghouse designed for disabled access was required to meet his living needs. It had also been highlighted in the submissions that there was no viable or affordable means of adapting his existing house to allow suitable levels of wheelchair access.

The Local Review Body considered that personal circumstances can rarely be taken into account in considering the merits of planning applications; that any material consideration should serve or be related to the purpose of planning, relate to the development and use of land, and be fairly and reasonably related to the particular application. However, after reviewing the case in detail, the Local Review Body was persuaded that, in these specific circumstances, this information submitted by the appellant was material to the consideration of the appeal. The LRB concluded that a refusal of permission would cause the appellant extreme hardship. It concluded that this fact, together with the provisions of Section 149 of the Equality Act, enabled it to grant an exceptional approval of the application; to grant planning permission to the appellant to erect a new house specifically designed to improve his quality of life and to allow him to remain in an area with which he is familiar and to retain a connection to his existing small holding and equestrian operations.

Each application must be considered on its own merits and the differences between the two applications are noted above. It is considered that in the case of the current application, taking into account the requirements

of the Equalities legislation, the needs of the family do not outweigh the policy considerations and that by refusing the application for a house on this particular site, the family will not be severely disadvantaged. Furthermore, the site is on a hillside away from other properties and with clear access difficulties as noted below. A site closer to the village with easy access for carers and emergency vehicles would appear to be more appropriate to meet the family's needs.

Access

During consideration of the previous application, Roads Planning recommended refusal on the grounds of road safety given that the geometry of the access to the site off the A701 did not permit two vehicles to pass. Should two vehicles meet at the access, and the provision of this property would increase that possibility, this would result in a vehicle having to sit on the main A701 whilst the second vehicle left the site. It was the opinion of this section at that time that this was not a satisfactory situation.:

At the Appeal, the reporter accepted that two vehicles could not pass on the bridge and that one would have to wait on the main road, but due to the forward visibility available to traffic on the main road. However, he did not see this as a flaw in the application. In relation to the current application, Roads Planning, whilst accepting this viewpoint, still consider that whilst the visibility available should make drivers aware of any vehicle sitting on the main carriageway, the same visibility also makes overtaking on that stretch of the road available to drivers who may be frustrated at sitting behind slow vehicles. This in itself could cause a danger should an approaching driver not be aware the vehicle in the middle of the road is waiting to turn, or even that it is there.

The access road beyond the junction is narrow, winding and steep up to Broughton Place Farm which would make access for emergency vehicles difficult particularly in the winter months. Beyond the farm, access to the site is via a track to Broughton Place Cottage and then across a field laid to grass. The former access track to the site across the field is not clearly visible and it is on a slope. It is currently not the practice of Roads Planning to support development which would require access via a working farm which this would be.

The issues with the access track to the site which would all have to be resolved to the Council's satisfaction should the application be approved. It is not clear whether the applicant has enough control to resolve these issues and, until such times that all of the above issues can be resolved to the Council's satisfaction, Roads Planning recommend against this application in the interest of road safety.

Impact on Landscape

The site is located in an elevated position but is now surrounded by semi-mature trees which have been planted by the applicant. It would also be viewed against a backdrop of mature trees. These trees would help to screen any building on the site and a sensitively designed single storey dwellinghouse would not have a significant adverse impact on the landscape quality of the National Scenic Area. Provided that the access track was upgraded in an approved manner it is unlikely that it would affect the existing mature trees.

Residential Amenity

As noted above, the proposed new house is not close to the existing residential properties at Broughton Place and any building would not have any impact on residential amenity except for additional vehicles accessing the site and due to the specific medical requirements, it is likely that there would be more vehicular movements by the family and visitors. This has the potential to impact on the residents of Broughton Place Cottage who currently live at the end of a farm track.

Service Provision

Water Supply

The applicants have indicated that they propose to use the public water supply. However, no indication has been given as to how they propose to do this given that the site is relatively isolated and they have no control over any of the surrounding land.

Drainage

A new private drainage system is proposed for foul and surface water drainage. Again as this is a planning permission in principle application no details have been provided. However, it is considered that there is sufficient land within the site to accommodate an appropriate drainage system which would be acceptable to both Building Standards and SEPA and which would not have an adverse impact on the surrounding land.

Both the drainage and water supply could be addressed through suitably worded conditions should the application be approved.

Developer Contributions

The agent has indicated that the applicants would be prepared to pay the required contribution towards Education and Lifelong Learning but have not yet indicated whether this would be through a Section 69 or 75 Legal Agreement.

In conclusion, it is considered that the application cannot be supported as it is contrary to Local Plan policies and the specific needs of the applicants and their family do not outweigh these policy considerations.

REASON FOR DECISION :

The proposed development is not acceptable as it is contrary to Scottish Borders Consolidated Local Plan policies D2 and G8, Supplementary Planning Guidance on New Housing in the Borders Countryside and the Proposed Local Development Plan policies HD2 and PMD4, in that the application site does not relate well to the building group at Broughton Place and the requirement for a dwellinghouse on medical grounds does not justify a departure from development plan policy. Furthermore, in the interests of road safety, in that the existing vehicular access to the site is inadequate.

Recommendation: Refused

- 1 The proposal is contrary to Policy D2 - Housing in the Countryside and Supplementary Planning Guidance on New Housing in the Borders Countryside and Policy HD2 - Housing in the Countryside of the proposed Local development Plan in that the site for the new house is not within the recognisable building group at Broughton Place and it does not relate well to this group.

- 2 The proposal would be contrary to Policies D2 and G8 of the Scottish Borders Consolidated Local Plan 2011 and Policies HD2 and PMD4 of the Proposed Local Development Plan in that the stated need for the dwellinghouse would not justify the proposed development in this specific location.

- 3 The proposed dwellinghouse would be contrary to Policy D2 of the Scottish Borders Consolidated Local Plan 2011 and Policy HD2 of the Proposed Local development Plan in that satisfactory access and other road requirements cannot be met.

“Photographs taken in connection with the determination of the application and any other associated documentation form part of the Report of Handling”.



*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 : 07/01075/FUL

**To : S Kane And J Denson per Gordon Melrose Building Design 6 Market Place Selkirk
Scottish Borders TD7 4BT**

With reference to your application received on **1st June 2007** for planning permission under the Town and Country Planning (Scotland) Act 1997 for the following development :-

Proposal : Erection of dwellinghouse and gable mounted wind turbine

**at : Former Water Treatment Works East Of Broughton Place Cottage Broughton Scottish
Borders**

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

**Dated 22nd October 2007
Planning and Economic Development
Council Headquarters
Newtown St Boswells
MELROSE
TD6 0SA**

Signed

A large black rectangular redaction box covers the signature and name of the Head of Planning & Building Standards. The text "Head of Planning & Building Standards" is visible below the redaction.

Head of Planning & Building Standards

Application reference : 07/01075/FUL

REASONS FOR REFUSAL

- 1 The proposed dwellinghouse would be contrary to Policy H5 of the Scottish Borders Structure Plan 2001-2011, Policy D2 of the Finalised Scottish Borders Local Plan 2005 and Policy 7 of the Tweeddale Local Plan 1996 in that it would constitute housing development in the countryside that is not well related to an existing building group.
- 2 The proposal would be contrary to Policy H6 of the Scottish Borders Structure Plan 2001-2011, Policy D2 of the Finalised Scottish Borders Local Plan 2005 and Policy 8 of the Tweeddale Local Plan 1996 in that the stated need for the dwellinghouse would not justify the proposed development in this specific location.
- 3 The proposed dwellinghouse would be contrary to Policies H5 and H6 of the Scottish Borders Structure Plan 2001-2011, Policy D2 of the Finalised Scottish Borders Local Plan 2005 and Policies 7 and 8 of the Tweeddale Local Plan 1996 in that satisfactory access and other road requirements cannot be met.

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.

SCOTTISH BORDERS COUNCIL

TWEEDDALE AREA COMMITTEE

22 OCTOBER 2007

APPLICATION FOR PLANNING PERMISSION

ITEM: REFERENCE NUMBER: 07/01075/FUL

OFFICER: Mr B Fotheringham
WARD: Tweeddale West
PROPOSAL: Erection of Dwellinghouse and Gable Mounted Wind Turbine
SITE: Former Water Treatment Works, East of Broughton Place Cottage, Broughton Place, Broughton

APPLICANT: S Kane and J Denson
AGENT: Gordon Melrose Building Design

SITE AND APPLICATION DESCRIPTION

This planning application seeks full planning consent for the erection of a dwellinghouse on land to the east of Broughton Place Cottage, Broughton Place, near Broughton. The application site is a former water treatment facility and is accessed from the A701 via the existing private road serving Broughton Place Farm and Broughton Place. The site would be accessed using the existing track to the treatment facility which would be upgraded. There is a mature belt of trees to the north of the site and open farmland to the south and east. The Potting Shed is located to the north west of the site.

It is proposed to erect a detached, split level family home on the site of the former water treatment work. The house would be of a contemporary design incorporating sustainability techniques and renewable technologies in the design and finished materials. It would have the main living accommodation and exceptional needs facilities on the first floor and the remaining bedroom and bathroom accommodation on the ground floor. The dwelling would have natural dry stone wall, vertical sawn larch cladding and a turf roof. There would be a significant proportion of the south facing elevation finished in glazing panels and velux roof windows. It is proposed to mount a domestic wind turbine on the south east facing elevation.

CONSIDERATION BY TWEEDDALE AREA COMMITTEE

The application was considered by the Tweeddale Area Committee on 27 August 2007 where members were minded to continue the application to a future meeting to allow that applicant additional time to submit further supporting information. Supporting information was submitted on 19 September 2007

PLANNING HISTORY

None.

DEVELOPMENT PLAN POLICIES

Scottish Borders Structure Plan 2001-2011

Policy N10 – National Scenic Areas

Policy N11 – Areas of Great Landscape Value

Policy N20 – Design

Policy H5 – New Housing in the Countryside - Building Groups

Policy H6 – New Housing in the Countryside - Isolated Housing

Policy I21 – Small Scale Renewable Energy Technologies

Scottish Borders Local Plan Finalised December 2005

Policy G1 – Quality Standards for New Development

Policy G5 – Developer Contributions

Policy EP1 – National Scenic Areas

Policy EP2 – Areas of Great Landscape Value

Policy D2 – Housing in the Countryside

Policy D4 – Renewable Energy Development

Tweeddale Local Plan 1996

Policy 7 – Additions to Building Groups

Policy 8 – Single Houses in the Countryside

Policy 57 – Siting and Design in the Countryside

Policy 62 – Energy Efficiency

Policy 73 – Protection of National Scenic Areas

Policy 75 – Development in Designated Areas

OTHER PLANNING CONSIDERATIONS:

PAN72 – Housing in the Countryside. February 2005.

PAN 45 – Renewable Energy Technologies. 2002.

PAN 44 – Fitting New Housing Development into the Landscape. 1994.

CONSULTATION RESPONSES:

Scottish Borders Council Consultees

Director of Technical Services (Roads): The junction where the private access joins the public road is narrow, which does not allow two vehicles to pass in the junction bellmouth, therefore increasing the possibility of vehicles backing up on the busy A703 road. There is a small culvert which prevents the bellmouth being increased to the standard I would require and I therefore have no option but to recommend the application is refused.

Director of Technical Services (Environmental Health): The applicant should be required to submit a 1/3 Octave noise output analysis for the turbine installation, together with details of the methodology used to produce the data. Noise from the installation should not give rise to levels, assessed within a dwelling or noise sensitive building with windows closed, in excess of Noise Rating Curve NR 30 between the hours of 0700-2200 and NR Curve 20 at all other times.

Director of Education and Lifelong Learning: The Primary School has capacity to accept additional pupils and therefore no contribution is sought but in line with Council Policy, a contribution of £1,282 will be sought for the High School.

This contribution should be paid upon receipt of detailed planning consent but may be phased subject to an agreed schedule.

Please note that the level of contributions for all developments will be reviewed at the end of March each year and may be changed to reflect changes in the BCIS index – therefore we reserve the right to vary the level of the contribution if the contribution detailed above is not paid before 1 April 2008.

Statutory Consultees

Upper Tweed Community Council: Various objections from local residents who intend to write individually.

Other Consultees

None.

OTHER RESPONSES

Six letters of objections have been received and are copied in full for Members attention. The principle grounds of objection can be summarised as follows:

- Outwith the Broughton settlement boundary
- Not within or adjacent to the existing building group
- No history of residential use on site
- Lack of justification
- Adverse impact on the landscape
- Adverse visual impact of wind turbine
- Lack of a building group
- Inappropriate design of dwelling

- Adverse impact on designated area
- Inadequate access arrangements through the farm
- Detrimental impact on the setting of the listed building
- The site is not 'brownfield land' but agricultural land.

A supporting statement was also submitted by the applicant. This is copied in full for Members attention.

PLANNING ISSUES

Whether the proposed dwellinghouse would comply with the Council's policy for housing in the countryside.

ASSESSMENT OF APPLICATION

The application site is clearly located outwith the defined settlement boundary of Broughton and must therefore be assessed against the Council's policies for housing in the countryside. Proposals for new housing in the countryside outwith defined settlements but associated with existing building groups will normally be supported where they are in accordance with the provisions of the policy guidance 'New Housing in the Borders Countryside' as amended April 2000 and August 2004. The Council must be satisfied that the site is well related to an existing group of at least three houses or building(s) capable of conversion to residential use. The applicant in his supporting statement suggests that the application site forms part of an existing housing cluster and as such is an established settlement.

Limited new housing development in the countryside will be encouraged within or adjacent to recognised building groups where those building groups are identifiable by a sense of place which is contributed to by natural boundaries such as water courses, trees or enclosing land forms or man-made boundaries such as existing buildings, roads, plantations or other means of enclosure. The existing dispersed group of buildings at Broughton Place includes Broughton Place Farm, Broughton Place Cottage, The Potting Shed, Broughton Place Gallery and Flats and two existing dwellings on the north side of the main access road. The group of buildings is defined by the location of the existing residential units relative to each other and the relationship they have as a group of buildings to the landscape setting. The group is located within a mature woodland setting defined on the south side by a significant belt of mature woodland.

The current application site is located on the south side of the existing woodland belt and is therefore considered to be outwith the identifiable limits of the building group and therefore contrary to the building groups policies contained within the development plan. The site would be contrary to Policy H5 of the Structure Plan, Policy D2 of the Finalised Local Plan and Policy 7 of the Tweeddale Local Plan.

The application must therefore be assessed against the Council's policies for single isolated housing in the countryside. There continues to be a presumption against single housing in the countryside unless the need for that house can be clearly substantiated. The Council must be satisfied that the housing development is a direct operational requirement of an agricultural, horticultural, forestry or other enterprise which is itself appropriate to the countryside or the housing development would help support a business that results in a clear social or environmental benefit to the area, including the retention or provision of employment or the provision of affordable or local needs housing. The stated justification for the proposed dwelling

house is that it is necessary to be fit for purpose to support their son who suffers from profound developmental and physical disability. Whilst sympathetic to the applicant's circumstances, they are not sufficient justification for the erection of a dwellinghouse at this specific location in the countryside, nor is it a direct operational requirement of an established agricultural, horticultural, forestry or other enterprise which is itself appropriate to the countryside, which would justify an exception to strict national and local policy. As there is no established business at this location which requires a dwellinghouse to be essential for the running of that business, the proposal also fails to comply with the provisions of Policies H6, D2 and 8.

Members will note from the papers that the applicants supporting statement makes reference to the erection of a dwellinghouse in 2006 on land adjacent to the site. For clarification, this application was granted consent on the grounds that the existing stone built potting shed would be converted and extended to form a new dwelling. It was accepted that this would comply with policy whereas the erection of a new dwelling on this site would not.

The applicant is to be congratulated for his ambitions to create a sustainable dwellinghouse which incorporates renewable technologies. The Council will actively encourage the erection of sustainable dwellings which help to reduce carbon footprints and utilise renewable technologies such as wind turbines. However, this will not override the council's policies on housing in the countryside. The basic principle of erecting a dwellinghouse on this site must first be established. Whilst sympathetic to the applicant's circumstances, and acknowledging their aspirations to erect a suitable and sustainable family home in the area which is fit for purpose, the site does not relate well to the existing dispersed group of buildings at Broughton Place and does not form part of the established building group. Furthermore, the need for the house has not been adequately substantiated.

FURTHER CONSIDERATIONS

Members will note that additional information was submitted by the applicant in support of their application. The majority of this information is sensitive and the applicant has requested that it remains confidential. Members will note that this information has been copied for their attention only.

It is the applicant's contention that the additional information supports their proposal for the erection of a dwellinghouse under the terms of Policies H6, H7, H8 and H9 of the Scottish Borders Structure Plan which refer specifically to affordable and special needs housing. The Council will give favourable consideration to proposals solely for affordable and special needs housing to meet an identified local need in locations where housing development would not normally be permitted. Any such proposals would need to comply with other criteria on location and retention as affordable/special needs housing as set out in the local plans. Policy H9 of the Structure Plan makes exceptions for the erection of special needs housing where there is a shortage of available housing in the locality. However, the overriding concern remains the location of the proposed house and its relationship to existing residential properties. Whilst sympathetic to the circumstances of the applicant, and acknowledging that there are undoubtedly special needs which would necessitate adapted accommodation, these would not in themselves represent sufficient justification for the dwellinghouse to be located in this specific location.

Members will note from the papers and consultation replies that the Director of Technical Services objects to this application on the grounds of road safety. The existing private access is narrow and does not allow two vehicles to pass in the junction bellmouth. This could increase


the possibility of vehicles backing up on the busy A703 road. Furthermore, there is a small culvert which prevents the bellmouth being increased to the standard required it is recommended that the application is refused.

RECOMMENDATION BY HEAD OF PLANNING AND BUILDING STANDARDS

I recommend that this application be refused for the following reasons:

1. The proposed dwellinghouse would be contrary to Policy H5 of the Scottish Borders Structure Plan 2001-2011, Policy D2 of the Finalised Scottish Borders Local Plan 2005 and Policy 7 of the Tweeddale Local Plan 1996 in that it would constitute housing development in the countryside that is not well related to an existing building group.
2. The proposal would be contrary to Policy H6 of the Scottish Borders Structure Plan 2001-2011, Policy D2 of the Finalised Scottish Borders Local Plan 2005 and Policy 8 of the Tweeddale Local Plan 1996 in that the stated need for the dwellinghouse would not justify the proposed development in this specific location.
3. The proposed dwellinghouse would be contrary to Policies H5 and H6 of the Scottish Borders Structure Plan 2001-2011, Policy D2 of the Finalised Scottish Borders Local Plan 2005 and Policies 7 and 8 of the Tweeddale Local Plan 1996 in that satisfactory access and other road requirements cannot be met.

Approved by

Name	Designation	Signature
Brian Frater	Head of Planning and Building Standards	

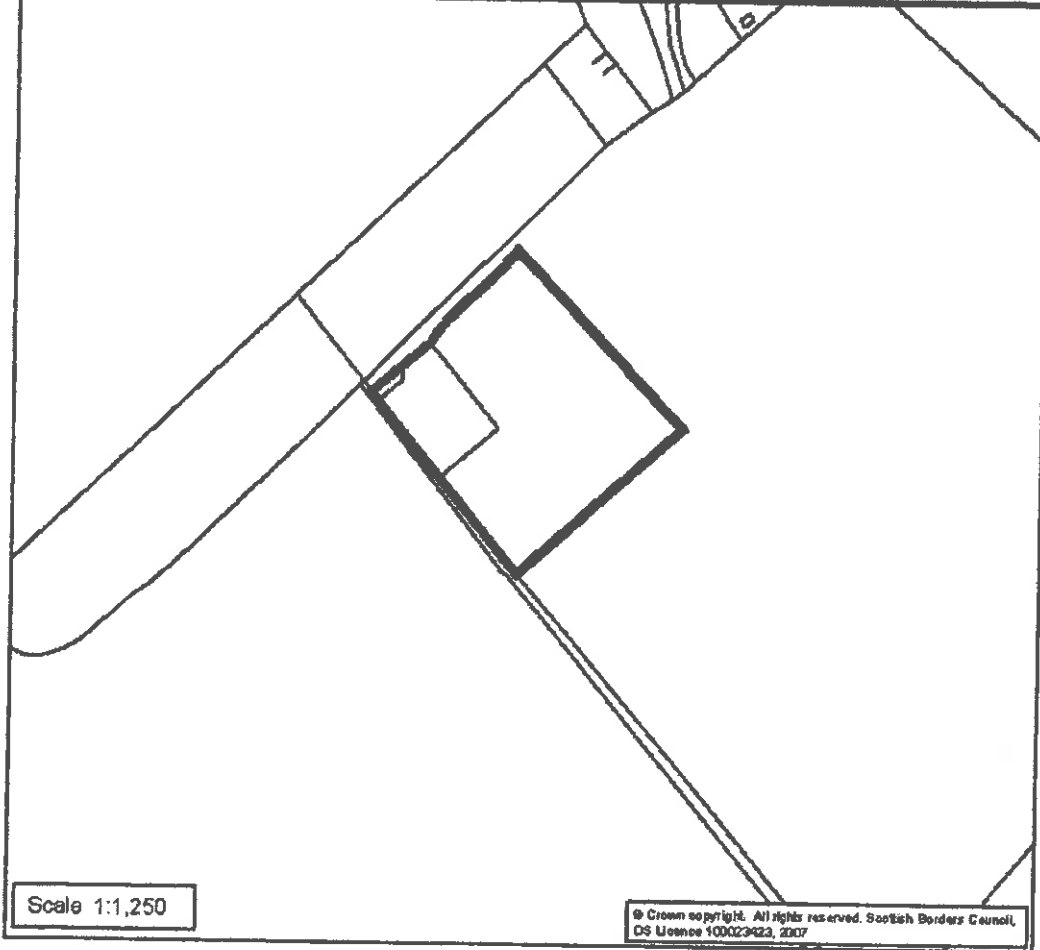
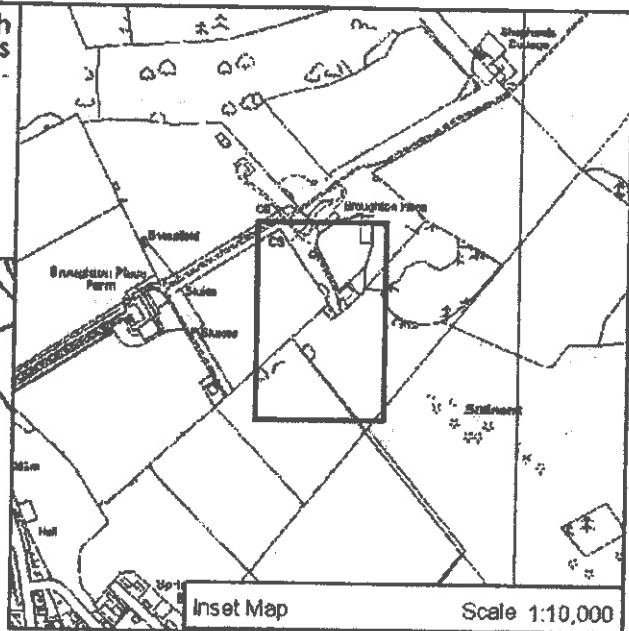
Author(s)

Name	Designation
Barry Fotheringham	Senior Development Control Officer

07/01075/FUL



Former Water Treatment Works
East Of Broughton Place Cottage
Broughton



Scale 1:1,250

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Directorate for Planning and Environmental Appeals

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07/01075/PLU

08/002101Ref



The Scottish Government

FAO Mrs Nuala McKinlay
Senior Solicitor
Scottish Borders Council
Corporate Resources
Council Headquarters
Newton St. Boswells
MELROSE
Scottish Borders
TD6 0SA

CORPORATE RESOURCES

02 JUN 2008

ADMINISTRATIVE

Your ref: PL662/7J/NM/ST

Our ref: P\PPA\140\365

30 May 2008

Dear Madam

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997.
PLANNING APPEAL: LAND AT FORMER TREATMENT WORKS, BROUGHTON
PLACE, BROUGHTON, SCOTTISH BORDERS**

I enclose for your information a copy of the decision letter on this appeal.

The Reporter's decision is final, subject to the right of any aggrieved person to apply to the Court of Session within six weeks from the date of the decision conferred by Sections 237 and 239 of the Town and Country Planning (Scotland) Act 1997; on any such application, the Court may quash the decision if satisfied that it is not within the powers of the Act or that the applicant's interests have been substantially prejudiced by a failure to comply with any requirement of the Act, or of the Tribunals and Inquiries Act 1992, or of any orders, regulations or rules made under these Acts.

Yours faithfully



CAROL-ANNE REDPATH

Enc

4 The Courtyard, Callendar Business Park, Falkirk, FK1 1XR
DX 557005 FALKIRK
www.scotland.gov.uk/Topics/Planning/Appeals



Appeal Decision Notice

T: 01324 696 400

F: 01324 696 444

E: dpea@scotland.gsi.gov.uk



Decision by Mike Croft, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: P/PPA/140/365
- Site address: land at the former water treatment works, Broughton Place, Broughton, Biggar
- Appeal by Stewart Kane against the decision by the Scottish Borders Council
- Application for planning permission 07/01075/FUL dated 30 May 2007 refused by notice dated 22 October 2007
- The development proposed: the erection of a dwellinghouse and a gable-mounted wind turbine
- Date of site visit by Reporter: 13 May 2008

Date of appeal decision: 30 May 2008

Decision

I dismiss the appeal and refuse planning permission.

Reasoning

1. The determining issue in this appeal is whether the appeal project would fail to accord with planning policy for new housing in the countryside.

2. It is very clear to me that the appeal site lies outwith a defined settlement, being in the countryside over 400 m from Broughton village. In those circumstances, I need to draw on policy H5 of the Scottish Borders Structure Plan 2001-2011 and policy 7 of the Tweeddale Local Plan 1996. These development plan policies draw a distinction between new housing in the countryside that is within, adjacent to, or associated with an existing or recognised building group and that which is not. New housing so related to a building group will be encouraged or normally supported, while policies are much less supportive of new housing not so related.

3. I therefore consider first the relationship between the appeal site and the building group to which reference is made. The council argue that the house now proposed would be outside what they accept as a building group here and would not be well related to it. That stance appears to derive mainly from their assessment that the group is located within a mature woodland setting but that the appeal site is outwith that. However, in those terms it seems to me that the appeal site's relationship to the local landscape setting is not very



different from the relationship between other dwellings in the countryside here and a series of woodland belts.

4. The appellant claims that the site is within a housing cluster. But he also says – and I regard this as very significant – that the concept and form of a small building group here is arbitrary, transient, poorly defined and open to subjective judgement. That very characterisation indicates to me that this can hardly be regarded at all as a recognised building group in the terms of the local plan. If it is a group, it is a very scattered one, with a small number of dwellings occupying an extensive area. If the boundary of the group is transient, then it could be extended time and time again and the loss of countryside character would as a consequence be very considerable. If this project were to be regarded as acceptable in terms of the site's relationship to a building group, it is not clear to me why the appellant's project could not be repeated on another small site 50 m, 100 m or 200 m distant, thus extending that dispersed pattern. That process could then be repeated indefinitely. I believe that points to the fundamental weakness of this part of the appellant's case, and I am drawn to the conclusion that what is proposed here is not properly regarded as meeting the development plan's requirements in terms of relationship to an existing building group.

5. Structure plan policy H6 and local plan policy 8 therefore come into play. These policies require new housing in the countryside unrelated to a building group to meet a number of requirements. Three of these requirements are relevant in this case: the proposal has to be essential at the location proposed for a rural use, access and other road requirements need to be satisfactory, and adverse landscape impact has to be avoided. There is no suggestion of operational necessity for a rural use. As to road requirements, traffic generated by the proposed dwelling would access the A701 (Penicuik – Dumfries) road, and the council argue that 2 vehicles cannot pass at the bellmouth junction with the A701. I saw for myself that the running carriageway width of the access road at this point narrows to about 3.2 m, so this could lead to a vehicle having to wait on the main road until another vehicle had completed an exit from the access road. However, as forward visibility is satisfactory here, and given that only a single dwelling is in question, I do not regard this as a crucial flaw in the appeal project. Finally, although there is some concern over visual impact, from what I saw in terms of both short- and longer-distance views, I do not believe criticism of the appeal project on that score is justified.

6. However, the lack of connection with any rural use, coupled with the lack of connection with a recognised building group, mean that the appeal project would be inconsistent with the development plan in relation to the principles of the proper location of new development in the countryside.

7. A number of important other matters are raised. There was a water treatment facility here until 2005, and the appellant claims that the council have underplayed the brownfield status of the appeal site. Some third parties question how much of the site can properly be regarded as brownfield, and it is certainly not clear to me that all of it is brownfield. The site as a whole is by no means a scar in the existing landscape and, although I do not criticise the appeal project for any adverse landscape impact, I am not satisfied that it would bring



about a net environmental benefit of the kind referred to in Scottish Planning Policy 15, "Planning for Rural Development".

8. The appellant also refers to what he terms a secondary supporting factor, ie a social need for the proposed dwelling. He says that he and his family have lived in the area for over 9 years, that they have established local links, and that the proposed house would include accommodation for his profoundly disabled son in the absence of suitable existing housing. I do not give much weight to the local links, and that leaves the matter of the appellant's son's disability. The appellant offers sight of confidential supporting statements from professionals relating to his son's condition and future needs. However, I have not seen those statements, nor can I see them on a confidential basis as it would be unfair to the council for me to take them into account without offering them the opportunity of commenting. A third party suggests that a disabled person would probably benefit more from living in a location where there would be more interaction with other people. In the absence of anything further from the appellant on the point, I have to say that that may be so.

9. The appellant says that the council's refusal in this case was inconsistent with a permission they granted for a house nearby. Although that project included a conversion element, from the material submitted and from what I saw during my visit this appears to have been much more of a new-build project. The difference from the project before me is that the latter has no conversion element at all. That may be enough to justify a different outcome in this case. In any case, I need to make my decision on the basis of information that is less than comprehensive: I have far less information about that earlier project than about the appellant's current proposal and, as indicated in paragraph 8 above, the appellant has chosen not to make available additional evidence that might have supported his case.

10. On balance, therefore, I do not believe that my decision should do anything other than accord with the development plan. I note the references to the Finalised Scottish Borders Local Plan 2005, but I do not believe that that plan takes matters materially further



Reporter



**SCOTTISH BORDERS COUNCIL
LOCAL REVIEW BODY INTENTION NOTICE**

**APPEAL UNDER SECTION 43A (8) OF THE TOWN AND COUNTRY PLANNING
(SCOTLAND) ACT 1997**

**THE TOWN AND COUNTRY PLANNING (SCHEMES OF DELEGATION AND
LOCAL REVIEW PROCEDURE) (SCOTLAND) REGULATIONS 2008**

Local Review Reference: 13/00032/RREF

Planning Application Reference: 12/01191/PPP

Development Proposal: Erection of dwellinghouse

Location: Land North East of Buxton House, Eastfield, Selkirk

Applicant: Mr Hugh Lovatt

DECISION

The Local Review Body reverses the decision of the appointed officer and is minded to grant planning permission subject to the applicant entering into an appropriate legal agreement to secure financial contributions towards the reinstatement of the Waverley line and the conditions set out below.

DEVELOPMENT PROPOSAL

The application is for the erection of a single dwellinghouse on land north east of Buxton House, Selkirk. The application drawings consisted of the following drawings:

Plan Type	Plan Reference No.
Location Plan	1:2500
Site Analysis Plan	1:2500
Title Plan	SEL 1889
Aerial Photo	

PRELIMINARY MATTERS

After examining the review documentation, which included: (a) Decision notice, (b) Notice of Review, (c) Report of Handling, (d) Paper referred to in the Report of Handling, (e) Correspondence from consultees, (f) Correspondence from objectors, (g) Support comments, (h) Further representations and (i) List of Policies, the Local Review Body determined that it had sufficient information to determine the review. In coming to this conclusion, the Review Body considered the request from the applicant for further procedure in the form of a site visit.

The Local Review Body considered the Review competently made under section 43A (8) of the Town & Country Planning (Scotland) Act 1997 at its meeting on 16th September 2013.

REASONING

The determining issues in this review were:

- (1) whether the proposal would be in keeping with the Development Plan, and
- (2) whether there were any material considerations which would justify departure from the Development Plan.

The Development Plan comprises: SESplan 2013 and consolidated Scottish Borders Local Plan 2011. The Review Body considered that the most relevant of the listed policies were:

- SESplan Policies 5 and 7
- Local Plan Policies: D2, G5, G6, INF4,

Other material key considerations the Local Review Body took into account related to:

- Supplementary Planning Guidance on New Housing in the Borders Countryside 2008
- Supplementary Planning Guidance on Development Contributions 2011
- Supplementary Planning Guidance on Placemaking 7 Design 2010
- Supplementary Planning Guidance on Local Landscape Designations 2012
- The extreme hardship to be occasioned by a refusal
- The Equality Act 2010

The Local Review Body was satisfied that there was a building group at Buxton, as defined in Local Plan Policy D2 and in the approved Supplementary Planning Guidance. The Local Review Body then considered whether the development was a suitable addition to the existing group and whether the group had the capacity to accommodate further development.

The Local Review Body took cognisance of the previous planning decisions on the site and in particular the determination in 2010 by the Local Review Body. They concluded that the site was located within the building group at Buxton; it fell within the area contained by its boundaries and sense of place. They also agreed that the north western boundary of that group was defined by the Dean Burn and the adjoining mature tree belt rather than the topography of the garden to Buxton House or man made boundaries adjoining the application site.

The Review Body also concluded that Buxton House formed an end stop to the built form of the group and that the application site and surrounding land were open areas that were in themselves part of the scenic qualities and character of the building group. Members determined that the proposal was therefore contrary to the stated Development Plan policies and the guidance in New Housing in the Borders Countryside SPG. In coming to this conclusion, they also considered the terms and reasoning for the Section 75 Agreement entered into when Buxton House had been developed, that the group should not be added to further.

The Review Body accepted that the new dwellinghouse would generate additional traffic on the existing access road serving the site. However, they did not consider that the access was of such a standard that it could not accommodate one additional dwelling. They concluded that this was a not a justifiable reason to refuse the application.

Members debated at length the applicant's personal medical circumstances and whether they were a material consideration. They also considered the implications of the Equality Act 2010. The applicant's submissions had stressed that his circumstances had changed in recent years and that a new dwellinghouse designed for disabled access was required to meet his living needs. It had also been highlighted in the submissions that there was no viable or affordable means of adapting his existing house to allow suitable levels of wheelchair access.

The Local Review Body considered that personal circumstances can rarely be taken into account in considering the merits of planning applications; that any material consideration should serve or be related to the purpose of planning, relate to the development and use of land, and be fairly and reasonably related to the particular application. However, after reviewing the case in detail, the Local Review Body was persuaded that, in these specific circumstances, this information submitted by the appellant was material to the consideration of the appeal. The LRB concluded that a refusal of permission would cause the appellant extreme hardship. It concluded that this fact, together with the provisions of Section 149 of the Equality Act, enabled it to grant an exceptional approval of the application; to grant planning permission to the appellant to erect a new house specifically designed to improve his quality of life and to allow him to remain in an area with which he is familiar and to retain a connection to his existing small holding and equestrian operations.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that while the development was contrary to the Development Plan there were substantial and overriding material factors in this instance that outweighed the presumption in favour of the Development Plan.

CONDITIONS

1. Approval of the details of the layout, siting, design and external appearance of the building(s), the means of access thereto and the landscaping of the site shall be obtained from the Local Planning Authority.
Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.
2. Application for approval of matters specified in the conditions set out in this decision shall be made to the Planning Authority before whichever is the latest of the following:
 - (a) the expiration of three years from the date of this permission, or
 - (b) the expiration of six months from the date on which an earlier application for approval of matters specified in the conditions set out in this decision notice was refused or dismissed following an appeal.

Only one application may be submitted under paragraph (b) of this condition, where such an application is made later than three years after the date of this consent.

Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

3. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the matters specified in the conditions set out in this decision.

Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

4. No development shall commence until written evidence is provided on behalf of Scottish Water to confirm that mains water, foul and surface water drainage systems shall be made available to serve the development.

Reason: To ensure the development can be adequately serviced

5. No development shall take place except in strict accordance with a scheme of hard and soft landscaping works, which has first been submitted to and approved in writing by the planning authority. Details of the scheme shall include (as appropriate):

- i. existing and finished ground levels in relation to a fixed datum preferably ordnance
- ii. existing landscaping features and vegetation to be retained and, in the case of damage, restored
- iii. location and design, including materials, of walls, fences and gates
- iv. soft and hard landscaping works
- v. existing and proposed services such as cables, pipelines, sub-stations
- vi. other artefacts and structures such as street furniture, play equipment
- vii. A programme for completion and subsequent maintenance.

Reason: To ensure the satisfactory form, layout and assimilation of the development.

6. A Design Statement for the development must be submitted for the approval of the Planning Authority in conjunction with the submission of the first application for the Approval of Matters Specified in Conditions pursuant to this consent. The Design Statement shall set out the design rationale that underpins the development and must illustrate how the development will deliver a fully accessible dwellinghouse that is appropriate for the locality. In this respect, the design of the dwellinghouse must include the following elements:

- a. fully detailed drawings showing wheelchair access into and throughout the dwellinghouse;
- b. details of how the property and its facilities will meet the applicant's living needs;
- c. details of wheelchair access from the house to the stables and adjoining land holding;
- d. a traditional design of house in terms of scale, form and external materials used, and;
- e. be single storey.

All Approval of Matters Specified in Conditions application must be compliant with the terms of the agreed Design Statement.

Reason: To ensure the satisfactory form, layout and assimilation of the development into the building group at Buxton.

SECTION 75 AGREEMENT

The Local Review Body required that a Section 75 Agreement, or other suitable legal agreement, be entered into regarding the payment of a financial contribution towards the Waverley Line reinstatement

Notice Under Section 21 of the Town & Country Planning (Schemes of Delegation and Local Review procedure) (Scotland) Regulations 2008.

1. If the applicant is aggrieved by the decision of the planning authority to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.
2. If permission to develop land is refused or granted subject to conditions 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 of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.

Signed.....
Chairman of the Local Review Body

Date.....

[Redacted] e

From: Thirlestane [Redacted]
Sent: 20 October 2015 12:13
To: Planning & Regulatory Services
Subject: Planning application 15/00890/PPP

Dear Sirs,

At a meeting yesterday the Upper Tweed Community Council considered planning application 15/00890/PPP - Erection of dwelling house and upgrade access track, redundant water treatment works, north east of Broughton Place Cottage, Broughton.

We should like to register an objection to this application. If it is approved, it would be very difficult to resist other applications to build houses in the countryside, and a proliferation of new houses outside existing settlements would be detrimental to this rural and agricultural area. The proposed house would not be part of an existing building group and as far as we are aware is not required for rural or agricultural use. The objections stated on 30 May 2008 by the Reporter of the Scottish Government would appear to have equal force today. The Local Plan already makes provision for new houses in Broughton and we do not consider that additional provision is needed.

Moreover, we consider that the design of the house would not fit in well with its surrounding environment. The site is up on a hill and any house built there would be visible from a wide area around. Other houses in prominent positions are largely of traditional types and we would be much happier with a house which conformed to this standard, rather than one of a more modern design as is proposed. The site is in a National Scenic Area and the adverse impact which the house, as currently designed, would have on the landscape is unacceptable.

We note that a number of close neighbours of the site have expressed concerns about water supply and drainage, the unsuitability of the proposed access near Broughton Place Cottage for more traffic, the difficult access from the A701 and the impact on the working of the farmland over which access would be required. We recommend that full weight should be placed on these concerns.

Yours faithfully,

Christopher Lewin
Chairman, Upper Tweed Community Council,
Thirlestane House,
Broughton,
Biggar, ML12 6HQ

[Redacted]

PLANNING CONSULTATION

On behalf of: Director of Education & Lifelong Learning

From: Head of Property & Facilities Management

Contact: Marc Bedwell, ext 5242

To: Head of Planning & Building Standards

Contact: Dorothy Amyes ☎ 01835 826743

Date: 26 May 2016

Ref: 15/00890/PPP

PLANNING CONSULTATION

Name of Applicant: Mr Stewart Kane

Agent: Suzanne McIntosh Planning

Nature of Proposal: Erection of dwellinghouse and upgrade access track

Site Redundant Water Treatment Works North East Of Broughton Place Cottage Broughton
Scottish Borders

OBSERVATIONS ON BEHALF OF: Director of Education & Lifelong Learning

CONSULTATION REPLY

I refer to your request for Education's view on the impact of this proposed development, which is located within the catchment area for Broughton Primary School and Peebles High School.

A contribution of £1383 is sought for the High school.

Rolls over 90% place strain on the school's teaching provision, infrastructure and facilities and reduce flexibility in timetabling, potentially negatively effecting quality standards within the school environment. Contributions are sought to raise capital to extend or improve schools, or where deemed necessary to provide new schools, in order to ensure that over-capacity issues are managed and no reduction in standards is attributed to this within the Borders Area.

This contribution should be paid upon receipt of detailed planning consent but may be phased subject to an agreed schedule.

Please note that the level of contributions for all developments will be reviewed at the end of March each year and may be changed to reflect changes in the BCIS index – therefore we reserve the right to vary the level of the contribution if the contribution detailed above is not paid before 1 April 2016.

If you require any further information, please do not hesitate to contact me.

Scottish Borders Council

Regulatory Services – Consultation reply

Planning Ref	15/00890/PPP
Uniform Ref	15/01854/PLANCO
Proposal	Erection of dwellinghouse and upgrade access track
Address	Redundant Water Treatment Works , North East Of Broughton Place Cottage, Broughton
Date	9th October 2015
Amenity and Pollution Officer	No Comments
Contaminated Land Officer	Gareth Stewart

Contaminated land

Assessment of Application

The above application appears to be proposing the redevelopment and change of use of land which was previously operated as a water treatment works. This land use is potentially contaminative and it is the responsibility of the developer to demonstrate that the land is suitable for the use they propose.

It is recommended that planning permission should be granted on condition that development is not be permitted to start until a site investigation and risk assessment has been carried out, submitted and agreed upon by the Planning Authority.

Any requirement arising from this assessment for a remediation strategy and verification plan would become a condition of the planning consent, again to be submitted and agreed upon by the Planning Authority prior to development commencing.

The attached standard condition may be helpful in this respect

Recommendation

<p>Delete as appropriate – Agree with application in principle, subject to conditions / Further Information Required Before Application is Determined / Information to be Provided Before Work Commences (see conditions) / No Comment / Object / Informative Note</p>

Conditions

Unless otherwise agreed in writing and in advance by the Planning Authority, prior to any development commencing on site, a scheme will be submitted by the Developer (at their expense) to identify and assess potential contamination on site. **No construction work shall commence until the scheme has been submitted to, and approved, by the Council, and is thereafter implemented in accordance with the scheme so approved.**

The scheme shall be undertaken by a competent person or persons in accordance with the advice of relevant authoritative guidance including PAN 33 (2000) and BS10175:2011 or, in the event of these being superseded or supplemented, the most up-to-date version(s) of any subsequent revision(s) of, and/or supplement(s) to, these documents. This scheme should contain details of proposals to investigate and remediate potential contamination and must include:-

- a) A desk study and development of a conceptual site model including (where necessary) a detailed site investigation strategy. The desk study and the scope and method of recommended further investigations shall be agreed with the Council **prior to** addressing parts b, c, d, and, e of this condition.

and thereafter

- b) Where required by the desk study, undertaking a detailed investigation of the nature and extent of contamination on site, and assessment of risk such contamination presents.
- c) Remedial Strategy (if required) to treat/remove contamination to ensure that the site is fit for its proposed use (this shall include a method statement, programme of works, and proposed validation plan).
- d) Submission of a Validation Report (should remedial action be required) by the developer which will validate and verify the completion of works to a satisfaction of the Council.
- e) Submission, if necessary, of monitoring statements at periods to be agreed with the Council for such time period as is considered appropriate by the Council.

Written confirmation from the Council, that the scheme has been implemented completed and (if appropriate), monitoring measures are satisfactorily in place, **shall be required by the Developer before any development hereby approved commences**. Where remedial measures are required as part of the development construction detail, commencement must be agreed in writing with the Council.

Reason: To ensure that the potential risks to human health, the water environment, property, and, ecological systems arising from any identified land contamination have been adequately addressed.

To: **Development Management Service**
FAO Dorothy Amyes

Date: **3 Nov 2015**

From: **Roads Planning Service**
Contact: **Paul Grigor**

Ext: **6663**

Ref: **15/00890/PPP**

**Subject: Erection of Dwellinghouse and Upgrade Access Track
Redundant Water Treatment Works, North East of Broughton
Place Cottage, Broughton, Scottish Borders**

A planning application for a dwelling on this site, 07/01075/FUL, was submitted to the Council in 2007. This application was recommended for refusal by the relevant officer at that time and was subsequently refused by the Tweeddale Area Committee. An appeal against that decision was submitted to the Scottish Government and the reporter upheld the decision of the Council and refused the application for various reasons.

During consideration of the previous application, this section had recommended refusal on the grounds of road safety given that the geometry of the access to the site off the A701 did not permit two vehicles to pass. Should two vehicles meet at the access, and the provision of this property would increase that possibility, this would result in a vehicle having to sit on the main A701 whilst the second vehicle left the site. It was the opinion of this section at that time that this was not a satisfactory situation.

As part of the reasoning behind their decision, the reporter accepted that two vehicles could not pass on the bridge and that one would have to wait on the main road, but due to the forward visibility available to traffic on the main road, they did not see this as a flaw in the application. Whilst I accept his support for the passing situation, I would argue that whilst the visibility available should make drivers aware of any vehicle sitting on the main carriageway, the same visibility also makes overtaking on that stretch of the road available to drivers who may be frustrated at sitting behind slow vehicles. This in itself could cause a danger should an approaching driver not be aware the vehicle in the middle of the road is waiting to turn, or even that it is there.

Furthermore, it is currently not the practice of this service to support development which would require access via a working farm.

Notwithstanding the above, there are also issues with the access track to the site which would all have to be resolved to the Council's satisfaction should the application be approved. It is not clear whether the applicant has enough control to resolve these issues and, until such times that all of the above issues can be resolved to the Council's satisfaction, I would have to recommend against this application in the interest of road safety.

AJS

Application Comments for 15/00890/PPP

Application Summary

Application Number: 15/00890/PPP

Address: Redundant Water Treatment Works North East Of Broughton Place Cottage Broughton Scottish Borders

Proposal: Erection of dwellinghouse and upgrade access track

Case Officer: Dorothy Amyes

Customer Details

Name: Mrs Jemima Elliott

Address: Broughton Place Farmhouse A701 A72 At Kaimrig End To A701 At Council Boundary At Tweedshaws, Scottish Borders, Biggar, Scottish Borders ML12 6HJ

Comment Details

Commenter Type: Neighbour

Stance: Customer objects to the Planning Application

Comment Reasons:

- Contrary to Local Plan
- Detrimental to environment
- Inadequate access
- Inadequate drainage
- Increased traffic
- Legal issues
- Road safety
- Trees/landscape affected
- Water Supply

Comment:A planning application for erecting a single dwelling on this site was rejected on appeal in 2008.

The proposed site does not conform with Scottish Borders Council Structure Plan 2001-2018 Policy H8 Housing in the Countryside: Isolated Housing. "Proposals for housing in the countryside outwith settlements identified in the Local Plan, and unrelated to building groups, will not be supported unless its location is essential for the needs of an agricultural business, or other business use that requires a specific rural location."

Broughton Place was one of the first enclosed farms in Peeblesshire as shown on Armstrongs map of 1775, and the McQueen estate maps of 1799. Considerable care has been taken by the Elliott family to preserve and enhance its amenity since 1935.

The proposed site does not relate to the Grade A listed buildings of Broughton Place, or the other

traditional buildings relating to the farm. These were not considered to be a housing cluster by the reporter in 2008, but have some cohesion relating to their ownership and use. The proposed site is outwith and unrelated to the agricultural business.

The beech trees adjacent to the site were planted before 1799.

In 1974 the Water Board requested that they be allowed to purchase the site from the farm, to enable the new village water supply to be properly filtered etc. They erected a small timber shed to hold that plant, but the rest of the site remained in agricultural usage. In 2005 they decided that it was no longer needed, but rather than returning the site to the farm, sold it on the open market. At that time the Planning Officer in Peebles advised that no planning permission would be given for developing the site.

Policy H5 Brownfield Development The development of brownfield sites for housing development is supported where the site is no longer required for any employment use and where it will enhance the form and quality of the urban environment. The proposed site was not a brownfield site under the terms above, and is not in an urban situation.

Access to Broughton Place from the A701 is difficult due to the narrow bell-mouth and bridge.

Access to the site past Broughton Place Cottage was not designed for regular traffic. The timber bridge is inadequate for non-agricultural vehicles, and access beyond the cottage is on a specified route across farm land. This access is unsuitable for daily use.

The application proposes a water supply connection to the public supply. However this is not adjacent to the site, and no permissions have been given.

The application proposes a septic tank and soakaway. We question whether these could be accommodated within the site and comply with the Building Regulations, particularly given the soil structure. We would urge the Planning Department to request a full drainage design before considering this application.

Application Comments for 15/00890/PPP

Application Summary

Application Number: 15/00890/PPP

Address: Redundant Water Treatment Works North East Of Broughton Place Cottage Broughton
Scottish Borders

Proposal: Erection of dwellinghouse and upgrade access track

Case Officer: Dorothy Amyes

Customer Details

Name: Mrs Jemima Elliott

Address: Broughton Place Farmhouse A701 A72 At Kaimrig End To A701 At Council Boundary At
Tweedshaws, Scottish Borders, Biggar, Scottish Borders ML12 6HJ

Comment Details

Commenter Type: Neighbour

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: Further to my earlier objections, it is now come to light that the applicants and their family have been re-housed in a specially adapted house for the disabled in Broughton Village by Eildon Housing Association, which is a more suitable location than the proposed site with its considerable access difficulties.

THE POTTING SHED · BROUGHTON PLACE
BROUGHTON · BIGGAR · SCOTLAND · ML12 6HJ

The Service Director, Regulatory Services,
Scottish Borders Council,
Newtown St Boswells
MELROSE
TD6 0SA

5th October 2015

Dear Sir,

Planning Application No. 15/00890/PPP
Erection of dwelling house at former Water Board plot, Broughton Place

I would like to register my objection to this planning application on the following grounds:

1. As far as I am aware, the site is well outside the boundary of the area scheduled for possible settlement at Broughton, under the Scottish Borders Local Plan.
2. There has been no previous building on this site.
3. The site for the proposed dwelling does not associate with any of the existing buildings in the area and could not be considered as forming part of a "housing cluster".
4. The proposed house would have an adverse impact on the landscape, viewed from Broughton to the South West.
5. Broughton Place House is 'A' listed.

I would be grateful if these points could be noted when this application is considered.

Yours faithfully,




Graham Buchanan-Dunlop

Corp Mgt Team

06 OCT 2015

DA

**Broughton Place
Broughton
Biggar
ML12 6HJ**


Planning and Regulatory Services
Scottish Borders Council
Newtown St Boswells
Melrose
TD6 0SA

DQA

1 October 2015

'0'
Dear Sir
**Application No 15/00890/PPP
Erection of Dwelling House
Redundant Water Treatment Works, Broughton.**

I would like to lodge an objection to this planning application, the reasons for which are similar to those which I stated in opposition to the original application in 2007. They are as follows.

- The site is outside the settlement boundary in the Scottish Borders Local Plan. I suggest that if a development was granted on this site, it would difficult to justify refusing similar ones on other sites outside the established boundaries.
- There are already at least two housing development sites within Broughton which have been approved but where no work has yet started.
- The proposed house will not be part of a housing cluster group.
- There has never previously been an inhabited dwelling on this site.
- The site is in an area of outstanding natural beauty and classified as a National Scenic Area. Any building on this site would be very visible from a considerable distance spoiling the fine views into the hills looking North or North East from Broughton - see attached photograph taken from the Kilbucho Road showing location of site.
- Broughton Place and the associated cottages have recently been upgraded by Historic Scotland to an A listed property and this proposed development would not be in keeping with those buildings.

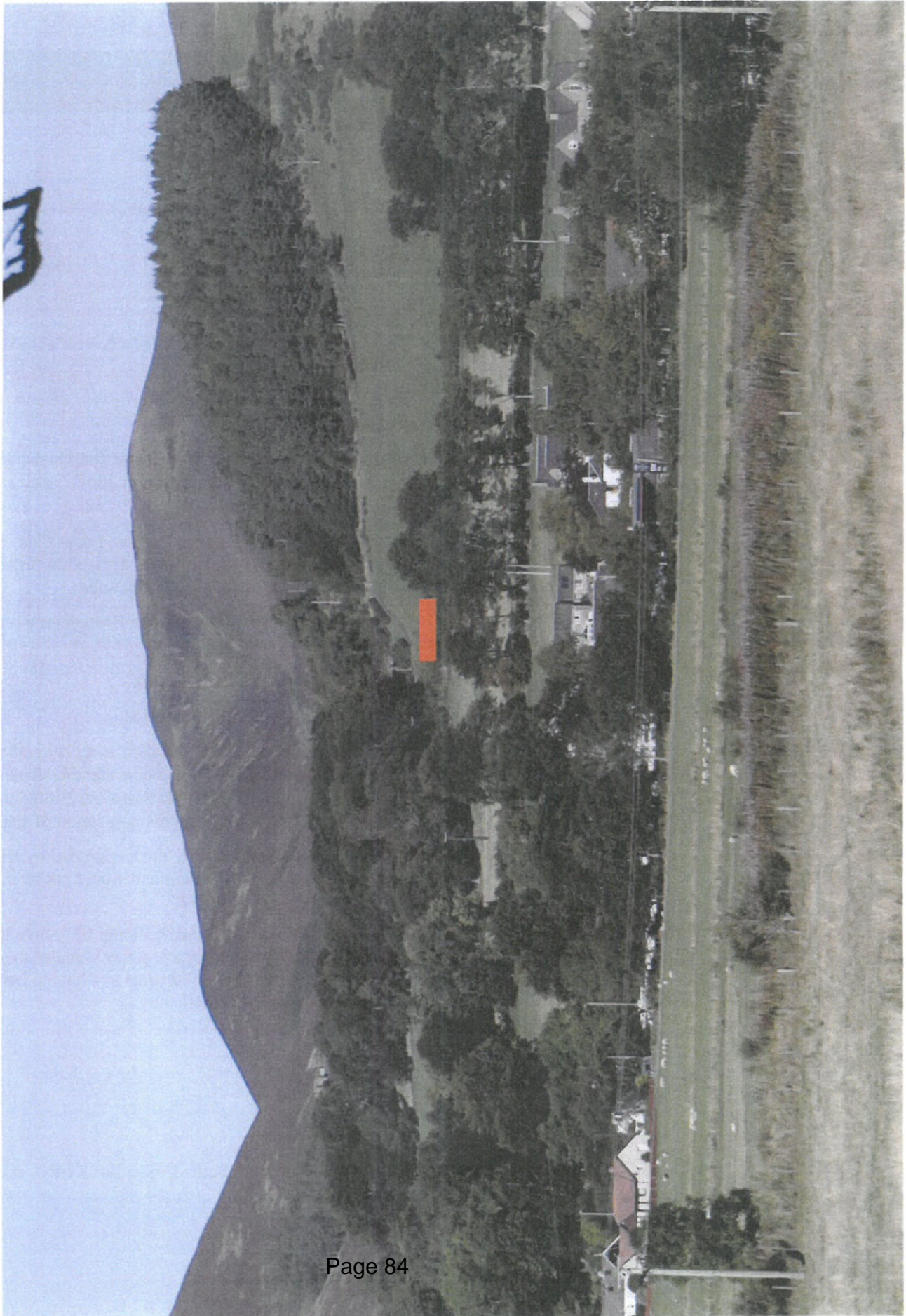
Finally, although it may not be a valid reason for objecting, I think it should be known that in extreme weather conditions it would be virtually impossible for emergency vehicles to get to the proposed site. I give this opinion having lived here for over 30 years and having had personal experience of this problem during a serious health emergency.

Yours faithfully



Richard Carr

Copies: Councillor Willie Archibald, Councillor Catriona Bhatia, Councillor Keith Cockburn.



Application Comments for 15/00890/PPP

Application Summary

Application Number: 15/00890/PPP

Address: Redundant Water Treatment Works North East Of Broughton Place Cottage Broughton Scottish Borders

Proposal: Erection of dwellinghouse and upgrade access track

Case Officer: Dorothy Amyes

Customer Details

Name: Mrs Claudia Ferguson-Smyth

Address: The Gallery Flat E Broughton Place A701 A72 At Kaimrig End To A701 At Council Boundary At Tweedshaws, Scottish Borders, Biggar, Scottish Borders ML12 6HJ

Comment Details

Commenter Type: Neighbour

Stance: Customer objects to the Planning Application

Comment Reasons:

- Contrary to Local Plan
- Inadequate access
- Inadequate drainage
- Land affected
- Loss of view
- Water Supply

Comment: I would like to object to this planning application on the following grounds:

1. The design of the new house is out of character with the other buildings at Broughton Place. Broughton Place House is an A listed building and I feel that the proposed modern design is out of keeping with other buildings on the farm.
2. There has never been a building on the proposed site and I am concerned that this new house will just appear to have been dropped on the landscape.
3. I am concerned about the water supply to the proposed new house. I am not certain that the private water supply now supplying Broughton Place House is robust enough to include another house. I understand that there are going to be major problem with bringing a supply from the village.
4. It is my understanding that this proposed new house would be outside the boundary of the area scheduled for new buildings under the Scottish Borders Local Plan.
5. Further I am concerned about the increase in traffic on the private drive and to the damage to the drive which might occur during building. I assume that if this permission is granted that the applicant will become responsible for repairs to the drive, including the removal of fallen trees and snow.

6. It seems so short sighted to build on undeveloped land and then create access across good farm land.

7. When Andrew Elliott sold the land to the water board he did not foresee that the water board would ever sell it on the open market. Nor did he image that a house would ever be built on the site. While nothing can be done about the Water Board's greed, it is within your powers to stop this application.

8. I suspect that permission would not be granted for any other similar site on the farm.

Sincerely yours,

Claudia Ferguson-Smyth

Application Comments for 15/00890/PPP

Application Summary

Application Number: 15/00890/PPP

Address: Redundant Water Treatment Works North East Of Broughton Place Cottage Broughton
Scottish Borders

Proposal: Erection of dwellinghouse and upgrade access track

Case Officer: Dorothy Amyes

Customer Details

Name: Mr Alan Warnock

Address: Dreva Farmhouse C9 C9 At Entrance To Cheat-The-Beggars To A701 At Broughton,
Broughton, Biggar, Scottish Borders ML12 6HH

Comment Details

Commenter Type: Neighbour

Stance: Customer objects to the Planning Application

Comment Reasons:

- Inadequate access
- Inadequate drainage
- Land affected
- Privacy of neighbouring properties affected
- Trees/landscape affected

Comment: Besides the reasons given in the other objections, I think the proposed house, and access to it, will interfere with the agricultural activity of the farm.

Walling, Fiona

From: Buchanan-Dunlop <buchanan.dunlop@biggar.gov.scot>
Sent: 06 May 2016 11:10
To: localreview
Subject: Review of Planning Decision

Dear Ms McGeoch,

I refer to the appeal against the decision in planning application 15/00890/PPP, which concerns a proposal to build on the site of the former water treatment works at Broughton Place. The appeal reference is 16/00010/RREF.

I wish to record my continued objection to the granting of planning permission in this case. My reasons are as contained in my original representations to the Planning Department. I would suggest that the applicant has not produced any new evidence sufficient to overturn the Council's current refusal of planning permission.

Yours faithfully,
Graham Buchanan-Dunlop

The Potting Shed
Broughton Place
Broughton
BIGGAR
ML12 6HJ

Managers Cottage
Broughton Place Farm
Broughton
By Biggar
ML12 6HJ

7th May 2016

Planning Ref: 15/00890/PPP
Appeal Ref: 16/00010/RREF

Dear Sirs,

Thank you for your letter dated 21st April regarding an Appeal against refusal of planning permission for the site of the old waterworks northeast of the Managers Cottage (also known as Broughton Place Cottage).

I would like to make the comments below to aid the Local Review Body in their decision.

- One can only sympathise with the family concerned in seeking to provide a family home which eases the provision of full time care for a young family member whilst maintaining good internal and external access suitable for a wheel chair.
- Whilst a new house on the proposed site would doubtless go some way towards meeting some of the needs of this family, it would also, effectively, confine the young person to the site thus limiting an opportunity to socialise or even get "Out and about".
- Present policy for those in need of additional support is to provide that care within the Community and to encourage integration with the wider community wherever possible. Paradoxically, whilst this appeal is being made on the grounds that the Equalities Act should be actively considered, a successful appeal would arguably increase the inequalities experienced by, and limit the opportunities available to the young person in question through the location and agricultural access of this site.
- I feel there is little doubt that the applicant has a "Right of Access" to the site, but it is doubtful he has the right to upgrade the track, (the route of which for the final 200 metres is now indistinguishable), as it is unlikely he holds any rights over that track.
- The Appellants ownership rights extend only over the proposed site, not over the access tracks. The description of the site as purchased was - "DESCRIPTION: The site comprises a recently cleared and in filled rectangular area just inside the entrance to a grass field. The site is bounded to the southwest by a post and rail fence with one strand barb-wire and the remaining sides consist of post and one strand of barb-wire with six strands plain wire. There is a timber access gate providing vehicular access. The fence is dilapidated in places and no longer stockproof. The surrounding area is down to grazing and any such activity on this site is unauthorised." (Source: SVA Sales Particulars, 23rd November 2005. Lot 37.)

I trust this will help you in your deliberations.

Yours faithfully,

Bruce Fraser

Walling, Fiona

From: Jemima Elliott <...>
Sent: 01 May 2016 11:45
To: localreview
Subject: Appeal Ref 16/00010/RREF Redundant water Treatment Works

Dear Sirs,

Please accept the following representations in respect to the above review.

Site Access:

The appeal site is accessed across open farmland between the site and Broughton Place Cottage, which is unsuitable for regular use.

Between Broughton Place Cottage and the main avenue, the track is rough and unmade up, with many potholes.

Access from the A701 onto the main avenue has been identified by SBC as difficult, due to the width of the bridge. This causes problems for the existing residential properties and the farming operations. The avenue is a private road in the ownership of Broughton Place Farm, and is not salted or cleared of snow. At times it is impassable except on foot.

The applicant does not have the right to improve the access on the land out-with his ownership.

All of these factors make it unsuitable for a disabled person who may require regular attendance for 'overnight and respite care'.

Brownfield site:

The structure previously on the site was a 'water supply monitoring kiosk', covering the valve set. It was not a workshop or office. We continue to assert that there is not justification for suggesting it is a brown field site.

The setting:

Once again, we reject the claim that the site is within the Broughton Place group of loosely arranged buildings.

For accuracy, the existing properties at Broughton Place are all accessed directly off the main, historic, avenue (planted before 1775). There is no central field. The pattern of enclosed fields, avenues and hedges, was recorded in 1799, and have changed little since.

The proposed site conflicts with this history.

No new buildings have been built at Broughton Place since 1935 except where required by the farming activity undertaken by Broughton Place Farm.

The Potting Shed was a conversion and extension of an existing building, by the owners of Broughton Place.

Pollution:

As the Planning Process is the only stage when objections can be raised about issues relating to pollution, we think it is reasonable to ask the applicant to prove the capability of the site to accommodate the foul discharge from any associated treatment within the site boundaries, before any planning permission is granted.

Local Development Plan:

For Broughton, there are two sites identified for housing with indicative site capacity of 20 houses within the Development Boundary. Both are accessed directly off public roads. Both these sites will be required to provide an appropriate proportion of Affordable and Special Needs Housing.

Equalities Act 2010:

We do not believe that the intention of the Equalities Act was to overrule planning guidelines. The case cited is not relevant, as the circumstances are completely different. The current applicant has no connection to Broughton Place Farm or its operations. It is our understanding that the applicant bought the site with 'hope value' in 2005/6, and did not move into the Broughton area until about 2008. It is therefore a weak argument that it is 'necessary for the family to stay in Broughton as a result of school, work and personal commitments'. Furthermore if planning permission were to be granted on this basis, then it would follow that the use of the house should be restricted to a disabled family, and in future not sold on the open market without such a condition.

Planning Policy H8 Isolated Housing Proposals.

This policy is irrelevant as the proposed location is not essential for the needs of an agricultural business etc. The applicant has no connection with Broughton Place Farm or its operations.

In response to paragraph 6.3, we note the applicant states 'for someone to express an knowledge of the personal circumstances of another without being fully conversant in the facts is astonishing and something that the LRB should be mindful of'. There is much that the applicant states about Broughton Place Farm that is inaccurate, misleading and irrelevant to this planning appeal. The fact that the applicant is currently living in a property recently adapted by Eildon Housing Association for that family is relevant and invalidates the argument that there is not suitable accommodation within the village.

Yours faithfully

Peter and Jemima Elliott

--

Jemima Elliott

Broughton Place Farmhouse, Broughton, Biggar, Lanarkshire. ML12 6HJ

01896 888 511

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List of Policies

Local Review Reference: 16/00010/RREF

Planning Application Reference: 15/00890/PPP

Development Proposal: Erection of Dwellinghouse and upgrade Access Track

Location: Redundant Water Treatment Works, North East of Broughton Place Cottage, Broughton

Applicant: Mr Stewart Kane

SESPlan Strategic Development Plan 2013:

None applicable

Adopted Local Development Plan 2016

Policy HD2: Housing in the Countryside

The Council wishes to promote appropriate rural housing development:

- a) in village locations in preference to the open countryside where permission will only be granted in special circumstances on appropriate sites,
- b) associated with existing building groups where this does not adversely affect their character or that of the surrounding area, and
- c) in dispersed communities in the Southern Borders housing market area.

These general principles in addition to the requirement for suitable roads access will be the starting point for the consideration of applications for housing in the countryside, which will be supplemented by Supplementary Planning Guidance / Supplementary Guidance on New Housing in the Borders Countryside and on Placemaking and Design.

(A) Building Groups

Housing of up to a total of 2 additional dwellings or a 30% increase of the building group, whichever is the greater, associated with existing building groups may be approved provided that:

- a) the Council is satisfied that the site is well related to an existing group of at least three houses or building(s) currently in residential use or capable of conversion to residential use. Where conversion is required to establish a cohesive group of at least three houses, no additional housing will be approved until such conversion has been implemented,
- b) the cumulative impact of new development on the character of the building group, and on the landscape and amenity of the surrounding area will be taken into account when determining new applications. Additional development within a building group will be refused if, in conjunction with other developments in the area, it will cause unacceptable adverse impacts,
- c) any consents for new build granted under this part of this policy should not exceed two housing dwellings or a 30% increase in addition to the group during the Plan period. No further development above this threshold will be permitted.

In addition, where a proposal for new development is to be supported, the proposal should be appropriate in scale, siting, design, access, and materials, and should be sympathetic to the character of the group.

The calculations on building group size are based on the existing number of housing units within the group as at the start of the Local Development Plan period. This will include those units under construction or nearing completion at that point.

(B) Dispersed Buildings Groups

In the Southern Housing Market area there are few building groups comprising 3 houses or more, and a more dispersed pattern is the norm. In this area a lower threshold may be appropriate, particularly where this would result in tangible community, economic or environmental benefits. In these cases the existence of a sense of place will be the primary consideration.

Housing of up to 2 additional dwellings associated with dispersed building groups that meet the above criteria may be approved provided that:

- a) the Council is satisfied that the site lies within a recognised dispersed community in the Southern Borders housing market area,
- b) any consents for new build granted under this part of this policy should not exceed two housing dwellings in addition to the group during the Plan period. No further development above this threshold will be permitted,
- c) the design of housing will be subject to the same considerations as other types of housing in the countryside proposals.

(C) Conversions of Buildings to a House

Development that is a change of use of a building to a house may be acceptable provided that:

- a) the Council is satisfied that the building has architectural or historic merit, is capable of conversion and is physically suited for residential use,
- b) the building stands substantially intact (normally at least to wallhead height) and the existing structure requires no significant demolition. A structural survey will be required where in the opinion of the Council it appears that the building may not be capable of conversion, and
- c) the conversion and any proposed extension or alteration is in keeping with the scale and architectural character of the existing building.

(D) Restoration of Houses

The restoration of a house may also be acceptable provided that the walls of the former residential property stand substantially intact (normally at least to wallhead height). In addition:

- a) the siting and design reflects and respects the historical building pattern and the character of the landscape setting,
- b) any proposed extension or alteration should be in keeping with the scale, form and architectural character of the existing or original building, and
- c) significant alterations to the original character will only be considered where it can be demonstrated that these provide environmental benefits such as a positive contribution to the landscape and/or a more sustainable and energy efficient design.

(E) Replacement Dwellings

The proposed replacement of an existing house may be acceptable provided that:

- a) the siting and design of the new building reflects and respects the historical building pattern and the character of the landscape setting,
- b) the proposal is in keeping with the existing/original building in terms of its scales, extent, form and architectural character,

c) significant alterations to the original character of the house will only be considered where it can be demonstrated that these provide environmental benefits such as a positive contribution to the landscape and /or a more sustainable and energy efficient design.

(F) Economic Requirement

Housing with a location essential for business needs may be acceptable if the Council is satisfied that:

- a) the housing development is a direct operational requirement of an agricultural, horticultural, forestry or other enterprise which is itself appropriate to the countryside, and it is for a worker predominantly employed in the enterprise and the presence of that worker on-site is essential to the efficient operation of the enterprise. Such development could include businesses that would cause disturbance or loss of amenity if located within an existing settlement, or
- b) it is for use of a person last employed in an agricultural, horticultural, forestry or other enterprise which is itself appropriate to the countryside, and also employed on the unit that is the subject of the application, and the development will release another house for continued use by an agricultural, horticultural, forestry or other enterprise which is itself appropriate to the countryside, and
- c) the housing development would help support a business that results in a clear social or environmental benefit to the area, including the retention or provision of employment or the provision of affordable or local needs housing, and
- d) no appropriate site exists within a building group, and
- e) there is no suitable existing house or other building capable of conversion for the required residential use.

In ALL instances in considering proposals relative to each of the policy sections above, there shall be compliance with the Council's Supplementary Planning Guidance where it meets the terms of this policy and development must not negatively impact on landscape and existing communities. The cumulative effect of applications under this policy will be taken into account when determining impact.

Policy PMD1: Sustainability

In determining planning applications and preparing development briefs, the Council will have regard to the following sustainability principles which underpin all the Plan's policies and which developers will be expected to incorporate into their developments:

- a) The long term sustainable use and management of land
- b) The preservation of air and water quality
- c) The protection of natural resources, landscapes, habitats, and species
- d) The protection of built and cultural resources
- e) The efficient use of energy and resources, particularly non-renewable resources
- f) The minimisation of waste, including waste water and encouragement to its sustainable management
- g) The encouragement of walking, cycling, and public transport in preference to the private car
- h) The minimisation of light pollution
- i) The protection of public health and safety
- j) The support to community services and facilities
- k) The provision of new jobs and support to the local economy
- l) The involvement of the local community in the design, management and improvement of their environment

Policy PMD2: Quality Standards

All new development will be expected to be of high quality in accordance with sustainability principles, designed to fit with Scottish Borders townscapes and to integrate with its landscape surroundings. The standards which will apply to all development are that:

Sustainability

- a) In terms of layout, orientation, construction and energy supply, the developer has demonstrated that appropriate measures have been taken to maximise the efficient use of energy and resources, including the use of renewable energy and resources such as District Heating Schemes and the incorporation of sustainable construction techniques in accordance with supplementary planning guidance. Planning applications must demonstrate that the current carbon dioxide emissions reduction target has been met, with at least half of this target met through the use of low or zero carbon technology,
- b) it provides digital connectivity and associated infrastructure,
- c) it provides for Sustainable Urban Drainage Systems in the context of overall provision of Green Infrastructure where appropriate and their after-care and maintenance,
- d) it encourages minimal water usage for new developments,
- e) it provides for appropriate internal and external provision for waste storage and presentation with, in all instances, separate provision for waste and recycling and, depending on the location, separate provision for composting facilities,
- f) it incorporates appropriate hard and soft landscape works, including structural or screen planting where necessary, to help integration with its surroundings and the wider environment and to meet open space requirements. In some cases agreements will be required to ensure that landscape works are undertaken at an early stage of development and that appropriate arrangements are put in place for long term landscape/open space maintenance,
- g) it considers, where appropriate, the long term adaptability of buildings and spaces.

Placemaking & Design

- h) It creates developments with a sense of place, based on a clear understanding of the context, designed in sympathy with Scottish Borders architectural styles; this need not exclude appropriate contemporary and/or innovative design,
- i) it is of a scale, massing, height and density appropriate to its surroundings and, where an extension or alteration, appropriate to the existing building,
- j) it is finished externally in materials, the colours and textures of which complement the highest quality of architecture in the locality and, where an extension or alteration, the existing building,
- k) it is compatible with, and respects the character of the surrounding area, neighbouring uses, and neighbouring built form,
- l) it can be satisfactorily accommodated within the site,
- m) it provides appropriate boundary treatments to ensure attractive edges to the development that will help integration with its surroundings,
- n) it incorporates, where appropriate, adequate safety and security measures, in accordance with current guidance on 'designing out crime'.

Accessibility

- o) Street layouts must be designed to properly connect and integrate with existing street patterns and be able to be easily extended in the future where appropriate in order to minimise the need for turning heads and isolated footpaths,
- p) it incorporates, where required, access for those with mobility difficulties,

- q) it ensures there is no adverse impact on road safety, including but not limited to the site access,
- r) it provides for linkages with adjoining built up areas including public transport connections and provision for buses, and new paths and cycleways, linking where possible to the existing path network; Travel Plans will be encouraged to support more sustainable travel patterns,
- s) it incorporates adequate access and turning space for vehicles including those used for waste collection purposes.

Greenspace, Open Space & Biodiversity

- t) It provides meaningful open space that wherever possible, links to existing open spaces and that is in accordance with current Council standards pending preparation of an up-to-date open space strategy and local standards. In some cases a developer contribution to wider neighbourhood or settlement provision may be appropriate, supported by appropriate arrangements for maintenance,
- u) it retains physical or natural features or habitats which are important to the amenity or biodiversity of the area or makes provision for adequate mitigation or replacements.

Developers are required to provide design and access statements, design briefs and landscape plans as appropriate.

Policy PMD4: Development Outwith Development Boundaries

Where Development Boundaries are defined on Proposals Maps, they indicate the extent to which towns and villages should be allowed to expand during the Local Plan period. Development should be contained within the Development Boundary and proposals for new development outwith this boundary, and not on allocated sites identified on the proposals maps, will normally be refused.

Exceptional approvals may be granted provided strong reasons can be given that:

- a) it is a job-generating development in the countryside that has an economic justification under Policy ED7 or HD2, OR
- b) it is an affordable housing development that can be justified under in terms of Policy HD1, OR
- c) there is a shortfall identified by Scottish Borders Council through the housing land audit with regard to the provision of an effective 5 year housing land supply, OR
- d) it is a development that it is considered would offer significant community benefits that outweigh the need to protect the Development Boundary.

AND the development of the site:

- a) represents a logical extension of the built-up area, and
- b) is of an appropriate scale in relation to the size of the settlement, and
- c) does not prejudice the character, visual cohesion or natural built up edge of the settlement, and
- d) does not cause a significant adverse effect on the landscape setting of the settlement or the natural heritage of the surrounding area.

The decision on whether to grant exceptional approvals will take account of:

- a) any indicators regarding restrictions on, or encouragement of, development in the longer term that may be set out in the settlement profile;
- b) the cumulative effect of any other developments outwith the Development Boundary within the current Local Plan period;
- c) the infrastructure and service capacity of the settlement.

Policy HD3 – Protection of Residential Amenity

Development that is judged to have an adverse impact on the amenity of existing or proposed residential areas will not be permitted. To protect the amenity and character of these areas, any developments will be assessed against:

- a) the principle of the development, including where relevant, any open space that would be lost; and
- b) the details of the development itself particularly in terms of:
 - (i) the scale, form and type of development in terms of its fit within a residential area,
 - (ii) the impact of the proposed development on the existing and surrounding properties particularly in terms of overlooking, loss of privacy and sunlighting provisions. These considerations apply especially in relation to garden ground or 'backland' development,
 - (iii) the generation of traffic or noise,
 - (iv) the level of visual impact.

Policy EP4: National Scenic Areas

Development that may affect National Scenic Areas will only be permitted where:

- a) the objectives of designation and the overall landscape value of the site and its surrounds will not be compromised, or
- b) any significant adverse effects on the qualities for which the site or its surrounds have been designated are clearly outweighed by social or economic benefits of national importance

Policy EP7: Listed Buildings

The Council will support development proposals that conserve, protect, and enhance the character, integrity and setting of Listed Buildings.

Internal or external alterations and extensions to Listed Buildings, or new developments within their curtilage, must meet the following criteria:

- a) be of the highest quality,
- b) respect the original structure in terms of setting, scale, design and materials, whilst not inhibiting contemporary and/or innovative design;
- c) maintain, and should preferably enhance, the special architectural or historic quality of the building;
- d) demonstrate an understanding of the building's significance.

All applications for Listed Building Consent or applications affecting the setting of Listed Buildings will be required to be supported by Design Statements.

New development that adversely affects the setting of a Listed Building will not be permitted.

The demolition of a Listed Building will not be permitted unless there are overriding environmental, economic, social or practical reasons. It must be satisfactorily demonstrated that every effort has been made to continue the present use or to find a suitable new use.

Policy EP13: Trees, Woodlands and Hedgerows

The Council will refuse development that would cause the loss of or serious damage to the woodland resource unless the public benefits of the development clearly outweigh the loss of landscape, ecological, recreational, historical, or shelter value.

Any development that may impact on the woodland resource should:

- a) aim to minimise adverse impacts on the biodiversity value of the woodland resource, including its environmental quality, ecological status and viability; and
- b) where there is an unavoidable loss of the woodland resource, ensure appropriate replacement planting, where possible, within the area of the Scottish Borders; and
- c) adhere to any planning agreement sought to enhance the woodland resource

Policy IS2: Developer Contributions

Where a site is otherwise acceptable in terms of planning policy, but cannot proceed due to deficiencies in infrastructure and services or to environmental impacts, any or all of which will be created or exacerbated as a result of the development, the Council will require developers to make a full or partial contribution towards the cost of addressing such deficiencies.

Contributions may be required for one or more of the following:

- a) treatment of surface or foul waste water in accordance with the Plan's policies on preferred methods (including SUDS maintenance);
- b) provision of schools, school extensions or associated facilities, all in accordance with current educational capacity estimates and schedule of contributions;
- c) off-site transport infrastructure including new roads or road improvements, Safer Routes to School, road safety measures, public car parking, cycle-ways, bridges and associated studies and other access routes, subsidy to public transport operators; all in accordance with the relevant standards and the provisions of any Travel Plan;
- d) leisure, sport, recreation, play areas and community facilities, either on-site or off-site;
- e) landscape, open space, allotment provision, trees and woodlands, including costs of future management and maintenance;
- f) protection, enhancement and promotion of environmental assets either on-site or off-site, having regard to the Local Biodiversity Action Plan and the Council's Supplementary Planning Guidance on Biodiversity, including compensation for any losses and/or alternative provision;
- g) provision of other facilities and equipment for the satisfactory completion of the development that may include: measures to minimise the risk of crime; provision for the storage, collection and recycling of waste, including communal facilities; provision of street furniture and digital connectivity with associated infrastructure.

Wherever possible, any requirement to provide developer contributions will be secured by planning condition. Where a legal agreement is necessary, the preference for using an agreement under other legislation, for example the 1973 Local Government (Scotland) Act and the 1984 Roads (Scotland) Act will be considered. A planning obligation will only be necessary where successors in title need to be bound by its terms. Where appropriate, the council will consider the economic viability of a proposed development, including possible payment options, such as staged or phased payments.

Policy IS5 – Protection of Access Routes

Development that would have an adverse impact upon an access route available to the public will not be permitted unless a suitable diversion or appropriate alternative route, as agreed by the Council, can be provided by the developer.

Policy IS7 – Parking Provision and Standards

Development proposals should provide for car and cycle parking in accordance with approved standards.

Relaxation of technical standards will be considered where appropriate due to the nature of the development and/or if positive amenity gains can be demonstrated that do not compromise road safety.

In town centres where there appear to be parking difficulties, the Council will consider the desirability of seeking additional public parking provision, in the context of policies to promote the use of sustainable travel modes.

Policy IS13: Contaminated Land

Where development is proposed on land that is contaminated, suspected of contamination, or unstable the developer will be required to:

- (a) carry out, in full consultation with, and to the satisfaction of Scottish Borders Council, appropriate phased site investigations and risk assessments; and
- (b) where necessary, and to the satisfaction of Scottish Borders Council design, implement, and validate appropriate remedial or mitigation measures to render the site suitable for its proposed use.

Other Material Considerations

SBC Supplementary Planning Guidance on New Housing in the Borders Countryside 2008
Scottish Planning Policy



Chief Executive
- 4 MAY 2016
Democratic Services

NOTICE OF REVIEW

UNDER SECTION 43A(8) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED) IN RESPECT OF DECISIONS ON LOCAL DEVELOPMENTS

THE TOWN AND COUNTRY PLANNING (SCHEMES OF DELEGATION AND LOCAL REVIEW PROCEDURE) (SCOTLAND) REGULATIONS 2008

THE TOWN AND COUNTRY PLANNING (APPEALS) (SCOTLAND) REGULATIONS 2008

IMPORTANT: Failure to supply all the relevant information could invalidate your notice of review.

Use BLOCK CAPITALS if completing in manuscript

Applicant(s)

Name LIVESH LOCKHART
Address CRAIGIE KNOWE
BLAINSLIE RD
EARLSTON
Postcode TD4 6DJ
Contact Telephone 1 /
Contact Telephone 2 /
Fax No /
E-mail* /

Agent (if any)

Name ALISTAIR McROD
Address THE STRONE
LONGHENTON
41, BOWELL'S
Postcode TD4 9EG
Contact Telephone 1 01103535185
Contact Telephone 2 /
Fax No /
E-mail* AMACO PROPERTY
@ BT INTERNET.COM
Mark this box to confirm all contact should be through this representative:

* Do you agree to correspondence regarding your review being sent by e-mail?

Yes No

Planning authority SCOTTISH BORDERS COUNCIL

Planning authority's application reference number 16/00041(FUL) & 04/02011(FUL)

Site address CRAIGIE KNOWE BLAINSLIE RD EARLSTON
TD4 6DJ

Description of proposed development REMOVAL OF CONDITION 3 OF PLANNING PERMISSION 04/02011/FUL

Date of application 27 NOV 2016 Date of decision (if any) 22 MARCH 2016

Note. This notice must be served on the planning authority within three months of the date of the decision notice or from the date of expiry of the period allowed for determining the application.

Nature of application

- 1. Application for planning permission (including householder application)
- 2. Application for planning permission in principle
- 3. Further application (including development that has not yet commenced and where a time limit has been imposed; renewal of planning permission; and/or modification, variation or removal of a planning condition)
- 4. Application for approval of matters specified in conditions

Reasons for seeking review

- 1. Refusal of application by appointed officer
- 2. Failure by appointed officer to determine the application within the period allowed for determination of the application
- 3. Conditions imposed on consent by appointed officer

Review procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may tick more than one box if you wish the review to be conducted by a combination of procedures.

- 1. Further written submissions
- 2. One or more hearing sessions
- 3. Site inspection
- 4. Assessment of review documents only, with no further procedure

If you have marked box 1 or 2, please explain here which of the matters (as set out in your statement below) you believe ought to be subject of that procedure, and why you consider further submissions or a hearing are necessary:

Site inspection

In the event that the Local Review Body decides to inspect the review site, in your opinion:

- 1. Can the site be viewed entirely from public land?

Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
-----	-------------------------------------	----	--------------------------
- 2. Is it possible for the site to be accessed safely, and without barriers to entry?

	<input checked="" type="checkbox"/>		<input type="checkbox"/>
--	-------------------------------------	--	--------------------------

If there are reasons why you think the Local Review Body would be unable to undertake an unaccompanied site inspection, please explain here:

Statement

You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. Note: you may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

If the Local Review Body issues a notice requesting further information from any other person or body, you will have a period of 14 days in which to comment on any additional matter which has been raised by that person or body.

State here the reasons for your notice of review and all matters you wish to raise. If necessary, this can be continued or provided in full in a separate document. You may also submit additional documentation with this form.

See attached Appeal Statement

Have you raised any matters which were not before the appointed officer at the time the determination on your application was made?

Yes No

If yes, you should explain in the box below, why you are raising new material, why it was not raised with the appointed officer before your application was determined and why you consider it should now be considered in your review.

List of documents and evidence

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review.

- | | |
|--|--|
| <ul style="list-style-type: none"> 1. Appeal Statement 2. Letter dated 27 April 2016 3. Refusal of planning application dated 22 March 2016 4. Various documents attached to planning application 5. Copy of grounds for seeking planning consent relating to application dated 22 January 2016 | <ul style="list-style-type: none"> 6. Copy of email from Stuart Herkes dated 4 February 2016 7. Letter in response to same dated 29 February 2016 8. Copy of sale particulars prepared by CKD Galbraith 9. Summary of interest in Craigieknowe provided by CKD Galbraith |
|--|--|

Note. The planning authority will make a copy of the notice of review, the review documents and any notice of the procedure of the review available for inspection at an office of the planning authority until such time as the review is determined. It may also be available on the planning authority website.

Checklist

Please mark the appropriate boxes to confirm you have provided all supporting documents and evidence relevant to your review.

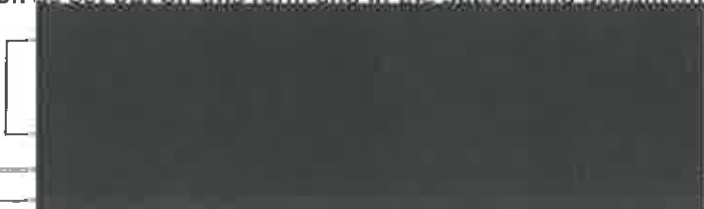
- Full completion of all parts of this form
- Statement of your reasons for requiring a review
- All documents, materials and evidence which you intend to rely on (e.g. plans and drawings or other documents) which are now the subject of this review.

Note. Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice from that earlier consent.

Declaration

I the applicant/agent [delete as appropriate] hereby serve notice on the planning authority to review the application as set out on this form and in the supporting documents.

Signed



Date

7th April 2016

The Completed form should be returned to the Head of Corporate Administration, Scottish Borders Council, Council Headquarters, Newtown St. Boswells TD6 0SA.

Alistair MacDonald

Property Consultants

Longnewton, St Boswells, TD6 9ES
Tel/Fax: (01835) 822492 Mobile: 07703 535185
E-mail: amacdproperty@btinternet.com

27 April 2016

Corporate Administration
Council Headquarters
Newtown St Boswells
TD6 0SA

Dear Sirs,

Craigieknowe, Blainslie Road, Earlston TD4 6DJ

Ref: 16/00041/FULL

Removal of Condition 3 of Planning Permission 04/02011/FULL

Following receipt of correspondence dated 22 March 2016, whereby Scottish Borders Council refused planning permission for removal of Condition 3 of the original Planning Permission 04/02011/FULL, on behalf of my client, Mrs Aileen Cockburn, we request that the Planning Authority review the case under Section 43a of the Town and Country Planning (Scotland) Act 1997.

Attached is a copy of my appeal statement together with copies of correspondence provided by myself and responded to by the Local Planning Authority during the planning process together with a copy of the advertising strategy during the 6 month period that the subjects were marketed by CKD Galbraith, Estate Agents with a proven track record in the sale of properties with a strong rural connection as is the case in respect of Craigieknowe.

A copy of the sale particulars prepared by CKD Galbraith are also enclosed.

The said correspondence from CKD Galbraith undoubtedly confirms that the subjects were actively marketed, encouraging interest particularly from those with a rural or equestrian background.

Planning condition in respect of business occupancy has caused a significant problem in the sale process and whilst three offers were obtained at a closing date, the offers were all subject to the removal of the planning condition and as a result the property remains unsold at the present time. Whilst it may be that a sale can still be achieved, the impact on valuation could be as much as £100,000.

Should you have any queries with regard to this request for a planning authority review, please do not hesitate to contact me and on the assumption that both myself and my client are permitted to attend the appeal hearing we would appreciate notification of the date, time and venue of same.

Yours faithfully,

Alistair MacDonald
Property Consultant

OVER 45 YEARS' EXPERIENCE OF PROPERTY IN THE BORDERS

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Application for Planning Permission

Reference : 16/00041/FUL

To : Eileen Cockburn per Alistair MacDonald The Strone Longnewton St Boswells TD6 9ES

With reference to your application validated on **22nd January 2016** for planning permission under the Town and Country Planning (Scotland) Act 1997 for the following development :-

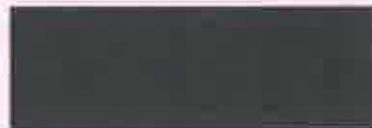
Proposal : Removal of Condition 3 of planning permission 04/02011/FUL pertaining to occupancy of the dwellinghouse

at : Craigie Knowe Blainslie Road Earliston Scottish Borders TD4 6DJ

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

**Dated 22nd March 2016
Regulatory Services
Council Headquarters
Newtown St Boswells
MELROSE
TD6 0SA**

Signed



.....
Chief Planning Officer

APPLICATION REFERENCE : 16/00041/FUL

Schedule of Plans and Drawings Refused:

Plan Ref	Plan Type	Plan Status
	Location Plan	Refused

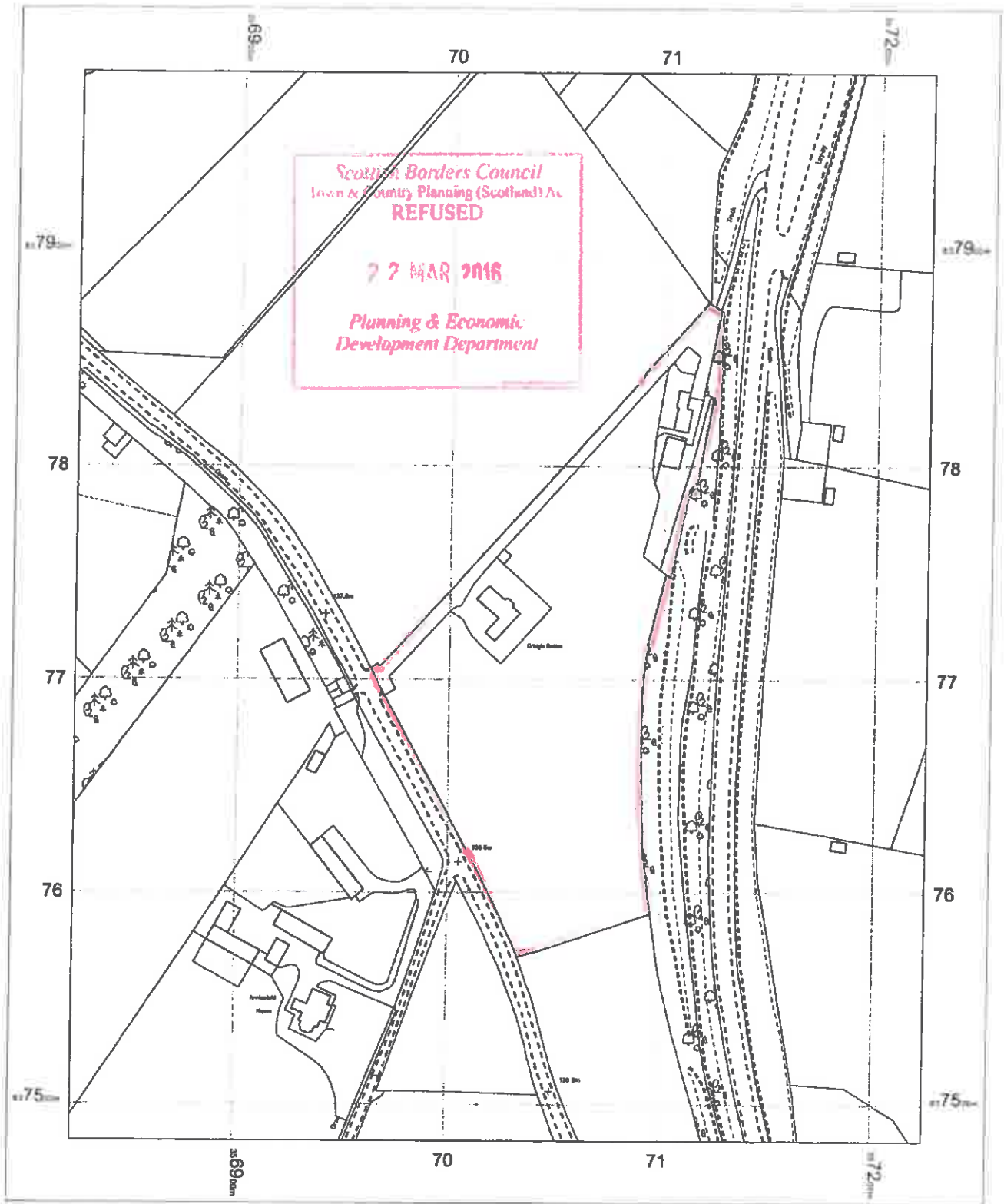
REASON FOR REFUSAL

1. The establishment of a new residential property in an isolated rural location in the absence of any restrictions upon its occupancy for the purposes of ensuring that it would only ever be used to serve a specific business' identified operational requirements, would be directly contrary to the Council's rural housing policy, and specifically, Policy D2 of the Adopted Scottish Borders Consolidated Local Plan 2011 and the guidance of the approved Supplementary Guidance Note on New Housing in the Borders Countryside. Further, it is not considered that there are any material considerations - including the Applicant's supporting case and the advice and guidance of the SPP and Circular 4/1998 - that outweigh the need to determine this application in accordance with the Council's adopted Housing in the Countryside Policy. Accordingly the application is only reasonably refused.

FOR THE INFORMATION OF THE APPLICANT

If the applicant is aggrieved by the decision of the Planning Authority to refuse planning permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under Section 43A of the Town and Country Planning (Scotland) Act 1997 within three months from the date of this notice. The notice of review should be addressed to Corporate Administration, Council Headquarters, Newtown St Boswells, Melrose TD6 OSA.

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 5 of the Town and Country Planning (Scotland) Act 1997.



Craigie Knowe
Blainslie Road
Earlston
TD4 6DJ

OS MasterMap 1250/2500/10000 scale
13 January 2016, ID: M4P-00493109
Iain Smith
1:2500 scale print at A4, Centre: 357024 E, 637733 N
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APPEAL STATEMENT by Alistair MacDonald on behalf of Mrs Aileen Cockburn against refusal of planning application ref 16/0004/FUL

INTRODUCTION

The refused application relates to condition 3 of the appellants previous planning consent 04/02011/FUL dated 13 August 2010.

Condition 3 states that *“The occupation of the dwellinghouse (Craigieknowe) hereby approved shall be limited to a person solely or mainly employed in the operation of the adjoining land and building as a Horse Breeder, Potato Merchant, Horse Feed Merchant, or Farrier or other business approved by the planning authority”* The stated reason is that the erection of a dwellinghouse for normal residential occupation would be contrary to the Council’s policy on housing in the countryside.

Condition 3 is one of seven attached to the approved application 04/02011/FUL for *The erection of dwellinghouse (Craigieknowe) and the change of use of existing shed to business use.*

The appellant wishes the appeals committee to re consider the decision to refuse the deletion of condition 3 ie to allow it to be removed from consent notice for application 04/02011/FUL

THE APPELLANTS REASONS

The appellant’s husband died last year and she now wishes to sell Craigieknowe a registered agricultural holding of 8 acres mainly under grazing. It includes the house itself, and two older and one more recent general purpose buildings having had horse related uses.

Craigieknowe has been on the market now for some six months and while there has been significant interest, what seems to have deterred prospective buyers, is the above referred to condition 3 attached to the planning consent. Of general concern has been the various categories of businesses specified in the condition. It could be some considerable time before a person came along seeking business premises for such uses as well as a dwellinghouse of the type on offer.

There has been substantial interest in the house and land on the basis that the buildings are used for domestic horse related uses as opposed to business ones. Were condition 3 to be removed, the Estate agents are confident the property would be sold. In fact offers have been received if the condition could be removed.

When the application was approved by the Eildon Area Committee in 2004 condition 3 was worded with the particular needs of the appellant’s husband in mind which he was pleased to agree to. The committee’s particular concern at that time was that the business/buildings could not be sold apart from the house. They did not wish to encourage future applications

for housing on the grazing land itself. To prevent this occurring a section 75 agreement with the appellant and her husband was put in place such that land and buildings could not be sold apart.

SUMMARY OF APPELLANT'S CASE

The particular businesses referred to in planning condition 3 are ones that engaged the appellant's husband for many years although with changes in the agricultural and business world and economy of scale in recent times, it seems unlikely that a potato merchant, horse feed merchant or farrier would now be seeking such premises and location. Domestic 'horsiculture' uses are in demand such that the buildings could still generate trade to local businesses without a specific and formal business use.

With the section 75 in place the Council's previous concerns regarding further housing out with settlement and against the Housing in the Countryside policy are overcome.

There is a genuine personal need on the part of the appellant to sell the property in a reasonable time period which it hoped that the Appeal's Committee will take into consideration.

It is respectfully requested that the previous decision be reversed and the condition deleted.

Statement of grounds for seeking planning consent for the removal of item 3 from the planning consent dated 13th August 2010, relating to planning application 04/02011/FUL as highlighted on the attached copy of the said consent.

NOTE: it was not myself responsible for the original application although I am baffled as to why an application dated 04 relating to a house built in 06 warrants a planning consent dated 2010.

However, unfortunately, Mr Cockburn died recently in 2015 and his widow, Mrs Eileen Cockburn still resides at Craigieknowe.

However, Mrs Cockburn dearly wants to move on for personal reasons and has acquired a dwellinghouse in Selkirk to be closer to her daughter, with the result that Craigieknowe is currently exposed for sale on the open market.

Unfortunately, the business restriction of the planning consent is causing a significant problem with regard to a sale and in the light of Mrs Cockburn's unfortunate change in circumstances, it is hoped that the said business condition can be removed.

Whilst it is accepted that the location of Craigieknowe is perhaps contrary to the Local Authority's Guidelines for residential properties in the countryside, I would argue that the property is part of a building group, albeit slightly dispersed and indeed within a 1.5 mile stretch of the Blainslie Road from Craigieknowe in the direction of Blainslie, there are 13 residential units in existence, including 2 modern dwellings on the opposite side of the public road.

To suggest that Craigieknowe does not sit well in the countryside would seem rather harsh and I would be very surprised if since its erection there have been any negative concerns lodged with SBC.

The ironic situation is that as things stand, Craigieknowe is occupied by someone in contravention of the business aspect of the planning consent, namely Mrs Cockburn herself, who is neither a feed merchant, potato merchant, horse breeder nor farrier. It is hoped, therefore in the light of the unfortunate change of circumstances that the local planning authority will look favourably on Mrs Cockburn's application to have the section 75 minute of agreement reworded to exclude reference to the occupation aspect of the planning consent attached to Reference 04/02011/FUL but retaining all other aspects of the said Agreement.

From: Herkes, Stuart
Sent: 04 February 2016 11:53
To:
Subject: 16/00041/FUL and 16/00049/MOD75 Craigie Knowe

Hi Alistair

I am in receipt of the above application but it lacks any justification in terms of the business that the house was approved to serve. I am aware that the Applicant has understandable personal reasons for seeking to re-locate but as discussed at pre-app, a planning decision must take account of the planning reasons and justification for the proposal, and cannot take account of any individual's personal circumstances. I am afraid that we must therefore set the latter aside and explore whether or not there is a planning justification for this proposal.

As far as I can tell, and am aware, the house has only ever been marketed on the general housing market and it is unclear whether any efforts have been made to sell the business and house on as an existing and operational business unit. Please could you consider the following questions and respond with further information:

What has become of the business that was being operated at the site and which the house was approved to serve?

What efforts were made to hand or sell this business (including the house) on to a successor?

Why is it not being marketed (or why has it not been marketed to this point) as an established business with a tied house?

Ultimately we cannot in a planning decision take account of the Applicant's personal circumstances, and the proposed removal of the condition and legal agreement would require a justification in specifically planning terms. Account needs to be had of the existing business since there is no indication to this point that the property (house and business) were not capable of being handed on or sold on as a going concern to a new owner and operator and no demonstration has been given that this option has been appropriately explored.

Regards

Stuart

Stuart Herkes MRTPI
Planning Officer (Development Management)
Regulatory Services
Scottish Borders Council
Council Headquarters
Newtown St Boswells
Melrose
Scottish Borders
TD6 0SA
Tel: 01835 825039
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Find out more about Scottish Borders Council: [Web](#) | [Twitter](#) | [Facebook](#) | [Flickr](#) | [YouTube](#)

Alistair MacDonald

Property Consultant

Longnewton, St Boswells, TD6 9ES
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E-mail: amacdproperty@btinternet.com

29 February 2016

Stuart Herkes
Planning Officer (Development Management)
Regulatory Services
Scottish Borders Council
Newtown St Boswells
TD6 0SA

Dear Sirs,

Craigie Knowe, Blainslie Road, Earlston

Further to ongoing discussions in respect of the above and in particular your email dated 4 February 2016, I confirm the following.

1. Unfortunately the business carried out by Charlie Cockburn was operated solely by himself and as he had no male heirs, the business terminated at Mr Cockburn's death.
2. To attempt to dispose of the subjects to someone in the business of potato merchant, horse breeder, horse feed merchant and farrier in the present climate would have been difficult to achieve in the lights of the general downturn in market trends and competition from larger national companies and indeed latterly Mr Cockburn was surviving solely on the farrier aspect of his business.

It is also fair to suggest that in the light of the condition contained within the planning consent relating to business us, would make access to borrowing from banks, building societies etc difficult if not nigh impossible.

I reiterate a previous commitment that Mrs Cockburn is only too happy to abide by the condition relating to the erection of one dwelling on the site in question and a property of that nature namely 8 acres of land with a dwellinghouse and stabling is what is much sought after in the Scottish Borders.

As discussed, it is my understanding that the application in question for the removal of the planning condition will be determined under delegated powers but in the event of a negative response, there will be rights of appeal.

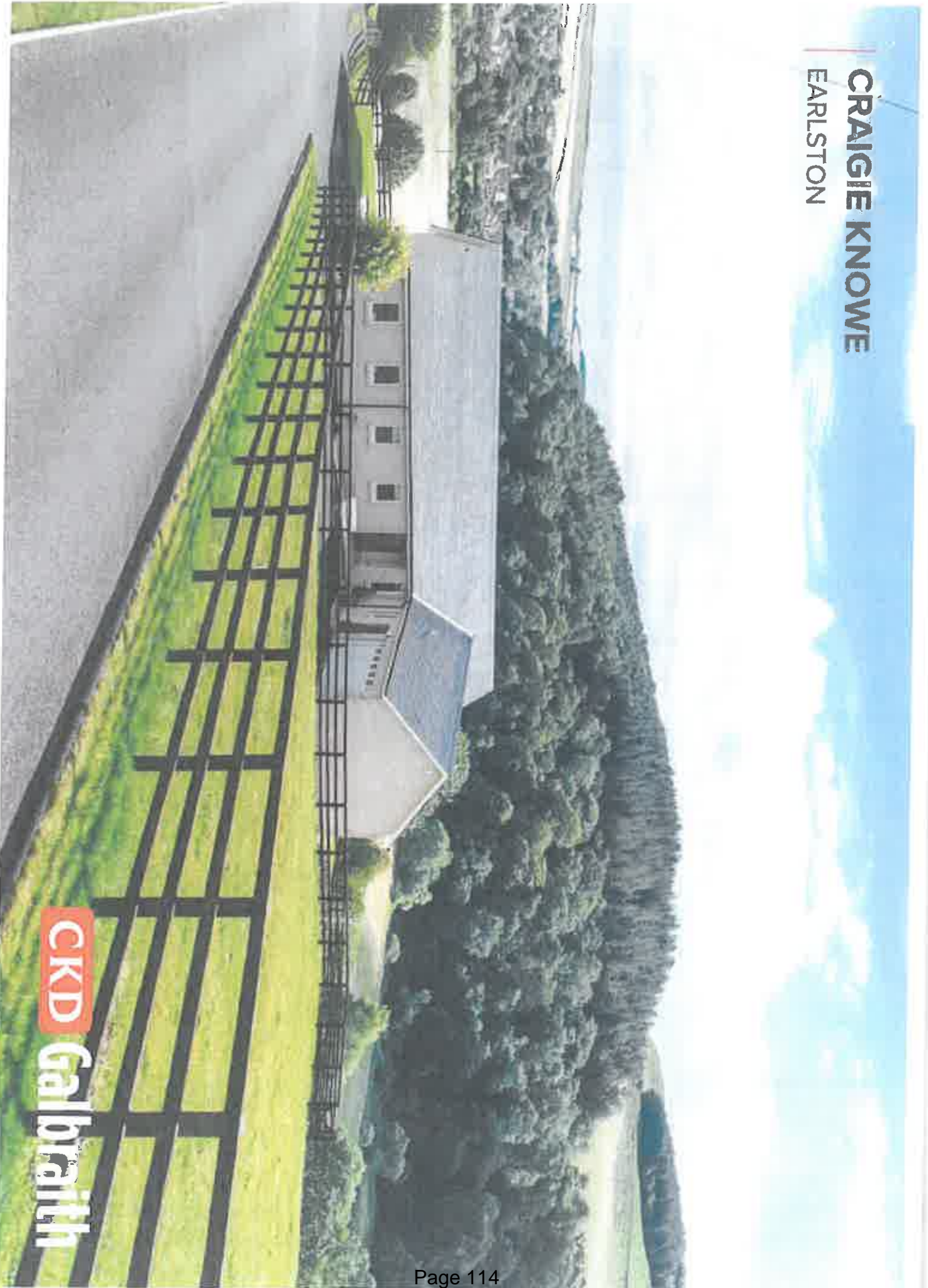
Should you have any further queries, please do not hesitate to contact me.

Yours faithfully,

Alistair MacDonald
Property Consultant

CRAIGIE KNOWE

EARLSTON



CKD Galbraith



CRAIGIE KNOWE EARLSTON SCOTTISH BORDERS, TD4 6DJ

Earlston 1 mile Metrose 5 miles Edinburgh 32 miles

A tremendous, modern detached bungalow with equestrian outbuildings and land.

- Accessible rural location approximately 1 mile from Earlston.
- Enjoys fine outlooks over Earlston and to the Black Hill.
- Within the catchment area for Earlston High School and within easy reach of the terminal for the new Borders rail link.
- Desirable family home with land and equestrian outbuildings.
- Versatile, nicely proportioned and well appointed accommodation.
- Sitting room, dining room, living kitchen, utility room, WC, master bedroom with en suite shower room, 3 further bedrooms and family bathroom.
- Gas central heating. Double glazing. Solar panels.
- Garden. Double garage.
- Craigie Knowe is a registered small holding.
- EPC - B

About 8.15 acres (3.3 ha)



CKD Galbraith
30 The Square
Kelso
TD5 7HL
01573 224244
kelsoc@ckdgalbraith.co.uk

LOCATION

Craigie Knowe has an accessible rural location within easy reach of the A68 approximately 1 mile to the southwest of Earlston. The property enjoys open north easterly outlooks over Earlston to the hills beyond and also has views to the Black Hill. Earlston is a popular Borders town with a good range of amenities including shops, inns, a highly regarded secondary school and a primary school. The countryside around Earlston is noted for its scenic beauty and nearby Borders towns provide a wide range of recreational and sporting facilities. The Tweedbank Terminal for the Borders rail link with Edinburgh lies approximately 6 miles from Craigie Knowe.

DIRECTIONS

Traveling south on the A68 from Earlston cross the Leader Water and take the first right turn, signed "Blainslie". Craigie Knowe lies on the right approximately half a mile up this road.

DESCRIPTION

Craigie Knowe is a tremendous, modern detached bungalow which dates from around 2006 and provides thoughtfully designed, nicely proportioned and well appointed family sized accommodation. The bungalow benefits from gas fired central heating and double glazing. Solar panels have been installed.

Craigie Knowe sits within its own garden grounds which are neatly maintained and include grass and gravel along with good tarred car parking/turning space. There is an attached double garage with electric door.

Craigie Knowe has approximately 8.15 acres of land and this lies mainly to its south and east. The land has been laid out for horses with electric fencing (run off the mains supply) and running mains water. Outbuildings include a useful stable block (with hay store, 3 loose boxes (one doubles as a foaling box if needed) and feed/wash room) and a large shed/workshop (approx. 8.9m x 13.4m) with a partitioned off tack room and workshop. Craigie Knowe is a registered small holding.

SERVICES

Mains electricity, gas and water are all connected. Drainage is to a septic tank. Solar panels have been installed.

COUNCIL TAX

Craigie Knowe falls into Band G for Council Tax purposes.

VIEWINGS

Strictly by appointment with the selling agent.

INTERNET AND SOCIAL MEDIA

This property and other properties offered by CKD Galbraith can be viewed on our website at www.ckdgalbraith.co.uk. For the latest properties for sale like us on www.facebook.com/CKDGalbraithKeiso and follow us on Twitter (twitter.com/Keiso_CKDGI).

MORTGAGE FINANCE

CKD Galbraith has an alliance with independent mortgage brokers Springtide Capital Ltd, who through their excellent relationships with lenders and private banks can advise on the most suitable mortgage for your circumstances. For further information, contact Matthew Griffiths who is based in our Edinburgh office on 0131 240 6990.





CRAIGIE KNOWE EARLSTON SCOTTISH BORDERS, TD4 6DJ

Earlston 7 mile Merrose 5 miles Edinburgh 32 miles

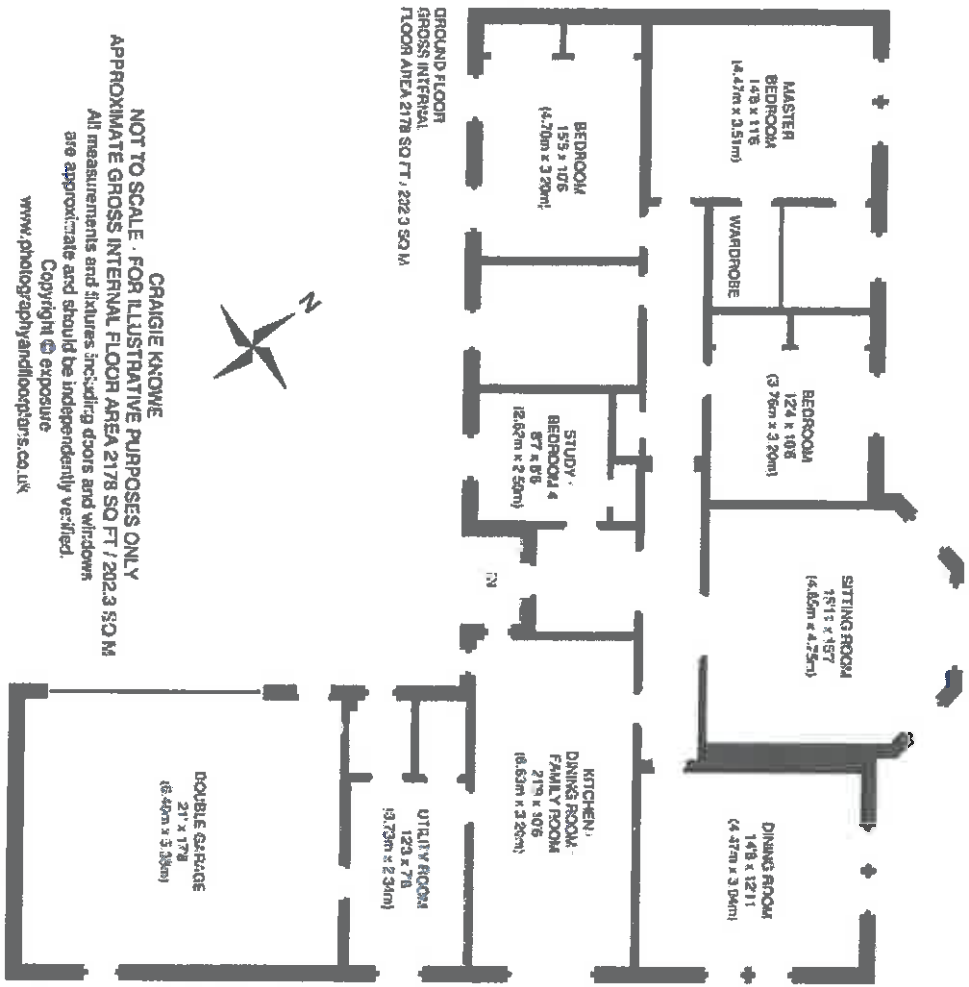
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30 The Square
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kelsoidckdgalbraith@ckd.co.uk



IMPORTANT NOTES

- 1 These particulars are intended to give a fair and overall description of the property. If any points are relevant to your interest please ask for further information, prior to viewing. Prospective purchasers are advised to seek their own professional advice.
- 2 Areas, measurements and distances are given as a guide. Photographs depict only certain parts of the property. Nothing within the particulars shall be taken to be a statement as to the structural condition, nor the working order of services and appliances.
- 3 These particulars shall not be binding on our clients or on their behalf, satisfying the requirements of Section 3 of The Requirements of Writing (Scotland) Act 1995.
- 4 Closing Date
A closing date may be fixed. Prospective purchasers who have notified their interest through lawyers to CKD Galbraith, in writing, will be advised of a closing date, unless the property has been sold previously.

The Seller will not be obliged to accept the highest, or indeed any offer and has the right to accept an offer at any time or withdraw the property from the market. The Seller will not be liable for any costs incurred by interested parties.

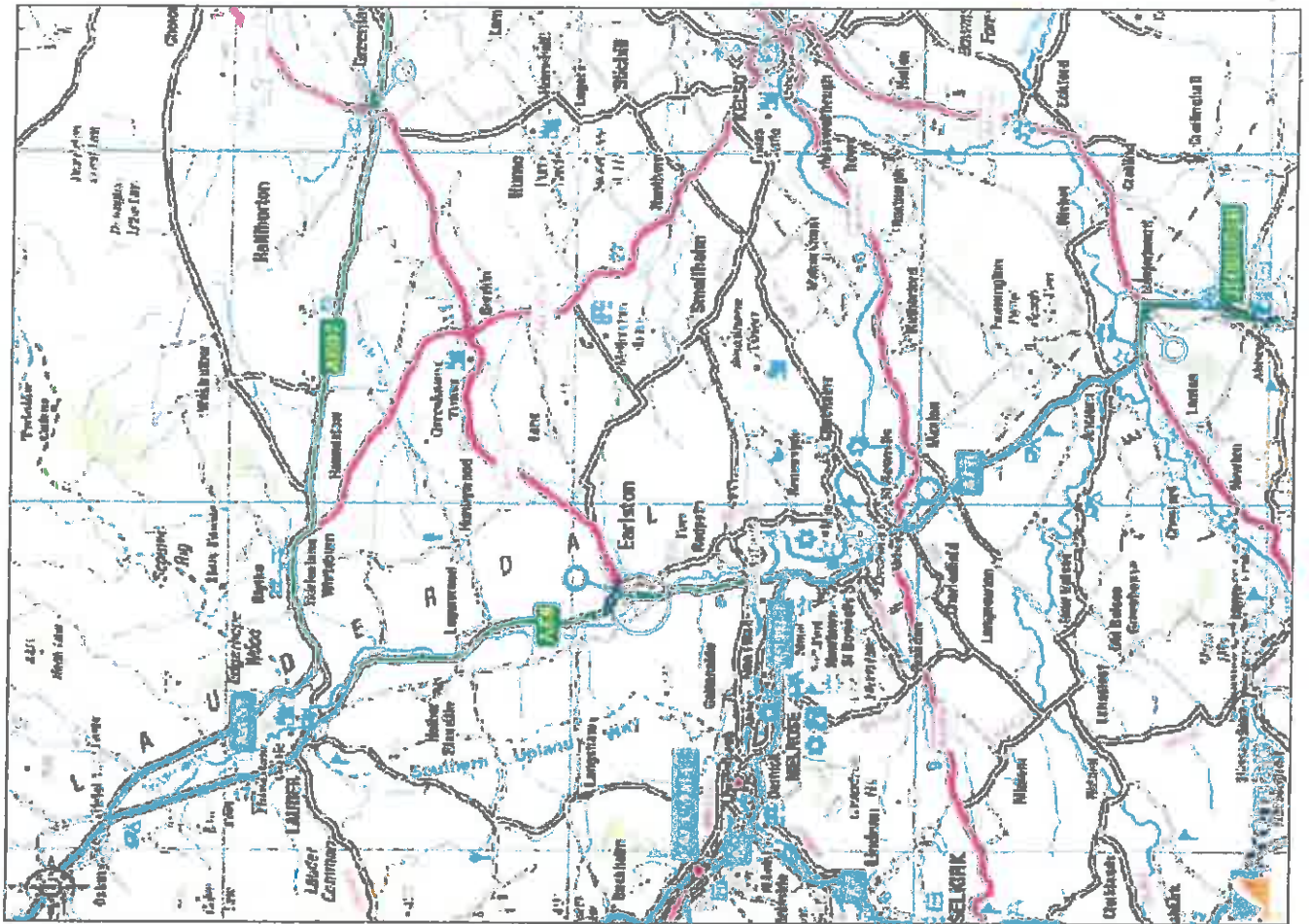
5 Offers
Formal offers in the acceptable Scottish form should be submitted, through a Scottish Lawyer, to CKD Galbraith, 30 The Square, Kilsa, TDS 7HL, Tel: 01573 224244, Fax: 01573 226676.

6 Third Party Rights and Servitudes
The subjects are sold together with and subject to all existing rights of way, servitudes, wayleaves and others whether contained in the Title Deeds or otherwise, and purchasers will be deemed to have satisfied themselves in all respects therefor.

For further details please visit ckdgalbraith.co.uk and onthemarket.com.













Summary of applicant interest in Craigie Knowe, Earlston, Scottish Borders, TD4 6DJ

Summary

The following shows a summary of applicant marketing and interest, indicating the number of those applicants still actively looking.

59 Applicants sent details of property: 35 currently live (1 brochure sent)
 12 Applicants viewing property: 6 currently live
 7 Applicants making offers: 5 currently live

Advertising

The following shows a list of advertisements, with specific applicant responses where noted.

UK Land and Farms on 16/12/2015 (1 response)
 UK Land and Farms on 16/12/2015
 Window on 08/10/2015 (1 response)
 Vendor on 03/09/2015 (1 response)
 Web - CKDG on 31/08/2015 (4 responses)
 Southern Reporter on 03/09/2015
 Southern Reporter on 27/08/2015
 Southern Reporter on 20/08/2015
 Web-Right Move on 14/08/2015 (8 responses)
 Recommended on 13/08/2015 (9 responses)
 Onthemarket on 06/08/2015 (2 responses)
 Advanced Letter on 06/08/2015 (2 responses)

Source of enquiry breakdown

The following shows how applicants said they heard about CKD Galbraith when they originally registered.

Advanced Letter	1 match		
Board	1 match		
Existing Client	1 match		
Onthemarket	3 matches		
Recommended	3 matches		
Telephone	1 match		1 viewing
UK Land and Farms	3 matches		
Vendor	1 match		
Web - CKDG	17 matches	4 offers	6 viewings
Web - Primelocation	1 match		
Web-Right Move	19 matches	3 offers	5 viewings
Window	6 matches		
Zoopla	2 matches		

Viewings

The following shows a list of viewing appointments, with any follow up notes recorded.

21/12/2015 12:00 PM

Follow up: closing date on 13th

26/11/2015 10:30 AM

Follow up: offered

24/10/2015 11:00 AM

Follow up: noted interest

19/10/2015 11:00 AM

Follow up:

12/10/2015 10:00 AM

Follow up: NOTE OF INTEREST, CLIENT AWARE SHE NEEDS TO SELL

10/10/2015 11:00 AM

Follow up: Informed client

02/10/2015 12:00 PM

Follow up: Very keen and going back for a second viewing with John on Monday 5th Oct. Will need to sell first. Updated client

01/10/2015 6:00 PM

Follow up: they have been in touch with clients direct

28/09/2015 4:00 PM

Follow up: Many thanks for keeping us updated about this property. In fact, we have now purchased a property at Robertson (through your Edinburgh office), and will not be making an offer on Craig Knowe.

Kind regards

27/09/2015 10:00 AM

Follow up:

19/09/2015 11:30 AM

Follow up:

18/09/2015 6:30 PM

Follow up: Gave client an update, when received the verbal offer

11/09/2015 5:30 PM

Follow up: verbally offered

08/09/2015 6:30 PM

Follow up:

02/09/2015 10:00 AM

Follow up: updated client

20/08/2015 1:00 PM

Follow up: updated client

17/08/2015 3:00 PM

Follow up: update client

13/08/2015 5:00 PM

Follow up:

SCOTTISH BORDERS COUNCIL

**APPLICATION TO BE DETERMINED UNDER POWERS DELEGATED TO
CHIEF PLANNING OFFICER**

PART III REPORT (INCORPORATING REPORT OF HANDLING)

REF : 16/00041/FUL

APPLICANT : Eileen Cockburn

AGENT : Alistair MacDonald

DEVELOPMENT : Removal of Condition 3 of planning permission 04/02011/FUL pertaining to occupancy of the dwellinghouse

LOCATION: Craigie Knowe Blainslie Road
Earlston
Scottish Borders
TD4 6DJ

TYPE : FUL Application

REASON FOR DELAY:

DRAWING NUMBERS:

Plan Ref	Plan Type	Plan Status
	Location Plan	Refused

NUMBER OF REPRESENTATIONS: 0
SUMMARY OF REPRESENTATIONS:

No representations and no statutory consultees.

PLANNING CONSIDERATIONS AND POLICIES:

Scottish Borders Council Consolidated Local Plan 2011:

Policy G1: Quality Standards for New Development
Policy H2: Protection of Residential Amenity
Policy D2: Housing in the Countryside

Scottish Borders Council Proposed Local Development Plan 2016

Policy HD2: Housing in the Countryside

SPG - New Housing in the Borders Countryside

SPP (2014)
Circular 4/1998
Circular 3/2012

Recommendation by - Stuart Herkes (Planning Officer) on 21st March 2016

This is a joint report on Planning Application 16/00041/FUL and Application for Modification or Discharge of a Planning Obligation 16/00049/MOD75. It should be read with reference to the Report of Handling which informed the Eildon Area Committee's approval of Planning Application 04/02011/FUL on 20 December 2004.

BACKGROUND

Planning Consent 04/02011/FUL gave permission for the erection of a dwellinghouse and the change of use of an existing shed to business use, at a site in the countryside to the southwest of Earlston.

Planning consent was granted subject to planning conditions and the conclusion of a legal agreement. The property concerned is today known as 'Craigie Knowe'. It remains out with the Development Boundary and in isolation from any building group, albeit that it lies in close proximity both to Earlston, and to some other isolated rural properties to the south and east.

The planning conditions attached to Planning Consent 04/02011/FUL include Condition 3, which specifically requires that:

"The occupation of the dwellinghouse hereby approved shall be limited to a person solely or mainly employed in the operation of the adjoining land and building as a Horse Breeder, Potato Merchant, Horse Feed Merchant or Farrier or other business approved by the planning authority.

Reason: The erection of a dwellinghouse for normal residential occupation would be contrary to the Council's policy on housing in the countryside."

Planning Application 16/00041/FUL now proposes that the above condition be removed. The Applicant's case in support of this proposal is set out in two documents and is considered below.

In addition to the imposition of conditions, a legal agreement was also required in relation to Planning Consent 04/02011/FUL, in order to achieve the following objectives: (i) to secure a development contribution towards the Waverley Rail reinstatement; (ii) to ensure that no further dwellinghouses are built on adjoining land within the Applicants' ownership; and (iii) to ensure that the subject house and business premises are not sold separately. Ultimately the first point was addressed within a Section 69 legal agreement shortly after the Eildon Area Committee's approval of the application in December 2004. A Section 75 agreement to achieve the latter two objectives was ultimately concluded in 2010, and registered in 2011.

Application for Modification or Discharge of a Planning Obligation 16/00049/MOD75 now proposes that the planning obligation secured by the Section 75, be modified. However, no specific details are given with respect to the proposed modification, beyond advice within the supporting statement that the Applicant wishes the occupancy restriction set out in Planning Condition No 3 to be removed from the Section 75 legal agreement. The occupancy restriction referred to though, is only required by Planning Condition No 3 attached to Planning Consent 04/02011/FUL. It does not feature (either directly or indirectly) as a burden within the Section 75 legal agreement. Moreover, the Applicant has explicitly advised that she is content that the existing burdens imposed by the Section 75 legal agreement should be maintained; specifically the prevention of further housing on the land and the requirement that the business premises and house should be retained in perpetuity as a single planning unit. In light of this, it is concluded that the MOD75 application has been predicated upon a misinformed understanding that there is a burden on the occupancy of the property contained within the legal agreement itself, when in fact no such legal burden exists.

Ultimately, the reason for, and purpose of, the proposed modification of the legal agreement are not clear. The application appears to be irrelevant even to the achievement of the Applicant's explicitly stated purpose for making it. Given that it is self-evidently redundant - unable to advance anything regardless of the outcome of the determination of Planning Application 16/00041/FUL - it is concluded that it is neither necessarily nor productively considered beyond this point, and is only reasonably refused in the circumstances.

Henceforth this report relates only to the proposal of Planning Application 16/00041/FUL.

PLANNING CONSENT 04/02011/FUL

Planning Application 04/02011/FUL proposed a new house and change of use of an existing shed to accommodate: (1) the operation of Mr Cockburn's established Potato Merchant, Horse Feed Merchant and

Farrier business activities, and (2) a proposed new Horse Breeding business. The applicants at this time were Mr and Mrs Cockburn. Until his death last year, Mr Cockburn was the sole operator of the above noted businesses. Mrs Cockburn, his widow, is the current Applicant (16/00041/FUL).

The Report of Handling which informed the Eildon Area Committee's decision of 20 December 2004, identifies the site as being in an isolated rural location.

In line with the Council's Housing in the Countryside Policies of the time, the Report of Handling recognises a strict requirement for the Applicant to demonstrate that the proposed residential property is justified on economic grounds as being essential to service the operational needs of a business with a demonstrable requirement to operate from this rural location. However, the Report also considers that significant weight is reasonably given within Members' consideration, to the prevalence of what is identified as a more relaxed approach to supporting new isolated houses in the countryside associated with business ventures.

Firstly, it is observed that this approach is reflected in (what was then) the most up-to-date review of the housing in the countryside policy.

Secondly, Members' attention is drawn to specific examples of other (then recent) planning decisions, where it is advised that the Council has accepted proposals for dwellinghouses in association with businesses which in their nature did not necessarily require to be located within a rural location. Two specific examples of such decisions are referenced. These are both for new single houses in association with new business premises in isolated rural locations. The first, the subject of Planning Consent 01/01789/FUL, was originally recommended for refusal but was ultimately approved by the Tweeddale Area Committee subject to a planning condition relating to access arrangements. The other, the subject of Planning Consent 03/02061/OUT, was also recommended for refusal but then ultimately approved by the Berwickshire Area Committee, this time subject to three conditions. These were imposed to regulate matters at the detailed application stage, but also specifically sought further details with respect to services and access. Legal agreements were concluded in both cases.

The Eildon Area Committee's determination of 20 December 2004 was that approval of Planning Application 04/02011/FUL was consistent with the Planning Authority's support for these other recent decisions of the Council in respect of similar proposals. Approval was however subject, firstly, to the conclusion of a Section 75 legal agreement (i) to ensure that no further dwellinghouses should be built on the adjoining land within the Applicant's ownership, and (ii) to ensure that the house and business unit should not be sold separately from one another; and secondly, to requirements that: (a) the businesses should be in operation prior to, or in tandem with, the occupation of the dwellinghouse, and (b) the dwellinghouse should be occupied by a person employed in the business.

The latter concern is addressed within Planning Condition No.3 attached to the Planning Consent which was ultimately issued on 13 August 2010.

PLANNING CONDITION NO. 3

The Reason For Decision given on the Decision Notice for Planning Consent 04/02011/FUL, explicitly notes the requirement for a suitably worded planning condition to be attached to ensure that "the dwellinghouse is occupied by a person employed in the business". Along with the other explicitly identified matter to be addressed by condition (Condition No 4) and the legal agreement, the regulation of the new property's occupancy is reasonably understood as being integral to the Planning Authority's support for the subject development.

According to the Reason attached to the Planning Condition itself, this is because: "The erection of a dwellinghouse for normal residential occupation would be contrary to the Council's policy on housing in the countryside".

Excepting only the explicit recognition within the Reason For Decision that the development "do(es) not necessarily require to be located within a rural location", it is reasonably understood that the Planning Authority's determination of 20 December 2004 is that the siting and operation of the dwellinghouse would otherwise have no unacceptable impacts upon the environment and amenity of this rural location so long as it is occupied by the operator of the subject business and is not available for normal residential occupation.

It is however the Applicant's current proposal that Planning Condition No 3 should now be removed entirely. If supported, this would result in the dwellinghouse being capable of residential occupation by someone other than an operator or a worker of the subject business (or an appropriate successor in operation to the latter). The only restrictions on the use and disposal of the site that would remain in force then, would be those secured by the legal agreement. However, since these require only that the site be retained as a single planning unit and not be subject to any further housing development, neither serve to tie the occupancy of the dwellinghouse to the business use it was approved to service.

Accordingly, the direct effect of the removal of Planning Condition No. 3 would be the establishment of a new residential property in an isolated rural location in the absence of any restrictions upon its occupancy. This would allow the existing house, within less than six years of its consent, to be occupied by a party with no operational requirement to be resident at the site for the purposes of overseeing the operations of the business that the house was explicitly approved to serve.

Given that the imposition of the occupancy restriction was explicitly identified as being integral to the Planning Authority's support for the dwellinghouse in 2004, it is axiomatic that the removal of Condition No. 3 would be contrary to the terms of the Planning Authority's support and approval of Planning Application 04/02011/FUL. However, the proposal of Planning Application 16/00041/FUL requires to be assessed within the planning policy context of the present, and not that which prevailed within 2004. More specifically, the principle requires to be assessed in terms of the policies and proposals of the current statutory development plan, and beyond this, regard is necessarily had to any other material considerations. The latter include the Applicant's own supporting case and national planning policy and guidance with respect to the operation of planning conditions.

PLANNING PRINCIPLE

Despite some subsequent development in closer proximity in the intervening years, the site still prevails within essentially the same planning policy context as it did at the time of the Eildon Area Committee's determination of Planning Application 04/02011/FUL in 2004. As such, it remains in planning policy terms, an isolated site in the countryside and therefore is only appropriately assessed accordingly.

The Applicants seeks the removal of the occupancy restriction, such that there should be no requirement for the occupants of the dwellinghouse to be actively engaged in the operation of a potato merchant, horse breeder, horse feed merchant and farrier business. This would have the effect of allowing the residential property to become available for onward sale, or disposal, to a third party unrelated or unconnected to the operation of the subject business. It would then be capable of being traded within the wider housing market and ultimately sold on to any party interested in the residential property per se, rather than retained for use by the subject business, or any appropriate successor in operation, to allow it to meet its operational needs for both a rural location and on-site residential accommodation.

The establishment of a new residential property in an isolated rural location in the absence of any restrictions upon its occupancy for the purposes of ensuring that it would only ever be used to serve a specific business' demonstrated operational requirements, would be directly contrary to the Council's rural housing policy; and specifically, Policy D2 of the Adopted Scottish Borders Consolidated Local Plan 2011 and the guidance of the approved Supplementary Guidance Note on New Housing in the Borders Countryside.

The above noted requirements of Policy D2 are essentially retained within Policy HD2 of the emerging Local Development Plan. The latter does expand the circumstances in which a new isolated dwellinghouse might be supported. However in all cases, these circumstances relate only to the operational requirements of a business with a demonstrated need for either a countryside location and/or for an isolated location. There is no support for a new isolated dwellinghouse unrelated to the operations of such a business.

Besides resulting in a proliferation of isolated dwellings which do not support a business' operation, the removal of the planning condition would also be liable to result in the loss of a potential opportunity for the appropriate accommodation of a business with an operational requirement for a rural location and on-site accommodation. Were it to be traded in the open housing market, and therein acquired by a private household, this opportunity would be lost to the rural economy.

Accordingly, and unless any other material considerations indicate otherwise, the proposed removal of Planning Condition No 3 would only be appropriately refused on the grounds that:

The establishment of a new residential property in an isolated rural location in the absence of any restriction that it only be occupied to serve the operational requirements of a business that has both a need for this countryside location and a need for on-site residential accommodation, would be directly contrary to the Council's rural housing policy; and specifically, Policy D2 of the Adopted Scottish Borders Consolidated Local Plan 2011 and the guidance of the approved Supplementary Guidance Note on New Housing in the Borders Countryside.

APPLICANT'S SUPPORTING CASE

In support of the proposed removal of Planning Condition No 3 and the proposed modification of the Section 75 legal agreement, the Applicant has provided supporting details which advise that the proposed deletion and modification that the applications have been prompted by her concern for personal reasons, to sell the property in its entirety, following the death of her husband and the cessation of the potato merchant, horse breeder, horse feed merchant, and farrier business activities which he had up until that time, operated from the property at 'Craigie Knowe'.

A supporting statement advises that there is no concern on the Applicant's part that the property should be divided and broken up, or that there should be any lifting of the legal burden prohibiting any further new dwellings on the subject land.

Her concern is only that Planning Condition No 3 attached to Planning Consent 04/02011/FUL should now be removed. The latter, it is advised, is causing a significant problem within the sale of the property upon the open housing market.

In support of the proposed deletion of the condition, it is advised that the house should now be re-considered as being well-related to an established rural building group, which it advises encompasses thirteen other existing houses, including two new properties on the opposite side of the road from 'Craigie Knowe'.

It is further advised that since the cessation of the specific business activities required to be in operation by Planning Condition No 3, the Applicant, as the widow of the late operator, is now by default occupying the property in direct contravention of the strict requirement of the same planning condition.

In direct response to the Planning Officer's concern to establish if any efforts had been made to sell the business and house on to a third party as an existing and operational business unit (04 February 2016), the Applicant has advised that no one else worked within the business other than her late husband, and that no one else within the family has been in a position to take over the running of the business in the period since.

With respect to onward sale to a third party, it is advised that the disposition of a potato merchant, horse breeder, horse feed merchant and farrier business, would have been difficult to achieve in the present climate in light of the general downturn in market trends and competition from larger national companies. The business it is advised, was latterly surviving solely on the basis of its farrier activities. It is also advised that the planning condition's restrictions would have made access to borrowing from financial institutions difficult, if not impossible.

ASSESSMENT OF APPLICANT'S SUPPORTING CASE

There are understandable personal reasons why the Applicant and her family have no concern to maintain the potato merchant, horse breeder, horse feed merchant and farrier business; and why the Applicant should now wish to be accommodated elsewhere. However, the principle of the proposals is only reasonably considered on the basis of its planning merits.

Given that the proposed removal of Condition No 3 would be liable to result directly in both an isolated dwelling which does not support a business' operational requirement, and the loss of a potential opportunity for the accommodation of another business with an operational requirement for a rural location and on-site accommodation, it need to be demonstrated to the Planning Authority's satisfaction that there is no realistic prospect of the site being retained in operation as a business premises.

The Applicant has however not reasonably demonstrated any effort to market the property as a business premises. Instead the advice given appears to indicate that the property has to this point, only ever been presented for sale on the open housing market as a private dwelling, without account or acknowledgement of the business occupancy restriction.

Ultimately, there is nothing within the supporting case itself which provides any tangible evidence of the statements that the Applicant has given with respect to the difficulties associated with the marketing of the property for onward sale as a business premises, or indeed with respect to securing any financial assistance required to facilitate any such transaction.

On the contrary, the statements about the difficulties that it is anticipated that the Applicant would have experienced had she sought to market the property as a business premises, appear to be entirely uncorroborated. There is no documentary evidence that any such difficulties have in fact been encountered, let alone during any reasonable period of time in which there has been a reasonable expenditure of effort to promote awareness of the property as a business premises available for uptake by a potato merchant, horse breeder, horse feed merchant and/or farrier business.

The supporting statement does not represent, or otherwise evidence, a genuine and credible attempt to promote awareness of the site amongst parties who would be liable to be both interested in, and qualified to operate, such a specialist business premises. It is therefore unclear at this point, whether or not there is actually any realistic prospect of the premises being capable of uptake and operation by a successor potato merchant, horse breeder, horse feed merchant and/or farrier business. Without an evidence-based account of any actual difficulties that have been experienced by the Applicant during the marketing of the site as a business premises over a reasonable period of time, and within a strategy that might reasonably have been expected to have yielded results had there been any serious and genuine interest in the property as a potato merchant, horse breeder, horse feed merchant and/or farrier business premises, it is not considered that it would be reasonable or necessary to accept that the occupancy restriction is having any unacceptable impacts.

There is further, a risk that any acceptance of the proposal on the basis of no or minimal evidence of any reasonable and concerted effort to market the site as a business premises, would be liable to promote other unsubstantiated proposals being made in relation to isolated dwellings elsewhere, for the purpose of removing restrictions or other ties affecting occupancy or operation. On this basis alone, it is reasonable for the Planning Authority to insist that evidence is provided to corroborate the advice that there is no prospect of the property being sold on to an equivalent business operation to that which the dwellinghouse was approved to serve.

Although the Planning Authority was content within its determination of Planning Application 04/02011/FUL that the house and business premises would have no adverse impacts upon the landscape setting at the site or within the surrounding area, the Applicant's assertion that the property has subsequently been absorbed into a building group is not found to be the case. Notwithstanding that there has been development within the surrounding area, the property remains an isolated, single property at distance from neighbouring development, which does not integrate with, or contribute to any sense of a wider building group within the surrounding area. Accordingly, there are no grounds to consider that the circumstances at the site have now changed so substantially that it is appropriate to redefine or reassess its relationship to its surroundings in any fundamental way. The property is, and is only appropriately considered, as an isolated rural dwelling.

In addition to the Applicant's own supporting case however, consideration needs to be given to national planning policy and guidance which are material to the operation of planning conditions in relation to the regulation of the occupancy of rural dwellings.

SCOTTISH PLANNING POLICY

Scottish Planning Policy (2014) Paragraph 83 allows that where appropriate, the construction of single houses out with settlements should be allowed provided these are well-sited and designed to fit with local landscape character, taking account of landscape protection and other plan policies. It also explicitly advises that occupancy restrictions on housing should not be imposed.

While the advice of the SPP is a consideration, and one which post-dates both the issue of Planning Consent 04/02011/FUL and the adoption of the Consolidated Scottish Borders Local Plan, it is not considered that it is sufficient in isolation to outweigh the need for the proposal to be determined in accordance with the statutory development plan.

The advice is general, and consideration needs to be given to the specific circumstances of a proposal, and whether, and (if relevant) how, its operation would be appropriately accommodated. Accordingly, and notwithstanding the relatively favourable context the SPP promotes relative to new development which has a demonstrated operational need for accommodation in an isolated rural location, there is no basis to accept the SPP as an overriding material consideration in this specific case.

CIRCULAR 4/1998

Circular 4/1998 sets out six tests to be applied with respect to the imposition of planning conditions. These are specifically whether the condition is: (i) necessary; (ii) reasonable; (iii) relevant to the development to be permitted; (iv) enforceable; (v) precise; and (vi) reasonable in all other respects.

It is acknowledged that the Applicant does find herself in very different circumstances to those that were then prevalent at the time of the determination of Planning Application 04/02011/FUL, and that the condition might have been written to allow greater flexibility in response to foreseeable events or circumstances. (Although not all circumstances are reasonably anticipated, the condition might nonetheless reasonably have included the potential for the property to be occupied by a spouse and any dependents of the operator of the business; the potential for the property to be occupied by the operator beyond their retirement from the business; and the potential for any widow or widower, and dependents, of the operator to occupy the property after the operator's death). While it would have been appropriate to consider (and, I would readily anticipate, support) any proposal to vary the planning condition to accommodate such provisions had such an application been made (or were it to subsequently be made) this is not the proposal before the Planning Authority. The application must be determined on the basis of the proposed removal - and not variation - of the planning condition.

Notwithstanding its shortcomings with respect to its regulation of the operation of the occupancy of the dwellinghouse, Planning Condition No 3 is, and remains, necessary, reasonable, relevant and enforceable in its requirement that the operation of the development consented by Planning Consent 04/02011/FUL, should be compliant with the Council's Housing in the Countryside Policy.

There is moreover, no reason to accept that the condition has now served its purpose since the property essentially still inhabits the same planning policy context as it did in 2004. The removal of Planning Condition No 3 would be liable to have more adverse and unacceptable impacts upon the environment and amenity of the site and its rural location than its maintenance. This would be through a dwellinghouse being made newly available for normal residential occupancy in a situation where this would not otherwise have been permitted in 2004, and which would not otherwise be permitted in 2016, and where no justification for doing so has otherwise been accepted, let alone provided.

CONCLUSION

As noted above, Application for Modification or Discharge of a Planning Obligation 16/00049/MOD75 appears to have been predicated upon the misunderstanding that there is a burden on the occupancy of the property contained within the legal agreement itself, when in fact no such legal burden exists. The application appears to be irrelevant even to the achievement of the Applicant's explicitly stated purpose for making it. Given that it is unclear in its proposal and redundant in its purpose, the application is only reasonably refused.

It is not considered that there any material considerations that outweigh the need to determine Planning Application 16/00041/FUL in accordance with the Council's adopted Housing in the Countryside Policy. Accordingly it is considered that the application should be refused.

As noted above, there are provisions within Planning Condition No 3 which are considered to be overly restrictive in their specific terms (not least in the lack of provision for the Applicant to remain within her existing home as the widow of the business' operator) but these matters appear readily capable of being addressed through variations to the planning condition, which, if these were now sought, it is anticipated

could be considered sympathetically. However, since the application seeks the removal of the condition, it is not possible to address these points within a refusal of the current application. These matters would now only be appropriately progressed by the Applicant through a new application, specifically proposing these variations.

REASON FOR DECISION :

The establishment of a new residential property in an isolated rural location in the absence of any restrictions upon its occupancy for the purposes of ensuring that it would only ever be used to serve a specific business' identified operational requirements, would be directly contrary to the Council's rural housing policy; and specifically, Policy D2 of the Adopted Scottish Borders Consolidated Local Plan 2011 and the guidance of the approved Supplementary Guidance Note on New Housing in the Borders Countryside. Further, it is not considered that there are any material considerations - including the Applicant's supporting case and the advice and guidance of the SPP and Circular 4/1998 - that outweigh the need to determine this application in accordance with the Council's adopted Housing in the Countryside Policy. Accordingly the application is only reasonably refused.

Recommendation: Refused

- 1 The establishment of a new residential property in an isolated rural location in the absence of any restrictions upon its occupancy for the purposes of ensuring that it would only ever be used to serve a specific business' identified operational requirements, would be directly contrary to the Council's rural housing policy; and specifically, Policy D2 of the Adopted Scottish Borders Consolidated Local Plan 2011 and the guidance of the approved Supplementary Guidance Note on New Housing in the Borders Countryside. Further, it is not considered that there are any material considerations - including the Applicant's supporting case and the advice and guidance of the SPP and Circular 4/1998 - that outweigh the need to determine this application in accordance with the Council's adopted Housing in the Countryside Policy. Accordingly the application is only reasonably refused.

“Photographs taken in connection with the determination of the application and any other associated documentation form part of the Report of Handling”.

SCOTTISH BORDERS COUNCIL

APPLICATION TO BE DETERMINED UNDER POWERS DELEGATED TO THE HEAD OF PLANNING AND REGULATORY SERVICES

PART III REPORT (INCORPORATING REPORT OF HANDLING)

REF : 04/02011/FUL

APPLICANT : Mr And Mrs Charlie Cockburn

AGENT : Andrew Davie Timber Frame Homes

DEVELOPMENT : Erection of dwellinghouse and change of use of existing shed to business use

LOCATION: Site Off Blainslie Road Near Craigsford Farm
Earlston
Scottish Borders
TD4 6DJ

TYPE : FUL Application

REASON FOR DELAY:

DRAWING NUMBERS:

Plan Ref	Plan Type	Plan Status
04/249	Location Plan	Approved
04/250A	Site Plan	Approved
04/248A	Elevations	Approved
04/195B	Floor Plans	Approved

NUMBER OF REPRESENTATIONS: 0

SUMMARY OF REPRESENTATIONS:

CONSULTATION RESPONSES:

Scottish Borders Council Consultees

Director of Technical Services (Roads): No details of the new access to the house have been provided, and no indication of what type of business is proposed for the shed. Both these points must be addressed to my satisfaction if I am going to support this application. I also need clarification that the business unit will access onto the minor road and that the existing access onto the A68 Trunk Road will be closed in the interests of road safety.

Other Consultees

Earlston Community Council: No objections.

Scottish Water: Awaiting response.

OTHER RESPONSES:

None.

PLANNING CONSIDERATIONS AND POLICIES:

DEVELOPMENT PLAN POLICIES:

Approved Structure Plan 2001-2011

POLICY E16 - Rural Economic Development

Business and industrial development will be encouraged which will support the rural economy provided it can be achieved in accordance with the Plan's other policies, particularly those on the environment. Particular encouragement will be given to proposals which:

- (i) provide employment in villages or the countryside,
- (ii) contribute to the wider rural economy,
- (iii) are part of farm diversification schemes,
- (iv) re-use vacant and derelict buildings.

Policy E13 also includes sites that fall within the Council's Area Regeneration priorities. Reference should also be made to Policy E19 and paragraph 7.3.

POLICY H6 - New Housing in the Countryside - Isolated Housing

Proposals for new housing in the countryside, outwith defined settlements¹ and unrelated to building groups, will only be supported where:

- (i) the house can be shown by the developer to be essential at that location for the needs of agriculture or other uses currently occupying or requiring an appropriate rural location, and
- (ii) the requirement for a house cannot be satisfied by Policy H5.

Ettrick and Lauderdale Local Plan 1995

Policies 8 and 84 apply which state:

Policy 8

Within the areas specified on the Proposals Map, there will be a presumption in favour of sensitively designed and well sited isolated housing in the countryside. Elsewhere, there will continue to be a presumption against single houses in the countryside which are not within or adjacent to existing building groups. Development will be permitted if an economic need can be clearly substantiated. Any development should meet the following criteria:

1. No adverse effect on the viability of a farming unit or conflict with the operations of a working farm;
2. Satisfactory access and other road requirements;
3. Satisfactory public or private water supply and drainage facilities;
4. No adverse effect on countryside amenity, landscape or nature conservation;
5. No adverse impact on ancient monuments, archaeological sites or on gardens or designed landscapes in the Inventory of Gardens and Designed Landscapes in Scotland;
6. Appropriate siting, design and materials in accordance with Policies 62 and 63;
7. The safeguarding of known mineral resources from sterilisation unless this is acceptable following an assessment of the environmental implications.

Policy 84

The Regional Council will ensure that all development in the countryside, including major developments such as overhead power lines, industrial buildings and tourism related projects, will meet the following criteria:

1. No adverse effect on countryside amenity, landscape or nature conservation;
2. No adverse impact on ancient monuments, archaeological sites or on gardens or designed landscapes in the Inventory of Gardens and Designed Landscapes in Scotland;

3. Appropriate site services and access available;
4. Any new building must be of sympathetic design and materials;
5. Any new building must be well sited in terms of location and landscape setting.
6. The safeguarding of known mineral resources from sterilisation unless this is acceptable following an assessment of the environmental implications.

N.B. The particular case of development by telecommunications operators is subject to Policy 104A

OTHER PLANNING CONSIDERATIONS:

New Housing in the Borders Countryside Policy and Guidance Note 1993 as Amended April 2000 and August 2004.

Executive Committee report of 5 October 2004 entitled Waverley railway project developer contributions.

Recommendation by - Stuart Herkes (Planning Officer) on 20th December 2004

REASON FOR DECISION :

The Council has accepted proposals for dwellinghouses associated with businesses which do not necessarily require to be located within a rural location. In light of the above, it is considered that the approval of this application would be consistent with recent decisions of the Council in respect of similar proposals. It is therefore considered that this application can be supported subject to a Section 75 legal agreement to ensure that no further dwellinghouses are built on the adjoining land within the applicant's ownership and to ensure that the house and business unit cannot be sold separately. Suitably worded conditions should also be attached to the consent requiring that the businesses are in operation prior to, or in tandem with, the occupation of the dwellinghouse and ensuring that the dwellinghouse is occupied by a person employed in the business.

Recommendation: Approved - conditions & Legal Agreement

- 1 The colour of the render to be agreed by the Planning Authority before the development is commenced.
Reason: To safeguard the visual amenity of the area.
- 2 The details of all boundary walls and/or fences to be submitted to and approved by the Planning Authority before the development is commenced.
Reason: To safeguard the visual amenity of the area.
- 3 The occupation of the dwellinghouse hereby approved shall be limited to a person solely or mainly employed in the operation of the adjoining land and building as a Horse Breeder, Potato Merchant, Horse Feed Merchant or Farrier or other business approved by the planning authority.
Reason: The erection of a dwellinghouse for normal residential occupation would be contrary to the Council's policy on housing in the countryside.
- 4 The buildings associated with the applicant's businesses to be in operation prior to, or in tandem with, the occupancy of the dwellinghouse.
Reason: To comply with the requirements of the Housing in the Countryside policy
- 5 A tree/shrub planting scheme to be submitted before the development commences for approval by the Planning Authority, the planting to be carried out concurrently with the development or during the next planting season thereto and to be maintained thereafter.
Reason: To maintain and enhance the visual amenities of the area.

“Photographs taken in connection with the determination of the application and any other associated documentation form part of the Report of Handling”.

SCOTTISH BORDERS COUNCIL

EILDON AREA COMMITTEE

20 DECEMBER 2004

APPLICATION FOR PLANNING PERMISSION

ITEM: REFERENCE NUMBER: 04/02011/FUL

OFFICER: Karen Hope
LOCAL MEMBER: Councillor Browne
PROPOSAL: Erection of dwellinghouse and change of use of existing shed to business use
SITE: Site off Blainslie Road near Craigsford Farm, Earlston
APPLICANT: Mr & Mrs Charlie Cockburn
AGENT: Andrew Davie Timber Frame Homes

SITE AND APPLICATION DESCRIPTION:

The site is situated between the A68 and the minor C76 road to Blainslie, to the south of Earlston. The site is an uncultivated field. There is a farm access from the Blainslie road. The field slopes down to the north to the A68 where there are existing buildings comprising of stables and a shed, with an access from the A68.

This is a full planning application for the erection of a dwellinghouse on a 0.2 hectare site within the 3.5 hectares owned by the applicant at Craigsford. The field access would be upgraded and a 60.0m long driveway would lead down to the dwellinghouse. This application also seeks consent to change the use of an existing shed to business use.

The proposed single storey dwellinghouse would provide accommodation for a kitchen, utility room (with WC and store), dining room, lounge, study, bathroom and three bedrooms (one with en-suite). The L-shaped dwellinghouse would have a dry dash external render finish and concrete roof tiles.

The applicants have submitted a statement in support of the application, which is copied in full with this report. In summary, the applicants currently reside in the centre of Earlston and acquired the land at Craigsford with a view to expanding their interest in horses by starting a breeding programme with brood mares. Mr Cockburn has established his own business as a self-employed Potato Merchant, Horse Feed Merchant and Farrier. While he is still resident in the centre of Earlston, it is difficult to expand the business at Craigsford and there are problems of lack of supervision and security. It is also considered unsuitable to deal with customers from a small office in his house separated from his business premises. It is also difficult to provide a service for customers outside normal business hours because his store is some distance from his house. Having a house beside his business would rectify these problems.

Furthermore, the agricultural building, which was granted planning permission in May 2002, would be used for the storage of potato sacks, fruit baskets and shoeing equipment presently stored in rented premises in St. Boswells. In addition, the building would accommodate the horse feed business and the expansion of the farriers business. Mr Cockburn owns a broad mare for breeding purposes and a foal. At present, the only facility for shoeing horses is at the applicants garage at his home. It would be of benefit to have customers bring their horses to an equipped base, and to be on hand to respond in urgent cases.

PLANNING HISTORY:

Mr and Mrs Cockburn applied for outline planning permission for the erection of a house on this site in September 1997. They advised that they own and manage the stable block on the land and breed and rear horses; the house was required for security reasons as a constant presence was required on site. The application was refused in November 1997 as the proposal was contrary to Policy 8 of the Ettrick and Lauderdale Local Plan in that the site is outwith any recognised building group and the need for the house was not adequately substantiated. The proposed access was considered to have substandard visibility on a section of road subject to undulations.

A further application was refused for the erection of a dwellinghouse and agricultural building on the same site in August 2001. It was considered that, despite the diversification of the applicant's business, the level of commercial activity at the site did not justify a different recommendation to that reached in 1997.

Planning consent was granted in May 2002 for the erection of an agricultural shed to be located to the south of an existing stable block.

A further application for the erection of a dwellinghouse on the same site was refused in October 2002.

DEVELOPMENT PLAN POLICIES:

Approved Structure Plan 2001-2011

POLICY E16 - Rural Economic Development

Business and industrial development will be encouraged which will support the rural economy provided it can be achieved in accordance with the Plan's other policies, particularly those on the environment. Particular encouragement will be given to proposals which:

- (i) provide employment in villages or the countryside,
- (ii) contribute to the wider rural economy,
- (iii) are part of farm diversification schemes,
- (iv) re-use vacant and derelict buildings.

Policy E13 also includes sites that fall within the Council's Area Regeneration priorities. Reference should also be made to Policy E19 and paragraph 7.3.

POLICY H6 - New Housing in the Countryside - Isolated Housing

Proposals for new housing in the countryside, outwith defined settlements¹ and unrelated to building groups, will only be supported where:

- (i) the house can be shown by the developer to be essential at that location for the needs of agriculture or other uses currently occupying or requiring an appropriate rural location, and
- (ii) the requirement for a house cannot be satisfied by Policy H5.

Ettrick and Lauderdale Local Plan 1995

Policies 8 and 84 apply which state:

Policy 8

Within the areas specified on the Proposals Map, there will be a presumption in favour of sensitively designed and well sited isolated housing in the countryside. Elsewhere, there will continue to be a presumption against single houses in the countryside which are not within or adjacent to existing building groups. Development will be permitted if an economic need can be clearly substantiated. Any development should meet the following criteria:

1. No adverse effect on the viability of a farming unit or conflict with the operations of a working farm;
2. Satisfactory access and other road requirements;
3. Satisfactory public or private water supply and drainage facilities;
4. No adverse effect on countryside amenity, landscape or nature conservation;
5. No adverse impact on ancient monuments, archaeological sites or on gardens or designed landscapes in the Inventory of Gardens and Designed Landscapes in Scotland;
6. Appropriate siting, design and materials in accordance with Policies 62 and 63;
7. The safeguarding of known mineral resources from sterilisation unless this is acceptable following an assessment of the environmental implications.

Policy 84

The Regional Council will ensure that all development in the countryside, including major developments such as overhead power lines, industrial buildings and tourism related projects, will meet the following criteria:

1. No adverse effect on countryside amenity, landscape or nature conservation;
2. No adverse impact on ancient monuments, archaeological sites or on gardens or designed landscapes in the Inventory of Gardens and Designed Landscapes in Scotland;
3. Appropriate site services and access available;
4. Any new building must be of sympathetic design and materials;
5. Any new building must be well sited in terms of location and landscape setting.
6. The safeguarding of known mineral resources from sterilisation unless this is acceptable following an assessment of the environmental implications.

N.B. The particular case of development by telecommunications operators is subject to Policy 104A

OTHER PLANNING CONSIDERATIONS:

New Housing in the Borders Countryside Policy and Guidance Note 1993 as Amended April 2000 and August 2004.

Executive Committee report of 5 October 2004 entitled Waverley railway project developer contributions.

CONSULTATION RESPONSES:

Scottish Borders Council Consultees

Director of Technical Services (Roads): No details of the new access to the house have been provided, and no indication of what type of business is proposed for the shed. Both these points must be addressed to my satisfaction if I am going to support this application. I also need clarification that the business unit will access onto the minor road and that the existing access onto the A68 Trunk Road will be closed in the interests of road safety.

Other Consultees

Earlston Community Council: No objections.

Scottish Water: Awaiting response.

OTHER RESPONSES:

None.

PLANNING ISSUES:

The main planning issue with this application is whether or not the proposal complies with the terms of the Council's policy on housing in the countryside in that a house is justified on the strength of the information provided.

ASSESSMENT OF APPLICATION:

The proposed site lies outwith the settlement boundary of Earlston, within an undeveloped field. This application must therefore be assessed against Policy H6 of the Structure Plan which states that in such circumstances new dwellinghouses will only be supported where the house can be shown to be essential at that location for the needs of agriculture and other uses currently occupying or requiring an appropriate rural location.

Policy 8 of the Ettrick and Lauderdale Local Plan states that there will be a presumption against single houses in such locations, except where a need can be clearly justified on economic grounds.

The proposed change of use of the existing shed to business use aspect of this application should be assessed against Policy E16 of the Structure Plan and Policy 84 of the Ettrick and Lauderdale Local Plan. It

is considered that the use of this site for the applicant's business purposes is acceptable and appropriate in planning terms.

The applicant previously applied for planning permission for a house on this site in 1997. At that time the applicant used the land and stable block to breed and rear horses and required the house for security reasons, as a constant presence was needed on the site. The applicant had three horses and the level of commercial activity was considered to be insufficient to justify the need for a house for convenience and security reasons. The application was refused.

The applicant later applied for planning permission in May 2001 for the erection of a dwellinghouse and agricultural building on the site. It was considered that, despite the diversification of the applicant's business since the previous application in 1997, the level of commercial activity undertaken on the site still did not justify a different recommendation to that reached in 1997. The application was refused as the application failed to comply with Policy H6 of the Structure Plan and Policy 8 of the Ettrick and Lauderdale Local Plan.

The applicant again applied for planning permission in August 2002 for the erection of a dwellinghouse. The applicant had purchased a broad mare for breeding purposes and confirmed that he shod approximately 20 horses per week from his garage at his home in Earlston. Despite this further diversification of his business, it was concluded that the level of commercial activity operated from the application site at that time was not sufficiently different to justify a different recommendation from that reached in 1997 and 2001. The application was subsequently refused.

The applicant's business as a potato merchant is currently based in St. Boswells where potato sacks are stored in a hauliers yard. Planning consent was granted in May 2002 for the erection of an agricultural shed to be located to the north east of the proposed site. The supporting statement submitted with this application indicates that the applicant intends to use this building for receiving deliveries and for loading for distribution. The building would also be used to accommodate the horse breed business and the expansion of the farriers business.

The applicants consider that they could operate their businesses more efficiently if they resided next to their shed and if their businesses were pulled together in one location. The current requirement to operate from a number of different locations causes particular problems and is very inefficient. They have been reluctant to relocate their stock to the shed thus far due to the lack of supervision.

The Council has recently indicated a more relaxed approach to supporting houses in the countryside associated with business ventures and this is reflected in the most recent review of the housing in the countryside policy. Applications have been approved for the change of use of land at Smiddy Hill, West Mains, Blyth Bridge (01/01789/FUL) to form a yard area and erect a dwellinghouse and general purpose building and for the erection of a dwellinghouse and workshop on land at 55 Holding, Foulden (03/02061/OUT). The Council has therefore accepted proposals for dwellinghouses associated with businesses which do not necessarily require to be located within a rural location.

In light of the above, it is considered that the approval of this application would be consistent with recent decisions of the Council in respect of similar proposals. It is therefore considered that this application can be supported subject to a Section 75 legal agreement to ensure that no further dwellinghouses are built on the adjoining land within the applicant's ownership and to ensure that the house and business unit cannot be sold separately. Suitably worded conditions should also be attached to the consent requiring that the businesses are in operation prior to, or in tandem with, the occupation of the dwellinghouse and ensuring that the dwellinghouse is occupied by a person employed in the business.

The Housing in the Countryside Policy and Guidance Note states that it should be possible to ensure that any new building is sympathetic to, and compatible with, the traditional building form of the Region. The proposed dwellinghouse has a relatively low pitched roof with windows extending to the wall height. This is not consistent with older houses in the Borders. In a rural location such as this my Department would encourage the use of slate as a roof material. These design matters will be discussed with the applicant/agent and a verbal report will be made at Committee.

The issues raised by the Director of Technical Services (Roads), in relation to proposed new access and the existing access onto the A68, also remain to be clarified with the applicant/agent and will also be reported verbally at Committee.

This application falls within an area subject to the Council's policy seeking developer contributions towards the funding of the Waverley project. Any decision to approve would therefore require to be subject to the conclusion of a Section 75 or alternative agreement securing the appropriate developer contribution.

RECOMMENDATION BY HEAD OF DEVELOPMENT CONTROL:

I recommend that this application is approved subject to the following conditions and subject to a Section 75 or alternative agreement securing the appropriate level of developer contribution towards the Waverley railway project:

1. The colour of the render to be agreed by the Planning Authority before the development is commenced.
Reason: To safeguard the visual amenity of the area.
2. The details of all boundary walls and/or fences to be submitted to and approved by the Planning Authority before the development is commenced.
Reason: To safeguard the visual amenity of the area.
3. The occupation of the dwellinghouse hereby approved shall be limited to a person solely or mainly employed in the operation of the adjoining land and building as a Horse Breeder, Potato Merchant, Horse Feed Merchant or Farrier or other business approved by the planning authority.
Reason: The erection of a dwellinghouse for normal residential occupation would be contrary to the Council's policy on housing in the countryside.
4. The buildings associated with the applicant's businesses to be in operation prior to, or in tandem with, the occupancy of the dwellinghouse.
Reason: To comply with the requirements of the Housing in the Countryside policy
5. A tree/shrub planting scheme to be submitted before the development commences for approval by the Planning Authority, the planting to be carried out concurrently with the development or during the next planting season thereto and to be maintained thereafter.
Reason: To maintain and enhance the visual amenities of the area.

Original copy of report signed by
BRIAN FRATER (Head of Development Control)

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008

Application for Planning Permission

Reference : 04/02011/FUL

To : Mr And Mrs Charlie Cockburn per Andrew Davie Timber Frame Homes Eastfield
Business Park Newark Road South Glenrothes KY7 4NS

With reference to your application validated on 14th October 2004 for planning permission under the Town and Country Planning (Scotland) Act 1997 for the following development :-

Proposal : Erection of dwellinghouse and change of use of existing shed to business use

at : Site Off Blainslie Road Near Craigsford Farm Earlston Scottish Borders TD4 6DJ

The Scottish Borders Council hereby **grant planning permission** in accordance with the approved plan(s) and the particulars given in the application and in accordance with Section 58 of the Town and Country Planning (Scotland) Act 1997.

subject to the conditions on the attached schedule imposed by the Council for the reasons stated

Dated 13th August 2010
Planning and Economic Development
Council Headquarters
Newtown St Boswells
MELROSE
TD6 0SA

Signed



.....
Head of Planning & Building Standards

APPLICATION REFERENCE : 04/02011/FUL

Schedule of Plans and Drawings Approved:

Plan Ref	Plan Type	Plan Status
04/249	Location Plan	Approved
04/250A	Site Plan	Approved
04/248A	Elevations	Approved
04/195B	Floor Plans	Approved

REASON FOR DECISION

The Council has accepted proposals for dwellinghouses associated with businesses which do not necessarily require to be located within a rural location. In light of the above, it is considered that the approval of this application would be consistent with recent decisions of the Council in respect of similar proposals. It is therefore considered that this application can be supported subject to a Section 75 legal agreement to ensure that no further dwellinghouses are built on the adjoining land within the applicant's ownership and to ensure that the house and business unit cannot be sold separately. Suitably worded conditions should also be attached to the consent requiring that the businesses are in operation prior to, or in tandem with, the occupation of the dwellinghouse and ensuring that the dwellinghouse is occupied by a person employed in the business.

SCHEDULE OF CONDITIONS

- 1 The colour of the render to be agreed by the Planning Authority before the development is commenced.
Reason: To safeguard the visual amenity of the area.
- 2 The details of all boundary walls and/or fences to be submitted to and approved by the Planning Authority before the development is commenced.
Reason: To safeguard the visual amenity of the area.
- 3 The occupation of the dwellinghouse hereby approved shall be limited to a person solely or mainly employed in the operation of the adjoining land and building as a Horse Breeder, Potato Merchant, Horse Feed Merchant or Farrier or other business approved by the planning authority.
Reason: The erection of a dwellinghouse for normal residential occupation would be contrary to the Council's policy on housing in the countryside.
- 4 The buildings associated with the applicant's businesses to be in operation prior to, or in tandem with, the occupancy of the dwellinghouse.
Reason: To comply with the requirements of the Housing in the Countryside policy
- 5 A tree/shrub planting scheme to be submitted before the development commences for approval by the Planning Authority, the planting to be carried out concurrently with the development or during the next planting season thereto and to be maintained thereafter.
Reason: To maintain and enhance the visual amenities of the area.

- 6 The roofing material to be natural slate
Reason: To safeguard the visual amenity of the area.
- 7 The access road to be formed to the satisfaction of the Planning Authority prior to the occupation of the house.
Reason: In the interests of road safety.

FOR THE INFORMATION OF THE APPLICANT

N.B: This permission does not include any consent, approval or licence necessary for the proposed development under the building regulations or any other statutory enactment and the development should not be commenced until all consents are obtained.

Notice of Initiation of Development

Section 27 of the Town and Country Planning (Scotland) Act (as amended) requires that any person who has been granted planning permission (including planning permission in principle) and intends to start development must, once they have decided the date they will start work on the development, inform the planning authority of that date as soon as is practicable. A form is enclosed with this decision notice for this purpose.

Notice of Completion of Development

Section 27B requires that any person who completes a development for which planning permission (including planning permission in principle) has been given must, as soon as practicable after doing so, give notice of completion to the planning authority.

When planning permission is granted for phased development then under section 27B(2) the permission is to be granted subject to a condition that as soon as practicable after each phase, other than the last, is completed, the person carrying out the development is to give notice of that completion to the planning authority.

In advance of carrying out any works it is recommended that you contact Utility Bodies whose equipment or apparatus may be affected by any works you undertake. Contacts include:

Transco, Susiephone Department, 95 Kilbirnie Street, Glasgow, G5 8JD
Scottish Power, Riccarton Mains Road, Currie, Edinburgh, EH14 5AA
Scottish Water, Developer Services, 419 Balmore Road, Possilpark, Glasgow G22 6NU
British Telecom, National Notice Handling Centre, PP404B Telecom House, Trinity Street, Stoke on Trent, ST1 5ND
Scottish Borders Council, Street Lighting Section, Council HQ, Newtown St Boswells, Melrose, TD6 0SA
Cable & Wireless, 1 Dove Wynd, Strathclyde Business Park, Bellshill, ML4 3AL
BP Chemicals Ltd, PO Box 21, Bo'ness Road, Grangemouth, FK2 9XH
THUS, Susiephone Department, 4th Floor, 75 Waterloo Street, Glasgow, G2 7BD
Susiephone System – 0800 800 333

If you are in a Coal Authority Area (Carlops or Newcastleton), please contact the Coal Authority at the following address: The Coal Authority 200 Lichfield Lane, Berry Hill, Mansfield, Nottinghamshire NG18 4RG.

If the applicant is aggrieved by the decision of the Planning Authority to refuse planning permission for or approval required by a condition in respect of the proposed development, or to grant permission or

approval subject to conditions, the applicant may appeal to the Scottish Ministers under Section 47 of the Town and Country Planning (Scotland) Act 1997 within three months from the date of this notice. The notice of the appeal should be addressed to The Directorate for Planning and Environmental Appeals, 4 The Courtyard, Callendar Business Park, Falkirk FK1 1XR. A copy of the notice of the appeal must, at the same time, be sent to the Legal Services Section, Scottish Borders Council, Council Headquarters, Newtown St. Boswells, Melrose TD6 0SA.

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 5 of the Town and Country Planning (Scotland) Act 1997.

List of Policies

Local Review Reference: 16/00011/RFEF

Planning Application Reference: 16/00041/FUL

Development Proposal: Removal of condition no 3 of planning permission 04/02011/FUL pertaining to occupancy of dwellinghouse

Location: Craigie Knowe, Blainslie Road, Earlston

Applicant: Eileen Cockburn

SESPlan Strategic Development Plan 2013:

None applicable

Adopted Local Development Plan 2016

Policy HD2: Housing in the Countryside

The Council wishes to promote appropriate rural housing development:

- a) in village locations in preference to the open countryside where permission will only be granted in special circumstances on appropriate sites,
- b) associated with existing building groups where this does not adversely affect their character or that of the surrounding area, and
- c) in dispersed communities in the Southern Borders housing market area.

These general principles in addition to the requirement for suitable roads access will be the starting point for the consideration of applications for housing in the countryside, which will be supplemented by Supplementary Planning Guidance / Supplementary Guidance on New Housing in the Borders Countryside and on Placemaking and Design.

(A) Building Groups

Housing of up to a total of 2 additional dwellings or a 30% increase of the building group, whichever is the greater, associated with existing building groups may be approved provided that:

- a) the Council is satisfied that the site is well related to an existing group of at least three houses or building(s) currently in residential use or capable of conversion to residential use. Where conversion is required to establish a cohesive group of at least three houses, no additional housing will be approved until such conversion has been implemented,
- b) the cumulative impact of new development on the character of the building group, and on the landscape and amenity of the surrounding area will be taken into account when determining new applications. Additional development within a building group will be refused if, in conjunction with other developments in the area, it will cause unacceptable adverse impacts,
- c) any consents for new build granted under this part of this policy should not exceed two housing dwellings or a 30% increase in addition to the group during the Plan period. No further development above this threshold will be permitted.

In addition, where a proposal for new development is to be supported, the proposal should be appropriate in scale, siting, design, access, and materials, and should be sympathetic to the character of the group.

The calculations on building group size are based on the existing number of housing units within the group as at the start of the Local Development Plan period. This will include those units under construction or nearing completion at that point.

(B) Dispersed Buildings Groups

In the Southern Housing Market area there are few building groups comprising 3 houses or more, and a more dispersed pattern is the norm. In this area a lower threshold may be appropriate, particularly where this would result in tangible community, economic or environmental benefits. In these cases the existence of a sense of place will be the primary consideration.

Housing of up to 2 additional dwellings associated with dispersed building groups that meet the above criteria may be approved provided that:

- a) the Council is satisfied that the site lies within a recognised dispersed community in the Southern Borders housing market area,
- b) any consents for new build granted under this part of this policy should not exceed two housing dwellings in addition to the group during the Plan period. No further development above this threshold will be permitted,
- c) the design of housing will be subject to the same considerations as other types of housing in the countryside proposals.

(C) Conversions of Buildings to a House

Development that is a change of use of a building to a house may be acceptable provided that:

- a) the Council is satisfied that the building has architectural or historic merit, is capable of conversion and is physically suited for residential use,
- b) the building stands substantially intact (normally at least to wallhead height) and the existing structure requires no significant demolition. A structural survey will be required where in the opinion of the Council it appears that the building may not be capable of conversion, and
- c) the conversion and any proposed extension or alteration is in keeping with the scale and architectural character of the existing building.

(D) Restoration of Houses

The restoration of a house may also be acceptable provided that the walls of the former residential property stand substantially intact (normally at least to wallhead height). In addition:

- a) the siting and design reflects and respects the historical building pattern and the character of the landscape setting,
- b) any proposed extension or alteration should be in keeping with the scale, form and architectural character of the existing or original building, and
- c) significant alterations to the original character will only be considered where it can be demonstrated that these provide environmental benefits such as a positive contribution to the landscape and/or a more sustainable and energy efficient design.

(E) Replacement Dwellings

The proposed replacement of an existing house may be acceptable provided that:

- a) the siting and design of the new building reflects and respects the historical building pattern and the character of the landscape setting,
- b) the proposal is in keeping with the existing/original building in terms of its scales, extent, form and architectural character,

c) significant alterations to the original character of the house will only be considered where it can be demonstrated that these provide environmental benefits such as a positive contribution to the landscape and /or a more sustainable and energy efficient design.

(F) Economic Requirement

Housing with a location essential for business needs may be acceptable if the Council is satisfied that:

- a) the housing development is a direct operational requirement of an agricultural, horticultural, forestry or other enterprise which is itself appropriate to the countryside, and it is for a worker predominantly employed in the enterprise and the presence of that worker on-site is essential to the efficient operation of the enterprise. Such development could include businesses that would cause disturbance or loss of amenity if located within an existing settlement, or
- b) it is for use of a person last employed in an agricultural, horticultural, forestry or other enterprise which is itself appropriate to the countryside, and also employed on the unit that is the subject of the application, and the development will release another house for continued use by an agricultural, horticultural, forestry or other enterprise which is itself appropriate to the countryside, and
- c) the housing development would help support a business that results in a clear social or environmental benefit to the area, including the retention or provision of employment or the provision of affordable or local needs housing, and
- d) no appropriate site exists within a building group, and
- e) there is no suitable existing house or other building capable of conversion for the required residential use.

In ALL instances in considering proposals relative to each of the policy sections above, there shall be compliance with the Council's Supplementary Planning Guidance where it meets the terms of this policy and development must not negatively impact on landscape and existing communities. The cumulative effect of applications under this policy will be taken into account when determining impact.

Policy HD3 – Protection of Residential Amenity

Development that is judged to have an adverse impact on the amenity of existing or proposed residential areas will not be permitted. To protect the amenity and character of these areas, any developments will be assessed against:

- a) the principle of the development, including where relevant, any open space that would be lost; and
- b) the details of the development itself particularly in terms of:
 - (i) the scale, form and type of development in terms of its fit within a residential area,
 - (ii) the impact of the proposed development on the existing and surrounding properties particularly in terms of overlooking, loss of privacy and sunlighting provisions. These considerations apply especially in relation to garden ground or 'backland' development,
 - (iii) the generation of traffic or noise,
 - (iv) the level of visual impact.

Policy PMD2: Quality Standards

All new development will be expected to be of high quality in accordance with sustainability principles, designed to fit with Scottish Borders townscapes and to integrate with its landscape surroundings. The standards which will apply to all development are that:

Sustainability

- a) In terms of layout, orientation, construction and energy supply, the developer has demonstrated that appropriate measures have been taken to maximise the efficient use of energy and resources, including the use of renewable energy and resources such as District Heating Schemes and the incorporation of sustainable construction techniques in accordance with supplementary planning guidance. Planning applications must demonstrate that the current carbon dioxide emissions reduction target has been met, with at least half of this target met through the use of low or zero carbon technology,
- b) it provides digital connectivity and associated infrastructure,
- c) it provides for Sustainable Urban Drainage Systems in the context of overall provision of Green Infrastructure where appropriate and their after-care and maintenance,
- d) it encourages minimal water usage for new developments,
- e) it provides for appropriate internal and external provision for waste storage and presentation with, in all instances, separate provision for waste and recycling and, depending on the location, separate provision for composting facilities,
- f) it incorporates appropriate hard and soft landscape works, including structural or screen planting where necessary, to help integration with its surroundings and the wider environment and to meet open space requirements. In some cases agreements will be required to ensure that landscape works are undertaken at an early stage of development and that appropriate arrangements are put in place for long term landscape/open space maintenance,
- g) it considers, where appropriate, the long term adaptability of buildings and spaces.

Placemaking & Design

- h) It creates developments with a sense of place, based on a clear understanding of the context, designed in sympathy with Scottish Borders architectural styles; this need not exclude appropriate contemporary and/or innovative design,
- i) it is of a scale, massing, height and density appropriate to its surroundings and, where an extension or alteration, appropriate to the existing building,
- j) it is finished externally in materials, the colours and textures of which complement the highest quality of architecture in the locality and, where an extension or alteration, the existing building,
- k) it is compatible with, and respects the character of the surrounding area, neighbouring uses, and neighbouring built form,
- l) it can be satisfactorily accommodated within the site,
- m) it provides appropriate boundary treatments to ensure attractive edges to the development that will help integration with its surroundings,
- n) it incorporates, where appropriate, adequate safety and security measures, in accordance with current guidance on 'designing out crime'.

Accessibility

- o) Street layouts must be designed to properly connect and integrate with existing street patterns and be able to be easily extended in the future where appropriate in order to minimise the need for turning heads and isolated footpaths,
- p) it incorporates, where required, access for those with mobility difficulties,
- q) it ensures there is no adverse impact on road safety, including but not limited to the site access,
- r) it provides for linkages with adjoining built up areas including public transport connections and provision for buses, and new paths and cycleways, linking where possible to the existing path network; Travel Plans will be encouraged to support more sustainable travel patterns,

s) it incorporates adequate access and turning space for vehicles including those used for waste collection purposes.

Greenspace, Open Space & Biodiversity

t) It provides meaningful open space that wherever possible, links to existing open spaces and that is in accordance with current Council standards pending preparation of an up-to-date open space strategy and local standards. In some cases a developer contribution to wider neighbourhood or settlement provision may be appropriate, supported by appropriate arrangements for maintenance,

u) it retains physical or natural features or habitats which are important to the amenity or biodiversity of the area or makes provision for adequate mitigation or replacements.

Developers are required to provide design and access statements, design briefs and landscape plans as appropriate.

Other Material Considerations

SBC Supplementary Planning Guidance on New Housing in the Borders Countryside 2008

Scottish Planning Policy

Circular 4/1998 – The Use of Conditions in Planning Permissions

Circular 3/2012 – Planning Obligations and Good Neighbour Agreements

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NOTICE OF REVIEW

UNDER SECTION 43A(8) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED) IN RESPECT OF DECISIONS ON LOCAL DEVELOPMENTS

THE TOWN AND COUNTRY PLANNING (SCHEMES OF DELEGATION AND LOCAL REVIEW PROCEDURE) (SCOTLAND) REGULATIONS 2008

THE TOWN AND COUNTRY PLANNING (APPEALS) (SCOTLAND) REGULATIONS 2008

IMPORTANT: Failure to supply all the relevant information could invalidate your notice of review.

Use **BLOCK CAPITALS** if completing in manuscript

Applicant(s)

Name KAYLEIGH MCFADZEAN

Address 5, KITTLECAIRY VIEW

Postcode EH45 9LZ

Contact Telephone 1

Contact Telephone 2

Fax No

E-mail*

Agent (if any)

Name

Address

Postcode

Contact Telephone 1

Contact Telephone 2

Fax No

E-mail*

Mark this box to confirm all contact should be through this representative:

* Do you agree to correspondence regarding your review being sent by e-mail? Yes No

Planning authority SCOTTISH BORDERS COUNCIL

Planning authority's application reference number 15/01498/FUL

Site address BLOCK 2 UNIT 6 CHERRY COURT, CAVALRY PARK, PEEBLES

Description of proposed development CHANGE OF USE FROM CLASS 4 (OFFICE) TO CLASS 2 (BEAUTY SALON)

Date of application ~~16.05.2016~~ 16.05.2016 Date of decision (if any)

Note. This notice must be served on the planning authority within three months of the date of the decision notice or from the date of expiry of the period allowed for determining the application.

Nature of application

- 1. Application for planning permission (including householder application)
- 2. Application for planning permission in principle
- 3. Further application (including development that has not yet commenced and where a time limit has been imposed; renewal of planning permission; and/or modification, variation or removal of a planning condition)
- 4. Application for approval of matters specified in conditions

Reasons for seeking review

- 1. Refusal of application by appointed officer
- 2. Failure by appointed officer to determine the application within the period allowed for determination of the application
- 3. Conditions imposed on consent by appointed officer

Review procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may tick more than one box if you wish the review to be conducted by a combination of procedures.

- 1. Further written submissions
- 2. One or more hearing sessions
- 3. Site inspection
- 4. Assessment of review documents only, with no further procedure

If you have marked box 1 or 2, please explain here which of the matters (as set out in your statement below) you believe ought to be subject of that procedure, and why you consider further submissions or a hearing are necessary:

I CAN GATHER WRITTEN SUBMISSIONS FROM A LARGE NUMBER OF BUSINESSES AND INDIVIDUALS THAT ARE SITUATED IN AND AROUND CAVALRY PARK WHO WILL EXPRESS THEIR SUPPORT.
Site inspection

In the event that the Local Review Body decides to inspect the review site, in your opinion:

- | | Yes | No |
|--|-------------------------------------|--------------------------|
| 1. Can the site be viewed entirely from public land? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 2. Is it possible for the site to be accessed safely, and without barriers to entry? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

If there are reasons why you think the Local Review Body would be unable to undertake an unaccompanied site inspection, please explain here:

Statement

You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. Note: you may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

If the Local Review Body issues a notice requesting further information from any other person or body, you will have a period of 14 days in which to comment on any additional matter which has been raised by that person or body.

State here the reasons for your notice of review and all matters you wish to raise. If necessary, this can be continued or provided in full in a separate document. You may also submit additional documentation with this form.

PLEASE REFER TO 'APPEAL STATEMENT' ATTACHED

Have you raised any matters which were not before the appointed officer at the time the determination on your application was made?

Yes

No

If yes, you should explain in the box below, why you are raising new material, why it was not raised with the appointed officer before your application was determined and why you consider it should now be considered in your review.

List of documents and evidence

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review.

KVA

- ROADS PLANNING REPLY
- OFFICER'S REPORT
- REFUSAL
- COVER LETTER
- STATEMENT OF APPEAL

Note. The planning authority will make a copy of the notice of review, the review documents and any notice of the procedure of the review available for inspection at an office of the planning authority until such time as the review is determined. It may also be available on the planning authority website.

Checklist

Please mark the appropriate boxes to confirm you have provided all supporting documents and evidence relevant to your review:

- Full completion of all parts of this form
- Statement of your reasons for requiring a review
- All documents, materials and evidence which you intend to rely on (e.g. plans and drawings or other documents) which are now the subject of this review.

Note. Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice from that earlier consent.

Declaration

I the applicant/~~agent~~ [delete as appropriate] hereby serve notice on the planning authority to review the application as set out on this form and in the supporting documents.

Signed [REDACTED] Date 16.05.2016

The Completed form should be returned to the Head of Corporate Administration, Scottish Borders Council, Council Headquarters, Newtown St. Boswells TD6 0SA.

Dear Mr Herkes,

I write in reply to your refusal of planning application 15/01498/FUL

You state that as Cavalry Park is regarded as a strategic site in the Local Plan and Structure Plan and therefore is protected, to ensure only classes 4, 5 & 6 are permissible, as defined in Policy ED1.

I feel I have to point out that businesses within the park include:-

- Oral Design Dental surgery
- Chiropractors
- Children's Nursery
- Female Gym
- Male gym
- NHS Dental Surgery
- Internet & Public retail shoe shop
- Music School
- Accountants Office
- Lawyers Office
- Photography Studio

All of the above have public support making Cavalry Park the hive of activity it is now. You may therefore understand my disappointed and dismay with your refusal.

For many years units at Cavalry Park were vacant, as no manufacturing businesses were tempted to set up. However, since the small business units were built and class 1&2 small businesses started to trade, the park has thrived on the diversity of companies therein. Which I believe contributes to the commercial and economic community.

I would also like to point out that we are the only salon at this side of town, this has proved to be a valuable and much needed service to the community and has attracted a lot of public support.

It is worth highlighting that our business provides services to the community at Cavalry Park which is also complimentary to other businesses. Any increase in volume of traffic within the park would be limited as a consequence of my proposal.

Continued

Before taking on the unit at cavalry park, I investigated the possibility of suitable premises in and around the High Street but was unable to find anything.

The problems I encountered were;

- suitability of premises
- lack of easy access
- parking
- congestion

The above are major issues in and around the High Street of Peebles, there would have been (and to my mind still are) huge difficulties for the elderly, disabled and in particular the wheelchair bound.

There are no permanent changes in our unit. All of the concerns with a High Street location would be eliminated since we are fully compliant with all health and safety issues and with easy access for the elderly and disabled having more than ample level site parking available on the doorstep.

I look forward to hearing from you.

Yours sincerely

Kayleigh mcfadzean



STATEMENT OF APPEAL

Planning Ref: 15/01498/FUL

Change of Use from Class 4 (Office) to Class 2 (Beauty
Therapy Salon)
6 Cherry Court, Cavalry Park, Peebles, EH45 9BU
May 2016

Kayleigh McFadzean
Peebles Beauty Salon

CONTENTS

1. Introduction.....	2
2. Background.....	3
3. Reason for Refusal.....	5
4. Grounds of Appeal.....	7
5. Conclusion.....	13

1. INTRODUCTION

1.1 This statement of appeal has been written and prepared by Kayleigh McFadzean, who seeks a change of use from Class 4 to Class 2 for her beauty therapy salon.

1.2 The beauty therapy salon is currently operating from the site, and has been doing so since 11th March 2013.

1.3 The initial planning application was lodged on 10th December 2015.

1.4 Scottish Borders Council's Planning Department refused the change of use application on 16th February 2016. We therefore now seek to appeal this decision via the Council's Local Review Body.

1.5 The following appeal statement includes background information for myself, the applicant, will provide detail on the unit's change of use, and will note strong grounds for appeal.

2. BACKGROUND

2.1 I, Kayleigh McFadzean, currently own and manage Peebles Beauty Salon from my unit at 6 Cherry Court, Cavalry Park, Peebles.

2.2 I was born in Nottingham, England in 1989. I moved to Broughton, Scotland in 2000, and have been a resident of Peebles since 2011. Myself and my husband, who is a retained Firefighter in Peebles, recently welcomed our son into the world, on 16th December 2015. We plan to reside in Peebles for the foreseeable future, wishing to raise our family here.

2.3 I set up Peebles Beauty Salon in March 2011. I did an Events Degree at Edinburgh Napier University, specialising in Human Resource Management. During my time on this course, I noticed a gap in the market for a beauty salon on the South side of Peebles. Using my business knowledge from my course, I created Peebles Beauty Salon.

2.4 Over the past three years, the business has thrived, and has grown significantly. Our client database currently has excess of 800 clients. I currently employ four members of staff, and also work there myself. If business continues to flourish, there is the potential to employ a further two members of staff.

2.5 I am thrilled to have been a part of Cavalry Business Park, which is a charming and flourishing business community, and sincerely hope to remain part of this Business Park. I believe the diversification of businesses within Cavalry Park are its bloodline, and its reason for vitality.

2.6 There are numerous businesses that are beyond Class 4-6 within Cavalry Park:

- Oral Design Dental Surgery (Class 2)
- NHS Dental Surgery (Class 2)
- Public Shoe Shop (Class 1)
- Chiropractor (Class 2)
- Carpet Showroom (Class 1)
- Children's Nursery (Class 10)
- Fitness Studio (Class 11)
- Accountants/ Lawyers Offices (Class 2)

- 2.7 The proposed change of use has not been applied for sooner as I was unaware of this requirement. I was not advised of this when taking on the property, and had not considered it due to the diverse business types that were already located within Cavalry Park.
- 2.8 No changes made to the building internally are permanent, and changes made are minimal. The building is compliant with health and safety regulations.
- 2.9 The beauty therapy salon creates a number of benefits to the Peebles area, which include:
- Employment of 5 staff members, with the potential to employ a further two members of staff, therefore enhancing the local economic climate.
 - Employment of further staff members through sub-contracting of complimentary therapies.
 - Our clients include individuals from all over the Scottish Borders and Edinburgh. These clients will contribute to the local economy, as they will often use restaurants, cafes and shops etc whilst visiting Peebles.
 - The location of our beauty therapy salon eases and reduces the harmful environmental effects of driving. Many clients who would have to drive to an alternative premises situated in or around the high street are able to access our salon on foot.

3. REASON FOR REFUSAL

3.1 The recommendation for refusal was on the basis of:

The proposed change of use of the premises to Beauty Therapy Salon would be contrary to Adopted Local Plan Policy ED1 in that it is not a Class 4, Class 5 or Class 6 use, and the site (Cavalry Park) is safeguarded for employment uses in the Adopted Local Plan, having more particularly been identified as a Strategic Employment Site; a designation which requires that all other uses be resisted. Further, the Beauty Therapy Salon would not constitute a complementary commercial activity or enhance the quality of the business park as an employment location, and as such does not comply with the Policy ED1 of the emerging Local Development Plan.

3.2 Within the officers report, there were no objections from the Roads Planning Section or the Environmental Health Section. There were also no comments made from the Community Council.

3.3 The following extracts taken from the Officer's Report are considered important to highlight towards the refusal decision are:

3.31 No Class 2 approval is in place within this development and this operation should not be permitted.

3.32 We do not consider it appropriate for this operation to be on employment land when it seems more appropriate to be within the town centre where class 1 & 2 uses, involving visits by the general public, are more desirable.

3.33 Within the emerging Local Development Plan, Cavalry Park is to be identified as a Strategic High Amenity Site, and as such, according to emerging Local Development Plan Policy ED1, will be for predominantly Class 4 use. It is acknowledged that other complementary commercial activity may be acceptable, if it enhances the quality of the business park as an employment location.

3.34 Class 2 uses are usually more appropriately accommodated in town centres, in areas outwith Prime Retail Frontages, where the surrounding

infrastructure is more conducive to the accommodation of visiting members of the public; and Class 2 uses can themselves contribute to the diversity and vitality of town centres as attractive shopping and service areas.

3.35 *It is acknowledged that the Local Review Body (LRB) has recently taken a different view with respect to the requirements of emerging policy ED1 within its consideration of the appeal relating to Planning Application 15/00275/FUL.*

3.36 *This is a group of buildings that have been set aside from the start, to accommodate the core employment uses that Cavalry Park is intended for.*

4. GROUNDS OF APPEAL

The main reasons for the application refusal were noted in Section 3 of this document. My responses to the reasons for refusal, alongside further information regarding the business and supporting the appeal, have led to the following Ground Of Appeal (GOA):

4.1 GOA 1:

Referring to Section 3.31 of this document, within the officer's report it was stated that ***"No Class 2 approval is in place within this development and this operation should not be permitted."*** The Local Review Body recently overturned the refusal of Planning Application 15/00275/FUL and their appeal case was accepted to allow a part change of use from Class 4 Office to a Class 2 Dental Surgery. This application was also contrary to Adopted Local Plan Policy ED1 . The application was eventually approved on the basis that *'the dental surgery was reasonably characterised as a complimentary commercial activity'; that it was 'currently operating with a range of businesses, some in classes uses outwith the specified classes'; and that 'there is an oversupply of Class 4 land within the Scottish Borders and the Peebles Area.'* These considerations are relevant to this proposal also. It is conceivable that the Beauty Salon is complimentary to many businesses within Cavalry Park. Many of our clients are recommended to other businesses within the park, specifically the chiropractors and the chiropodist. We have many clients who use our services after visiting the fitness studio. A large number of our clients are employees within the business park, who would agree that the services we provide improve their working life within the Cavalry Park. There is no other Beauty Salon operating within Cavalry Park, so the business is adding to the diversity of the site, making it more attractive to other potential businesses. There are a number of businesses within Cavalry Park that fall beyond Class 4-6 uses. These, in my opinion, add to its vitality and sustainability. This wide variety of businesses includes:

- Oral Design Dental Surgery
- Scotlight Electricians
- James Inglis Shoe Store
- Scotsdale Finance
- Nomad Beat Music School
- Lemon Digital Design
- Braidwood Graham Accountants
- Borders Chiropractor
- Black Circle Tyre Store
- Rugby Store
- NHS Dental Surgery

- Mackieson & Sons Painters
- Rogersons Shoe Warehouse
- Omni Fitness Gym
- The Health Rooms Fitness and Wellbeing Studio
- Peebles Carpet Showroom
- DcR Computer Maintenance
- Gold Star Taxi's
- The Sew Shed

The Planning Department consented an office development to allow Class 2 uses within it at Cavalry Park (10/01098/FUL). Another example of a change of use application being approved, in a similar case to my own, is that of case 06/01787/FUL which consented an office being changed into a Chiropractor. I believe that this flexibility and assortment of businesses that contributes to the increasing success of Cavalry Park.

There is also an oversupply of Employment Land within the Peebles area. According to the Scottish Borders Council Employment Land Audit (2015), there has been no employment land take up during the last few years. This suggests to me that although supply is high, demand is low.

4.2 GOA 2:

Referring to Section 3.32 of this document, it was shown that the Officers Report quoted: ***'We do not consider it appropriate for this operation to be on employment land when it seems more appropriate to be within the town centre where class 1 & 2 uses, involving visits by the general public, are more desirable.'*** As stated within GOA 1, there is an oversupply of employment land within the area. There are various office spaces within Cavalry Park, and currently within Cherry Court, that are vacant. Furthermore, the statement suggests that the general public are more likely to visit businesses situated within the town centre. The majority of the salon's client base visit us on the basis that we are not situated within the town centre. Parking is much easier and more available for clients, than in the town centre. It is within walking distance for many residents who are situated on the South side of Tweed Bridge, therefore making it much more accessible to clients who cannot drive and live within walking distance of Cavalry Park. We are particularly accessible to people who live in, and people who visit the new housing development. We feel that we pose as an attractive selling point to potential home-owners within the area as they will have a beauty salon on their door step. We have disabled access, which in many premises within the town centre is not possible. Our client base also advantages other businesses within the park, as we bring a large footfall of people into the Park who use other businesses as a result of visiting us.

4.3 GOA 3:

Considering Section 3.33 of this document, within the Officers Report it was stated: ***'Within the emerging Local Development Plan, Cavalry Park is to be identified as a Strategic High Amenity Site, and as such, according to emerging Local Development Plan Policy ED1, will be for predominantly Class 4 use. It is acknowledged that other complementary commercial activity may be acceptable, if it enhances the quality of the business park as an employment location.'***

I have already touched on the number of businesses that are operating outwith Class 4 use. I feel that I should stress that the salon does enhance the quality of the business park as an employment location. Many employees from various businesses within the park visit the salon, particularly in their lunch hours. This provides them with an easily accessible service which can not only uplift their mood and therefore improve their workplace morale and productivity, but also can improve their home life as they do not have to take time out after work to obtain such services. We have great support from all of our clients based withing Cavalry Park, and from other business owners. Our services compliment many other businesses within the park- we often work alongside the gym, chiropractor, dental surgery and chiropodist to provide the best and most fulfilling service to our clients. We also uitlise services within the park for salon purposes, including electricity and gas services, and accountants, further adding to the economy of the park.

4.4 GOA 4:

Referring back to Section 3.34 of this document, the Officers Report noted that: ***'Class 2 uses are usually more appropriately accommodated in town centres, in areas outwith Prime Retail Frontages, where the surrounding infrastructure is more conducive to the accommodation of visiting members of the public; and Class 2 uses can themselves contribute to the diversity and vitality of town centres as attractive shopping and service areas.'***

Firstly, I would like to point out that there are various other Class 2 business operating within Cavalry Park. Secondly, I think it is important to consider that the beauty salon is contributing much more in its current location than it could if it was situated within the town centre. I would disagree that my business could add to the diversity of businesses within Peebles Town Centre. There are already the following beauty salons situated within this area:

- Xanadu Beauty Clinic
- The Retreat
- At First Sight Beauty Salon
- Clare Gilmore Beauty Salon

- The Loft Beauty Salon
- Liz Howieson Beauty Salon
- Gina Enickle Beauty Salon

For a relatively small distance, which spans not even one mile, there are seven beauty salons operating. Another beauty salon operating within this area would not improve the diversity of the town centre. In fact, I think it could have a detrimental effect, as it could be using a premises which would be better suited for a more diverse and potentially beneficial business.

4.5 GOA 5:

Referring to Section 3.35 of this document, the Officers report highlighted:

'It is acknowledged that the Local Review Body (LRB) has recently taken a different view with respect to the requirements of emerging policy ED1 within its consideration of the appeal relating to Planning Application 15/00275/FUL.'

As previously mentioned, this refers to the accepted application of Oral Design Dental Surgery, which also operates within Cherry Court, Cavalry Park. As with the Dental Surgery, we will not be limiting the availability of employment land within Cavalry Park, or within the general area.

4.6 GOA 6:

I will now refer back to Section 3.36 of this document. A quote from the Officers Statement claims:

'This is a group of buildings that have been set aside from the start, to accommodate the core employment uses that Cavalry Park is intended for.'

I feel that this statement is outdated. Cavalry Park was established in 2002, with Cherry Court being opened in 2009. Since then, a number of additional buildings have been built within Cavalry Park, including the recently finished Copperbeech Court, which is also for Class 4 use only. I am of the opinion that there is surplus space within Cavalry Park for offices, with many units currently sitting empty. I am employing four members of staff plus myself, which surely can be seen as a positive, and as an employment use.

4.7 Further Arguments:

- Peebles Beauty Salon was a big investment for myself. I spent a large amount of money when I first set the salon up, using all local services to help me do

so. It would be a huge loss financially for me if I was unable to continue working from there. I would be unable to fund a new kit-out if I had to move premises, and therefore would most likely be forced to cease trading.

- I employ four members of staff, and also work there myself. I also give work experience to college students. If I had to leave my premises, it would likely result in the loss of employment for my staff members. I feel that the salon provides a high and satisfactory level of employment for the size of premises. Many other units housing office-based businesses within the site have less employees. I also have potential to employ a further two members of staff if my business continues to flourish.
- Our location means there is less congestion in the town centre than if we were to be located there. Peebles Town Centre is already an extremely busy location. Parking is limited, and more traffic would have to cross over Tweed Bridge from the other side of town to access services there.
- We have many clients who use our salon because of the fantastic location, accessibility and disabled access. Many premises available within the town centre are not situated on the ground floor, and therefore those who have difficulty walking, or who are wheelchair bound, would not be able to access.
- Cavalry Park enjoys generous parking provisions, and the salon clients do not impact the parking facilities or access to the surrounding sites in any way.
- We are the only Beauty Salon that operates within its location. We believe we offer a very important service particularly to clients who live in addresses such as Kittlegairy, Whitehaugh, Kingsmeadows, Forest View, Cademuir Drive, The Meadows, Victoria Park Drive and many more.

5. CONCLUSION

I believe that the current site represents a sound and acceptable location for my Beauty Therapy Salon. It compliments and enhances neighbouring businesses, adds value to the local economy, boosts local spending, creates employment opportunities and learning facilities, decreases congestion within the town centre, provides a valuable service to the local community and helps to improve the wellbeing of employees within Cavalry Park. As a result of this, it will encourage and upkeep the diversity and vitality of the business park as a whole. In my opinion, in compliance with Planning Policy ED1, allowing the change of use for my beauty therapy salon will not have a negative impact on the economy or on the town centre, and will not take up existing vacant units or employment opportunities. In my opinion, it is quite the contrary. The beauty salon being located within Cherry Court has a positive effect on the economy, on the business park as a whole, and provides employment opportunities. I feel that relocating to the town centre would not only be unachievable, but would also be of no benefit to the diversity and vitality of the town centre.

Considering all points of argument, including the 'Ground of Appeal', I respectfully request that this appeal be allowed.

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Application for Planning Permission

Reference: 15/01498/FUL

To: Ms K McFadzean per M S Sim 3 Castlecraig Gardens Blyth Bridge West Linton Scottish Borders EH46 7DH

With reference to your application validated on **10th December 2015** for planning permission under the Town and Country Planning (Scotland) Act 1997 for the following development :-

Proposal: Change of use from Class 4 (Office) to Class 2 (Beauty Therapy Salon)

At: Block 2 Unit 6 Cherry Court Cavalry Park Peebles Scottish Borders EH45 9BU

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

**Dated 16th February 2016
Regulatory Services
Council Headquarters
Newtown St Boswells
MELROSE
TD6 0SA**

Signed



.....
Chief Planning Officer

APPLICATION REFERENCE: 15/01498/FUL

Schedule of Plans and Drawings Refused:

Plan Ref	Plan Type	Plan Status
	Location Plan	Refused

REASON FOR REFUSAL

The proposed change of use of the premises to Beauty Therapy Salon would be contrary to Adopted Local Plan Policy ED1 in that it is not a Class 4, Class 5 or Class 6 use, and the site (Cavalry Park) is safeguarded for employment uses in the Adopted Local Plan, having more particularly been identified as a Strategic Employment Site; a designation which requires that all other uses be resisted. Further, the Beauty Therapy Salon would not constitute a complementary commercial activity or enhance the quality of the business park as an employment location, and as such does not comply with the Policy ED1 of the emerging Local Development Plan.

FOR THE INFORMATION OF THE APPLICANT

If the applicant is aggrieved by the decision of the Planning Authority to refuse planning permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under Section 43A of the Town and Country Planning (Scotland) Act 1997 within three months from the date of this notice. The notice of review should be addressed to Corporate Administration, Council Headquarters, Newtown St Boswells, Melrose TD6 0SA.

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 5 of the Town and Country Planning (Scotland) Act 1997.

SCOTTISH BORDERS COUNCIL

**APPLICATION TO BE DETERMINED UNDER POWERS DELEGATED TO
CHIEF PLANNING OFFICER**

PART III REPORT (INCORPORATING REPORT OF HANDLING)

REF : 15/01498/FUL

APPLICANT : Ms K McFadzean

AGENT : M S Sim

DEVELOPMENT : Change of use from Class 4 (Office) to Class 2 (Beauty Therapy Salon)

LOCATION: Block 2 Unit 6 Cherry Court
Cavalry Park
Peebles
Scottish Borders
EH45 9BU

TYPE : FUL Application

REASON FOR DELAY:

DRAWING NUMBERS:

Plan Ref	Plan Type	Plan Status
	Location Plan	Refused

NUMBER OF REPRESENTATIONS: 0
SUMMARY OF REPRESENTATIONS:

No representations.

Roads Planning Section: No objections to this proposal.

Environmental Health Section: No comments.

Economic Development Section: Cavalry Park is regarded as a strategic site in the Local Plan and Structure Plan and therefore is protected, to ensure only classes 4, 5 & 6 are permissible, as defined in Policy ED1. We have checked the original application for this development under PA 08/01574/FUL and it was approved, on 21 Nov 08, as Class 4 & 6 only. Therefore no Class 2 approval is in place within this development and this operation should not be permitted. We do not consider it appropriate for this operation to be on employment land when it seems more appropriate to be within the town centre where class 1 & 2 uses, involving visits by the general public, are more desirable. We do not support this application.

Community Council: has been consulted but has not responded to the public consultation.

PLANNING CONSIDERATIONS AND POLICIES:

Adopted Scottish Borders Local Plan Policy ED1 - Protection of Employment Land
Adopted Scottish Borders Local Plan Policy G1 - Quality Standards For New Development
Adopted Scottish Borders Local Plan Policy H2 - Protection of Residential Amenity
Adopted Scottish Borders Local Plan Policy H3 - Land Use Allocations
Adopted Scottish Borders Local Plan Policy Inf4 - Parking Provisions and Standards

Recommendation by - Stuart Herkes (Planning Officer) on 12th February 2016

PROPOSED DEVELOPMENT

This application proposes a part change of use of an existing office premises to accommodate a beauty therapy salon within a business unit at Cherry Court, Cavalry Park. The unit in question (No 6) is located on the end of a row of three similar units on the north side of a courtyard shared by a total of 11 units. The beauty therapy salon is currently operating from the site.

These units were consented by Planning Consent 08/01574/FUL. The latter was issued subject to conditions, including a requirement that these units, including the site, be restricted to a use within Class 4 of the Schedule of the Town and Country Planning (Use Classes) (Scotland) Order 1997 or to any other purpose in Class 6 (limited to no more than 235 square metres) of the Schedule to The Town and Country Planning (Use Classes) (Scotland) Order 1997. This is for the purpose of ensuring that the uses of the units remain compatible within the site.

The Applicant advises on the application form that there has historically been no interest in the units from Class 4, 5 or 6 businesses; that the beauty therapy contributes to a vibrant business park and economy at Cavalry Park and within Peebles; and that it encountered difficulty locating appropriate premises within the vicinity of Peebles town centre due to the costs involved in converting an existing premises.

PLANNING POLICY

A beauty therapy salon is a Class 2 use and is therefore contrary to the requirement of the aforementioned planning condition. Beyond this, neither prevailing nor emerging planning policy affords any grounds to be supportive of a Class 2 use in these circumstances.

Within the statutory development plan, Cavalry Park is identified as a strategic employment site and is therefore subject to the strict requirement that sites so identified, should only be used for Classes 4, 5 and 6 uses, while all other uses should be refused.

The position within the emerging Local Development Plan is less explicit in its statement of a similar requirement, but does not afford any reasonable provision to be supportive of the accommodation of a Class 2 use. Within the emerging Local Development Plan, Cavalry Park is to be identified as a Strategic High Amenity site, and as such, according to emerging Local Development Plan Policy ED1, will be for predominantly Class 4 use. It is acknowledged that other complementary commercial activity may be acceptable, if it enhances the quality of the business park as an employment location. However, the examples given of potentially acceptable commercial activities are all Class 4 uses.

In line with Economic Development's consultation response, it is considered that Class 2 uses are generally not complementary to Class 4 uses. Class 2 uses are usually more appropriately accommodated in town centres, in areas out with Prime Retail Frontages, where the surrounding infrastructure is more conducive to the accommodation of visiting members of the public; and Class 2 uses can themselves contribute to the diversity and vitality of town centres as attractive shopping and service areas. A town centre appears to be the more natural location and context for a beauty therapy salon rather than operation from a peripherally located business park.

Taking account of the planning policy context constituted by both the statutory development plan and the emerging local development plan, it is not considered that there are any grounds to support the principle of a Class 2 use being accommodated at the site. However, with respect to the planning officer's interpretation of emerging planning policy, it is acknowledged that the Local Review Body (LRB) has recently taken a different view with respect to the requirements of emerging Policy ED1 within its consideration of the appeal relating to Planning Application 15/00275/FUL.

In particular, the LRB considered that the emerging policy's recognition of the potential for "other complementary commercial activity" to enhance "the quality of the business park as an employment location" was less restrictive than the requirements of Policy ED1 of the statutory development plan. In the aforementioned appeal case, the LRB was ultimately minded to consider that a proposed part-change of use of a Class 4 premises to accommodate a Class 2 use was appropriately characterised as a complementary commercial activity which would enhance the quality of the business park as an employment location.

The wider context of the LRB's consideration in this matter is considered below, but with respect to this particular point a distinction needs to be made between the current proposal and that which was the subject of the appeal. Critically the proposed change of use to Class 2 allowed at appeal is accommodated within a premises that remains in part (and predominantly) within Class 4 use, and in operational terms is well-related to that Class 4 use. It is therefore more reasonably characterised as a complementary use given that it directly supports a Class 4 operation within the premises in which it is accommodated. This is not the case with the current proposal which would result in the total loss of a business premises that is in Class 4 use.

Accordingly, the extent to which the proposed beauty therapy salon is reasonably characterised as "complementary" to the wider business park's operation as an employment location is more questionable when it directly reduces the number of Class 4 units which emerging Policy ED1 is concerned should predominate at Cavalry Park.

Ultimately it is the prerogative of the Applicant to test through the appeal system whether or not the LRB would be concerned to recognise their proposal as a "complementary use" within the business park at Cavalry Park in similar terms to the decision taken at appeal with respect to Planning Application 15/00275/FUL. However, it is not considered that such a view is reasonably extended to the assessment of the current proposal from the specific assessment the LRB undertook in the case of the appeal.

In summary, and unless there were reasons to support the proposal as the subject of an exceptional approval, it is not considered that the proposal complies, or accords, with either the statutory or emerging development plan.

MATERIAL CONSIDERATIONS

As noted in the previous section, a part-change of use to a Class 2 use - specifically the operation of a dental surgery in association with a pre-existing dental laboratory - has recently been approved at appeal by the Local Review Body with respect to a unit fronting the south of the same forecourt at Cherry Court (Unit 3).

The use of the property concerned in that case had been regulated in exactly the same way as the current unit, with a restriction on operations therein being restricted to Class 4 and Class 6 uses. The Planning Application (15/00275/FUL) was refused under delegated powers and specifically on the basis that: "the proposed change of use of part of the premises to dental surgery suite would be contrary to Adopted Local Plan Policy ED1 in that it is not a Class 4, Class 5 or Class 6 use, and the site (Cavalry Park) is safeguarded for employment uses in the Adopted Local Plan, having more particularly been identified as a Strategic Employment Site; a designation which requires that all other uses be resisted".

At appeal however, the Local Review Body overturned this decision on the basis of its determination that material considerations outweighed the non-compliance of the proposal with the Development Plan. Beyond the specific proposal being only a part-change of use of the premises of an established business (which would remain predominantly in Class 4 use) and beyond the LRB's view that the dental surgery was reasonably characterised as a "complementary commercial activity", the LRB also took account of other considerations.

First of all, it noted that Cavalry Park was currently operating with a range of businesses, some in classes uses outwith the specified classes, which were flourishing and adding to the vibrancy of the business park.

Secondly, it recognised a significant oversupply of Class 4 land within the Scottish Borders and the Peebles area and that there had been a low take-up of such land in recent years.

On this basis, the LRB was satisfied that the proposed dental surgery would not prejudice the availability of employment land at Cavalry Park, or within the area more generally.

These considerations are potentially relevant to the assessment of the current proposal. It is at least conceivable that the current proposal might contribute to the strength-in-diversity that the LRB highlighted at Cavalry Park, while the position with respect to Class 4 land within the Peebles area is unlikely to be significantly different to the position considered by the Planning Authority at the time of the appeal. Potentially then these are considerations that are liable to be equally applicable to the current determination. And it is reasonable to consider whether these concerns in isolation, or in culmination with other concerns, justify an exceptional approval.

Ultimately however, the LRB's consideration of the appeal relating to Planning Application 15/00275/FUL should not be taken out of context in that it relates to a particular view formed at a particular point in time, relative to a particular proposal. Given that this is a recent decision relating to very similar circumstances, it is reasonably considered here but it is not considered appropriate to assume or presuppose any fixed and blanket view or position on the part of the LRB, that should then be taken up by the Planning Authority with respect to the assessment of this, and all and every other future non-employment use proposal at Cavalry Park. In short, it is not considered that the wider context of the LRB's consideration in the case of Planning Application 15/00275/FUL constitutes any grounds to justify an exceptional approval contrary to Adopted Local Plan Policy ED1 or emerging Local Development Plan Policy ED1.

Ultimately there are differences between the current and appeal proposals. The current proposal does not benefit from any association with an established business that is already in Class 4 or Class 6 use, and - unlike the proposal that was the subject of Planning Application 15/00275/FUL - would result in a change of use of the entire unit. Unlike the appeal case, the proposal does not contribute positively to the maintenance of a Class 4 use or a Class 6 use within the existing business premises and would result in the loss of a unit in Class 4 use. It would therefore seem less reasonably and securely identified as a "complementary use".

The latter point is to some extent, capable of being mitigated by a condition requiring that the premises revert to Class 4/Class 6 use if, or when, the Applicant's business vacates the unit, but there are no considerations which suggests that the Applicant's circumstances or business should be viewed or treated exceptionally.

It is further acknowledged that Cavalry Park enjoys generous parking provision and that the proposed use would not be liable to have any unacceptable impacts upon parking and access at the site.

It is noted and known that there are other business operations both at Cherry Court, and within Cavalry Park more generally, that are either Class 2 uses or are not otherwise Class 4, 5 or 6 uses. Some of these uses are either consented or were accepted as permitted changes of use. Others have, however, been accommodated without planning approval. The latter are liable to enforcement action. With regard to those other uses that have previously secured planning consent on sites elsewhere within the business park, in some cases decision-making was informed by previous versions of the statutory development plan, and/or by the circumstances that prevailed within the specific cases concerned.

Ultimately, some diversification within the businesses accommodated is not considered to be unacceptable, provided that these uses are sympathetic to the amenity and environment of the business park and do not predominate. This diversification can contribute positively to the quality of business environment, with potential to make the business park a more attractive setting for new and expanding businesses. However, a balance is required. Cavalry Park's status as the Borders only Strategic High Amenity Site needs to be secured and protected in the long-term by ensuring that offices and light industrial units remain its predominant character. In this context, it is considered that the material considerations identified above are not sufficient (neither individually nor cumulatively) to outweigh the requirement that this application be determined in accordance with the plans and policies of the statutory development plan.

Further, it is considered material in this case that the planning conditions attached to the original approval, Planning Consent 08/01574/FUL, specifically require that these units be used for Class 4 or Class 6 uses only. This is a group of buildings that have been set aside from the start, to accommodate the core employment uses that Cavalry Park is intended for. There is no change in circumstances within the

prevailing planning policy context, or on site, that would require that any different view now be taken within the determination of the current application.

There are also opportunities for the accommodation of Class 2 uses elsewhere within Cavalry Park; which it is considered, further justifies the strict enforcement of the requirement that the units consented by Planning Consent 08/01574/FUL be reserved, as intended, for Class 4 use only. Four office units equally capable of Class 2 as Class 4 office use are located to the west of the site (10/01098/FUL).

Taking account of the above, it is not considered that the Applicant has demonstrated any requirement for the application to be made the subject of an exceptional approval.

OTHER CONCERNS

There are no Roads or Environmental Health concerns. Car parking provision at Cavalry Park is generous and appears appropriate to accommodate the vehicles of customers/clients arriving at the premises on an appointment basis.

CONCLUSION

It is not considered that there are any material considerations which individually, or collectively, outweigh the need to determine this application in strict accordance with the plans and policies of the Adopted Consolidated Local Plan or the emerging Local Development Plan. Accordingly, it is considered that the application should be refused.

REASON FOR DECISION :

The proposed change of use of the premises to Beauty Therapy Salon would be contrary to Adopted Local Plan Policy ED1 in that it is not a Class 4, Class 5 or Class 6 use, and the site (Cavalry Park) is safeguarded for employment uses in the Adopted Local Plan, having more particularly been identified as a Strategic Employment Site; a designation which requires that all other uses be resisted. Further, the Beauty Therapy Salon would not constitute a complementary commercial activity or enhance the quality of the business park as an employment location, and as such does not comply with the Policy ED1 of the emerging Local Development Plan.

Recommendation: Refused

- 1 The proposed change of use of the premises to Beauty Therapy Salon would be contrary to Adopted Local Plan Policy ED1 in that it is not a Class 4, Class 5 or Class 6 use, and the site (Cavalry Park) is safeguarded for employment uses in the Adopted Local Plan, having more particularly been identified as a Strategic Employment Site; a designation which requires that all other uses be resisted. Further, the Beauty Therapy Salon would not constitute a complementary commercial activity or enhance the quality of the business park as an employment location, and as such does not comply with the Policy ED1 of the emerging Local Development Plan.

“Photographs taken in connection with the determination of the application and any other associated documentation form part of the Report of Handling”.

REGULATORY SERVICES



**To: Development Management Service
FAO Stuart Herkes**

Date: 13 Jan 2016

**From: Roads Planning Service
Contact: Paul Grigor**

Ext: 6663

Ref: 15/01498/FUL

**Subject: Change of use from Class 4 (Office) to Class 2 (Beauty
Therapy Salon)
Block 2, Unit 6, Cherry Court, Cavalry Park, Peebles**

I have no objections to this proposal.

AJS



TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED)

For Office Use Only:

Application Number: 15/01498/FUL

10 DEC 2015 SH

Date Registered:

PLANNING APPLICATION

To: _____
 Ack: _____
 File: _____
 Comment/Corr: _____
 Ref No: _____

1. Name and Address of applicant	Name and Address of Agent
Ms K. McFADZEAN 5, KITTLEGARY VIEW PEEBLES Post Code EH45 9LZ	M. S. SIM 3, CASTLECRAIG GARDENS BLYTH BRIDGE Post Code EH46 7DH
Tel. No. _____	Tel. No. _____
E-mail address _____	E-mail _____

2. Full Postal Address of Application Site (edged in red on the site plan)

6, CHERRY COURT, CAVALRY PARK, PEEBLES.

Is this address a flat?
 Yes No

3. Brief Description of Proposed Development

CHANGE OF USE FROM CLASS 4 TO CLASS 2
 (BEAUTY THERAPY SALON).

4. Type of Application (tick one box only)

- (a) Full application for new building works and/or a change of use and/or engineering works
- (b) Full application for a change of use not involving any building works
- (c) Planning permission in Principle
- (d) Approval of matters specified in conditions (pursuant to a Planning Permission in Principle)
- (e) Application for removal or variation of a condition on a planning permission previously granted (Please indicate reference number of previous application)
- (f) Application for renewal of a limited period permission (Please indicate reference number of previous application)
- (g) Application for renewal of an unimplemented permission (You need only answer Questions 17 and 18) (Please indicate reference number of previous application)

5. Applications for Matters Specified in Conditions (if you ticked (d) in Q.4, please complete)

(a) State the reference number and date of the planning permission in principle

(b) State which of the conditions are submitted for approval as part of this application:

All Conditions (please tick) or Condition Numbers

6. Pre-Application Discussion and Consultation

(a) Has assistance or prior advice been sought from Scottish Borders Council about this application?

Yes No

If yes, please complete the following information about the advice you were given:

Officer Name: Date:

Council Reference:

(b) Has Pre-Application Consultation taken place (for MAJOR developments: See Notes for Guidance)?

Yes No

If Yes, a Pre-application Consultation Report should accompany this application

7. Site Area

8. State whether applicant owns or controls any adjoining land (edged in blue on submitted plans)

..... *N/A* hectares

Yes No

9. Existing/Proposed Uses

Please indicate all existing and proposed uses that are the subject of this application:

Existing	Proposed
CLASS 4.	CLASS 2.

10. Commerce and Business

(A) Floorpace

Please indicate the total amount of floor space (in square metres) to which this application relates:

Existing -	Proposed -
AS EXISTING	

(B) Employment

Please indicate the number of staff employed on the proposed site:

Existing -	Proposed -
5	5

(C) Traffic Flow

What is the anticipated traffic to be the site during a normal working day? (No. of vehicles moving in and out of the site) (Include all vehicles, except those used by individual employees, driving to work)

Existing -	Proposed -
AS EXISTING.	

(D) Industrial Processes

In the case of industrial development, please give a description of the processes to be carried on and of the end products, as well as the type of machinery to be installed.

/

(E) Storage of Hazardous Substances

Will the proposal involve the use or storage of any materials of a type and quantity defined as hazardous substances? If YES, please state materials and quantities below:

/

17. Declaration

I hereby apply for planning permission and declare that, to the best of my knowledge, the information contained in this application and on the submitted plans is correct.

I attach FOUR copies of the application forms and enclose the application fee of £401.00, together with:

- Four sets of the necessary plans and drawings
- In the case of MAJOR developments, a Pre-Application Consultation Report
- A Design and Access Statement or Design Statement, where the application site is situated within a conservation area, historic garden or designed landscape, a National Scenic Area, the site of a scheduled monument or the curtilage of an A Listed Building (see Notes for Guidance for further information)

Signed [redacted] on behalf of MS. K. MCFADDEAN Date 9.12.2015

18. Please complete Certificate A and Certificate B (please tick ONE box in each)

CERTIFICATE A under Section 35 of the Town and Country Planning (Scotland) Act 1997, as amended

I certify that:

- At the beginning of a period of 21 days ending with the date of this application, nobody other than the applicant was the owner¹ of all of the land to which the application relates
- OR
- The applicant has given the required notice to everyone who, at the beginning of the period of 21 days ending with the date of the accompanying application, was the owner¹ of any part of the land to which the application relates, as listed below:

Owner's Name	Address at which notice was served	Date on which notice was served
ANDY & MOIRA PEARSON	PREMIER SIPS 40 ROWAN COURT, PEEDLES EH15 9BU	9/12/2015

Signed [redacted] on behalf of Ms. K. MCFADDEAN Date 9/12/2015

CERTIFICATE B under Section 35 of the Town and Country Planning (Scotland) Act 1997, as amended

I certify that:

- At the beginning of a period of 21 days ending with the date of this planning application, none of the land to which the application relates is, or is part of, an agricultural holding;
- OR
- The applicant has given the required notice to every person other than the applicant who, at the beginning of 21 days ending with the date of the application, was a tenant of an agricultural holding on all or part of the land to which the application relates, as follows:

Tenant's Name	Address at which notice was served	Date on which notice was served

Signed [redacted] on behalf of MS. K. MCFADDEAN Date 9/12/2015

¹An owner includes anyone with a lease on the land that has at least seven years left to run

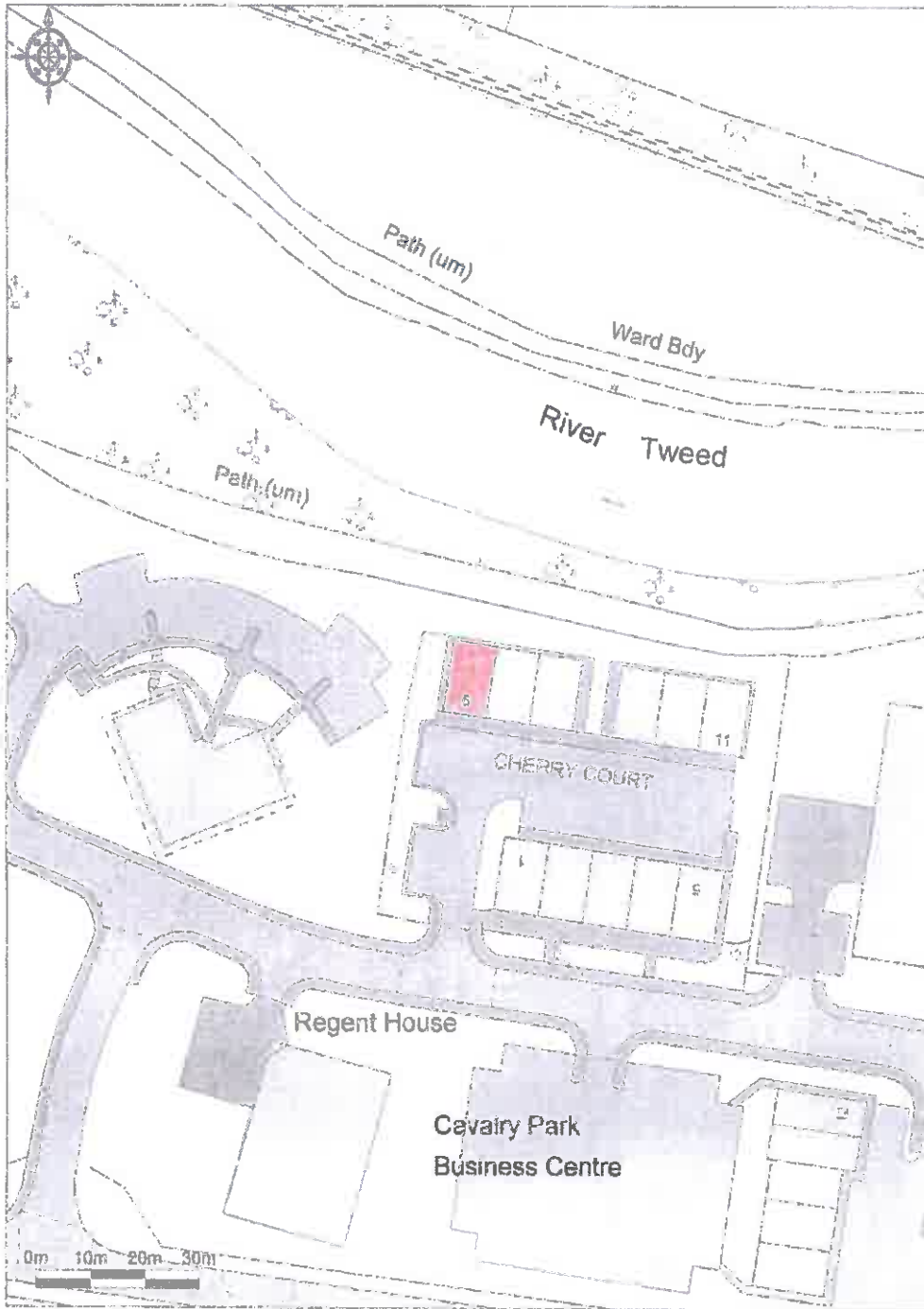
15/01498/FUL

Scottish Borders Council
Town And Country
Planning (Scotland) Act
1997

REFUSED

subject to the
requirements of the
associated Decision
Notice

6, CHERRY COURT, CASTLEY PARK, PEBSDALE
LOCATION PLAN. SCALE 1:1250.



Promap

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Town and Country Planning (Scotland) Act 1997

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ALL RIGHTS RESERVED. LICENCE NUMBER 100042662
M.S.SIM, ARCHITECTURAL CONSULTANTS.

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

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

Application for Planning Permission

Reference : 08/01574/FUL

**To : Pearson Donaldson Properties Ltd per Domus Limited 24 Winton Terrace Edinburgh
EH10 7AP**

With reference to your application validated on **22nd September 2008** for planning permission under the Town and Country Planning (Scotland) Act 1997 for the following development :-

Proposal : Erection of 3 No office units with associated parking and landscaping

at : Land East Of EBSEurope Ltd Cavalry Park Peebles Scottish Borders

the Scottish Borders Council hereby **grant planning permission** in accordance with the approved plan(s) and the particulars given in the application and in accordance with Section 58 of the Town and Country Planning (Scotland) Act 1997 **subject to the following condition:-**

that the development to which this permission relates must be begun within five years from the date of this consent.

and **subject to the conditions on the attached schedule** imposed by the Council for the reasons stated.

**Dated 21st November 2008
Planning and Economic Development
Council Headquarters
Newtown St Boswells
MELROSE
TD6 0SA**

Signed

 
.....
Planning & Building Standards

Application reference : 08/01574/FUL

SCHEDULE OF CONDITIONS

- 1 Notwithstanding the description of the materials in the application, no development shall be commenced until precise details of the materials to be used in the construction of the external walls and roofs of the buildings have been submitted to and approved in writing by the Local Planning Authority, and thereafter no development shall take place except in strict accordance with those details.
Reason: The materials require further consideration to ensure a satisfactory form of development, which contributes appropriately to its setting.
- 2 Before any part of the development hereby permitted is commenced detailed drawings showing which trees are to be retained on the site shall be submitted to, and be approved in writing by the Local Planning Authority, and none of the trees so shown shall be felled, thinned, lopped, topped, lifted or disturbed without the prior written consent of the Local Planning Authority.
Reason: To enable the proper effective assimilation of the development into its wider surroundings, and to ensure that those existing tree(s) representing an important visual feature are retained and maintained.
- 3 Before any part of the permitted development is commenced, the trees to be retained on the site and those adjacent to the northern boundary of the site shall be protected by a chestnut paling fence at a location to be agreed by the Local Planning Authority and the fencing shall be removed only when the development has been completed.
During the period of construction of the development:
(a) No excavations, site works, trenches or channels shall be cut, or pipes or services laid in such a way as to cause damage or injury to the trees by interference with their root structure;
(b) No fires shall be lit within the spread of the branches of the trees;
(c) No materials or equipment shall be stored within the spread of the branches of the trees;
(d) Any accidental damage to the trees shall be cleared back to undamaged wood and be treated with a preservative if appropriate;
(e) Ground levels within the spread of the branches of the trees shall not be raised or lowered in relation to the existing ground level, or trenches excavated except in accordance with details shown on the approved plans.
Reason: In the interests of preserving the health and vitality of existing trees on the development site, the loss of which would have an adverse effect on the visual amenity of the area.
- 4 No development shall take place except in strict accordance with a scheme of soft landscaping works, which shall first have been submitted to and approved in writing by the Local Planning Authority, and shall include:
I. indication of existing trees, shrubs and hedges to be removed, those to be retained and, in the case of damage, proposals for their restoration
II. location of new trees, shrubs, hedges and grassed areas

- III. schedule of plants to comprise species, plant sizes and proposed numbers/density
 - IV. programme for completion and subsequent maintenance.
 - V. Reason: To enable the proper form and layout of the development and the effective assimilation of the development into its wider surroundings.
- 5 All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner, and shall be maintained thereafter and replaced as may be necessary for a period of two years from the date of completion of the planting, seeding or turfing.
Reason: To ensure that the proposed landscaping is carried out as approved.
- 6 The premises shall be restricted to a use within Class 4 of the Schedule of the Town and Country Planning (Use Classes) (Scotland) Order 1997 or to any other purpose in Class 6 (limited to no more than 235 square metres) of the Schedule to The Town and Country Planning (Use Classes) (Scotland) Order 1997.
Reason: To ensure that the use remains compatible within the site.
- 7 The existing bullnose kerbing at the end of the existing bellmouth must be replaced with 150mm x 125mm square channel kerbing to the specification of the Local Planning Authority before the offices become operational.
Reason: In the interests of road safety.
- 8 The position of 'Office 2' to be agreed on site with the Local Planning Authority before any works commence on site.
Reason: To safeguard the existing trees adjacent to the northern boundary of the site.

FOR THE INFORMATION OF THE APPLICANT

It should be noted that:

It is possible that archaeological artefacts will be encountered when works are undertaken on site. Any such evidence found on the site should be brought to the attention of Scottish Borders Council for consideration.

Measures should be taken to prevent the flow of water onto the public road.

All work within the public road boundary must be completed by a contractor on Scottish Borders Council's approved list (attached) after obtaining the appropriate road opening permit (form attached).

N.B: This permission does not include any consent, approval or licence necessary for the proposed development under the building regulations or any other statutory enactment and the development should not be commenced until all consents are obtained.

In advance of carrying out any works it is recommended that you contact Utility Bodies whose equipment or apparatus may be affected by any works you undertake. Contacts include:

Transco, Susiephone Department, 95 Kilbirnie Street, Glasgow, G5 8JD
Scottish Power, Riccarton Mains Road, Currie, Edinburgh, EH14 5AA
Scottish Water, Developer Services, 419 Balmore Road, Possilpark, Glasgow G22 6NU

British Telecom, National Notice Handling Centre, PP404B Telecom House, Trinity Street, Stoke on Trent, ST1 5ND

Scottish Borders Council, Street Lighting Section, Council HQ, Newtown St Boswells, Melrose, TD6 0SA

Cable & Wireless, 1 Dove Wynd, Strathclyde Business Park, Bellshill, ML4 3AL

BP Chemicals Ltd, PO Box 21, Bo'ness Road, Grangemouth, FK2 9XH

THUS, Susiephone Department, 4th Floor, 75 Waterloo Street, Glasgow, G2 7BD

Susiephone System – **0800 800 333**

If you are in a Coal Authority Area (Carlops or Newcastleton), please contact the Coal Authority at the following address:

The Coal Authority 200 Lichfield Lane, Berry Hill, Mansfield, Nottinghamshire. NG18 4RG

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

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008

Application for Planning Permission

Reference : 10/01098/FUL

**To : Pearson Donaldson Properties per Tweed Homes Rowan Court Cavalry Park Peebles
EH45 9BU**

With reference to your application validated on **4th August 2010** for planning permission under the Town and Country Planning (Scotland) Act 1997 for the following development :-

Proposal : Erection of 4 no office units

at : Site 5 Cavalry Park Kingsmeadows Road Peebles Scottish Borders

The Scottish Borders Council hereby **grant planning permission** in accordance with the approved plan(s) and the particulars given in the application and in accordance with Section 58 of the Town and Country Planning (Scotland) Act 1997.

subject to the conditions on the attached schedule imposed by the Council for the reasons stated

**Dated 1st October 2010
Planning and Economic Development
Council Headquarters
Newtown St Boswells
MELROSE
TD6 0SA**

Signed


.....
Head of Planning and Regulatory Services

APPLICATION REFERENCE : 10/01098/FUL

Schedule of Plans and Drawings Approved:

Plan Ref	Plan Type	Plan Status
8375-P01	Site Plan	Approved
8375-P04	Floor Plans	Approved
8375-P03	General	Approved
8375-P05	Elevations	Approved
8375-LOC	Location Plan	Approved
8375-P02	Site Plan	Approved

REASON FOR DECISION

Subject to compliance with the schedule of planning conditions, the proposed development will accord with Approved Scottish Borders Structure Plan Policies E13, I11 and N20, and Adopted Scottish Borders Local Plan Policies BE2, ED1,G1, G4, G7, Inf4 and NE4.

SCHEDULE OF CONDITIONS

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
Reason: To comply with Section 58 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.
- 2 The developer shall afford access at all reasonable times to any archaeological organisation acceptable to the Planning Authority, and shall allow them to observe work in progress and record items of interest and finds. Notification of the commencement date, information as to whom the Council's Archaeology Officer should contact on site and the name of the archaeological organisation retained by the developer shall be given in writing to the Planning Authority not less than 14 days before development commences.
Reason: To safeguard a site of archaeological interest.
- 3 Prior to the commencement of development, the following details shall be submitted for the written approval of the Planning Authority:
 - i. a landscape proposals drawing based on approved Drawing 8375-P01 but including details of the landscaping treatment of the eastern boundary;
 - ii. a programme for completion and subsequent maintenance of both existing and proposed plantings.
 Thereafter the landscaping works shall be undertaken, completed and maintained in accordance with the approved details. Any subsequent change or changes to the approved details shall first have been agreed in writing by the Planning Authority prior to the implementation of this change/these changes.
Reason: To enable the proper form and layout of the development and the effective assimilation of the development into its wider surroundings.
- 4 No trees or hedging within the site or on its boundary shall be felled, lopped, lifted or disturbed in any way without the prior consent of the Planning Authority. Unless otherwise agreed in writing by the Planning Authority, all trees and hedging within the site and on its boundary shall be protected during the course of construction work in accordance with a scheme of details that shall first have been submitted to, and approved in writing by, the Planning

Authority prior to the commencement of development. The approved protective measures shall be maintained throughout the period of development. Any subsequent change or changes to the approved details shall first have been agreed in writing by the Planning Authority prior to the implementation of this change/these changes.

Reason: To safeguard the visual amenities of the area because the existing trees and hedging make a valuable contribution to the visual amenity of the site.

- 5 All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner, and shall be maintained thereafter and replaced as may be necessary for a period of two years from the date of completion of the planting, seeding or turfing.
Reason: To ensure that the proposed landscaping is carried out as approved.
- 6 Prior to the occupation of the first building, the existing kerb at the end of the bellmouth shall have been replaced with a 10-inch bullnose kerb to delineate the end of the public road and the parking court shall have been completed with a bituminous type surface.
Reason: In the interests of road safety to ensure that appropriate parking provision is existing before the consented offices are occupied
- 7 The finished floor levels of the buildings hereby permitted shall be consistent with levels indicated on a scheme of details that shall first have been submitted to, and approved in writing by, the Planning Authority before the commencement of development. Such details shall include:
(i) the proposed finished floor levels of the consented buildings; and
(ii) a clearly identifiable datum point, or clearly identifiable datum points, located outwith the site and sufficient for the purpose of establishing the heights of the proposed finished floor levels relative to the level of the existing streetscape.
Reason: To ensure that the consented development does not have an adverse impact upon the amenity of neighbouring properties or a detrimental impact upon the appearance of the surrounding area as a consequence of the ground levels within the site being raised to an inappropriate height.
- 8 Prior to their installation/application, precise details of (i) the roofing material and (ii) the finish of the external walls of the office buildings hereby consented, shall first have been agreed in writing by the Planning Authority.
Reason: The finished appearance of the roofs and walls requires further consideration to ensure a satisfactory form of development, which contributes appropriately to its setting.
- 9 The use of the business premises hereby consented shall be limited to Use Classes 2 and 4 of the Town & Country Planning (Scotland) Use Classes Order 1997, as amended, and shall not be used for any other Use Class (including Use Classes 1 and 6) without the express written consent of the Planning Authority.
Reason: To ensure that the business use of the site is appropriate for this locality.

FOR THE INFORMATION OF THE APPLICANT

It should be noted that:

Works within the public road must be undertaken by a Council approved contractor (DC-8).

It is recommended that the Finished Floor Levels are raised to allow for sufficient freeboard above the increased depth of flooding resulting from the loss of compensatory storage that occurred when the Stanley Brash premises was constructed.

There is a need to take into account the potential for flooding arising from other sources such as road drainage, overland surface water runoff and surcharged culverts.

N.B: This permission does not include any consent, approval or licence necessary for the proposed development under the building regulations or any other statutory enactment and the development should not be commenced until all consents are obtained.

Notice of Initiation of Development

Section 27 of the Town and Country Planning (Scotland) Act (as amended) requires that any person who has been granted planning permission (including planning permission in principle) and intends to start development must, once they have decided the date they will start work on the development, inform the planning authority of that date as soon as is practicable. A form is enclosed with this decision notice for this purpose.

Notice of Completion of Development

Section 27B requires that any person who completes a development for which planning permission (including planning permission in principle) has been given must, as soon as practicable after doing so, give notice of completion to the planning authority.

When planning permission is granted for phased development then under section 27B(2) the permission is to be granted subject to a condition that as soon as practicable after each phase, other than the last, is completed, the person carrying out the development is to give notice of that completion to the planning authority.

In advance of carrying out any works it is recommended that you contact Utility Bodies whose equipment or apparatus may be affected by any works you undertake. Contacts include:

Transco, Susiephone Department, 95 Kilbirnie Street, Glasgow, G5 8JD
Scottish Power, Riccarton Mains Road, Currie, Edinburgh, EH14 5AA
Scottish Water, Developer Services, 419 Balmore Road, Possilpark, Glasgow G22 6NU
British Telecom, National Notice Handling Centre, PP404B Telecom House, Trinity Street, Stoke on Trent, ST1 5ND
Scottish Borders Council, Street Lighting Section, Council HQ, Newtown St Boswells, Melrose, TD6 0SA
Cable & Wireless, 1 Dove Wynd, Strathclyde Business Park, Bellshill, ML4 3AL
BP Chemicals Ltd, PO Box 21, Bo'ness Road, Grangemouth, FK2 9XH
THUS, Susiephone Department, 4th Floor, 75 Waterloo Street, Glasgow, G2 7BD
Susiephone System – 0800 800 333

If you are in a Coal Authority Area (Carlops or Newcastleton), please contact the Coal Authority at the following address: The Coal Authority 200 Lichfield Lane, Berry Hill, Mansfield, Nottinghamshire NG18 4RG.

If the applicant is aggrieved by the decision of the Planning Authority to refuse planning permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under Section 43A of the Town and Country Planning (Scotland) Act 1997 within three months from

the date of this notice. The notice of review should be addressed to Corporate Administration, Council Headquarters, Newtown St Boswells, Melrose TD6 0SA.

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 5 of the Town and Country Planning (Scotland) Act 1997.

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Application for Planning Permission

Reference : 15/00275/FUL

To : J T Ceramics Ltd 3 Cherry Court Cavalry Park Peebles Scottish Borders EH45 9BU

With reference to your application validated on **13th March 2015** for planning permission under the Town and Country Planning (Scotland) Act 1997 for the following development :-

Proposal : Part change of use to form dental surgery suite

at : 3 Cherry Court Cavalry Park Peebles Scottish Borders EH45 9BU

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

**Dated 22nd April 2015
Regulatory Services
Council Headquarters
Newtown St Boswells
MELROSE
TD6 0SA**

Signed
Service Director Regulatory Services

APPLICATION REFERENCE : 15/00275/FUL

Schedule of Plans and Drawings Refused:

Plan Ref	Plan Type	Plan Status
	Location Plan	Refused
	Floor Plans	Refused

REASON FOR REFUSAL

- 1 The proposed change of use of part of the premises to dental surgery suite would be contrary to Adopted Local Plan Policy ED1 in that it is not a Class 4, Class 5 or Class 6 use, and the site (Cavalry Park) is safeguarded for employment uses in the Adopted Local Plan, having more particularly been identified as a Strategic Employment Site; a designation which requires that all other uses be resisted.

FOR THE INFORMATION OF THE APPLICANT

If the applicant is aggrieved by the decision of the Planning Authority to refuse planning permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under Section 43A of the Town and Country Planning (Scotland) Act 1997 within three months from the date of this notice. The notice of review should be addressed to Corporate Administration, Council Headquarters, Newtown St Boswells, Melrose TD6 OSA.

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 5 of the Town and Country Planning (Scotland) Act 1997.

**SCOTTISH BORDERS COUNCIL
LOCAL REVIEW BODY DECISION NOTICE**

**APPEAL UNDER SECTION 43A (8) OF THE TOWN AND COUNTRY PLANNING
(SCOTLAND) ACT 1997**

**THE TOWN AND COUNTRY PLANNING (SCHEMES OF DELEGATION AND
LOCAL REVIEW PROCEDURE) (SCOTLAND) REGULATIONS 2013**

Local Review Reference: 15/00011/RREF

Planning Application Reference: 15/00275/FUL

Development Proposal: Part change of use to form dental surgery suite

Location: 3 Cherry Court Cavalry Park, Peebles

Applicant: J T Ceramics Ltd

DECISION

The Local Review Body reverses the decision of the appointed officer and grants unconditional planning permission for the reasons set out in this notice.

DEVELOPMENT PROPOSAL

The application relates to the part change of use of the existing dental laboratory at 3 Cherry Court, Cavalry Park, Peebles to form dental surgery suite. The application drawings consisted of the following drawings:

Plan Type	Plan Reference No.
Location Plan	1:1250
Office 1 Floor Plan	CC-wd03 rev J
Internal Alterations	01
Panel Details	02

PRELIMINARY MATTERS

The Local Review Body considered at its meeting on 15th June 2015 that the review had been competently made under section 43A (8) of the Town & Country Planning (Scotland) Act 1997.

After examining the review documentation, which included: (a) Decision Notice, (b) Notice of Review and supporting papers, (c) Officer's Report of Handling, (d) Consultations and (e) List of Policies, the Local Review Body determined that it had sufficient information to determine the review. In coming to this conclusion, the

Review Body considered the applicant's request for further procedure in the form of one or more hearing sessions and a site inspection.

REASONING

The determining issues in this review were:

- (1) whether the proposal would be in keeping with the Development Plan, and
- (2) whether there were any material considerations which would justify departure from the Development Plan.

The Development Plan comprises: SESplan 2013 and the consolidated Scottish Border's Local Plan 2011. The Review Body considered that the most relevant of the listed policies were:

:

- Local Plan Policies: G1, H2, H3, INF4 and ED1

Other material considerations the Review Body took into consideration were:

- Scottish Planning Policy
- Proposed Local Development Plan - Policy ED1(Protection of Business & Industrial land)

The Review Body were conscious that section 25 of the Planning Act requires planning decisions to be made in accordance with the provisions of the development plan unless material considerations indicate otherwise.

The Review Body noted that the business unit lay within Cavalry Park, which is classified as a Strategic Employment Site in the Consolidated Local Plan. Members identified that Policy ED1 of the Local Plan was most critical to their deliberations, which stated:

"Development for uses other than Classes 4, 5 and 6 on strategic employment sites in the locations identified under Policy E13 of the Structure Plan will be refused."

Members concluded that as the proposal sought to introduce a use lying within Class 2 of the Town & Country Planning (Use Classes) Scotland Order 1997 the development was contrary to Policy ED1. The policy position is unequivocal in that all uses outwith classes 4, 5 & 6 will be refused. The development did not meet the policy's qualifying criteria and was therefore contrary to the Development Plan. The Review Body confirmed that the development was consistent with the other listed Development Plan policies.

In considering other material factors, the Review Body considered that these should be given significant weight in their deliberations. In the first instance, they acknowledged that Scottish Planning Policy was supportive of sustainable economic development and stated that planning authorities should "...give due weight to the net economic benefit of the proposed development." Members were content that this was a thriving business that was looking to expand its services and create employment for up to 8 new staff members. The economic benefits that would be generated by the development were in its favour.

The Review Body noted that Policy ED1 in the Proposed Local Development Plan now defined Cavalry Park as a Strategic High Amenity site, in which uses other than use class 4 would generally be refused. Members considered that this highlighted

there may be circumstances where alternative uses would be permissible and that the emerging policy position was not as restrictive as the existing Local Plan policy. In particular, the policy stated that a complementary use other than Class 4:

“...may be acceptable if it enhances the quality of the business park as an employment location.”

In this regard, Members considered, in detail, the nature of the business and its suitability at this location. In their view, the dental surgery was complementary to the existing business operation and would allow the business to grow and expand upon its specialist dental service. There were synergies in having the two elements of the business in the same location and it did not make practical or business sense for the business to be forced to consider a second premise elsewhere. The business would provide high quality services and employment and would, in Members' view, clearly enhance the quality of Cavalry Park as an employment location. The development's consistency with the emerging Local Development Plan policy was in its favour.

The Review Body also gave weight to how Cavalry Park was currently operating with a range of businesses, some in classes uses outwith the specified classes, which were flourishing and adding to the vibrancy of the business park. They also noted that another dental practice had been approved on the site in recent years.

The proposal would not involve the development of a vacant employment site and only required a modest portion of the floor space of the existing business to operate. Members noted that, in any event, there was a significant oversupply of such land within the Scottish Borders and the Peebles area and that there had been a low take-up of such land in recent years. The Review Body were satisfied that the development would not prejudice the availability of employment land at Cavalry Park, or the area more generally, and that this was also in its favour.

CONCLUSIONS

The Local Review Body concluded that, whilst the development was contrary to the Development Plan, there were a number of material factors that affect the balance of the decision in its favour. It was Members' determination that these matters outweighed the non-compliance with the Development Plan and that planning permission should be granted.

DIRECTION

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
Reason: To comply with Section 58 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006

Notice Under Section 21 of the Town & Country Planning (Schemes of Delegation and Local Review procedure) (Scotland) Regulations 2008.

1. If the applicant is aggrieved by the decision of the planning authority to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application

to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.

2. If permission to develop land is refused or granted subject to conditions 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 of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.

Signed... Councillor R Smith
Chairman of the Local Review Body

Date:... 25 June 2015

PLANNING CONSULTATION

To: Economic Development Section

From: Development Management

Date: 14th December 2015

Contact: Stuart Herkes ☎ 01835 825039

Ref: 15/01498/FUL

PLANNING CONSULTATION

Your observations are requested on the under noted planning application. I shall be glad to have your reply not later than 4th January 2016, If further time will be required for a reply please let me know. If no extension of time is requested and no reply is received by 4th January 2016, it will be assumed that you have no observations and a decision may be taken on the application.

Please remember to e-mail the DCConsultees Mailbox when you have inserted your reply into Idox.

Name of Applicant: Ms K McFadzean

Agent: M S Sim

Nature of Proposal: Change of use from Class 4 (Office) to Class 2 (Beauty Therapy Salon)

Site: Block 2 Unit 6 Cherry Court Cavalry Park Peebles Scottish Borders EH45 9BU

OBSERVATIONS OF: Economic Development Section

CONSULTATION REPLY

The response from the Economic Section is as follows:

Cavalry Park is regarded as a strategic site in the Local Plan and Structure Plan and therefore is protected, to ensure only classes 4, 5 & 6 are permissible, as defined in Policy ED1. We have checked the original application for this building development, under PA 08/01574/FUL, and it was approved, on 21 Nov 08, as Class 4 & 6 only. Therefore no Class 2 approval is in place within this development and this operation should not be permitted, nor a Class 1 use by default.

We do not consider it appropriate for this operation to be on employment land when it seems more appropriate to be within the town centre where class 1 & 2 uses are more desirable. We do not support this application.

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List of Policies

Local Review Reference: 16/00013/RFEF

Planning Application Reference: 15/01498/FUL

Development Proposal: Change of Use from Class 4 (Office) to Class 2 (Beauty Therapy Salon)

Location: Block 2 Unit 6 Cherry Court, Cavalry Park, Peebles

Applicant: Ms K McFadzen

SESPlan Strategic Development Plan 2013:

Policy 2 – Supply and Location of Employment Land

The Strategic Development Plan supports the development of a range of marketable sites of the size and quality to meet the requirements of business and industry within the SESplan area. Local Development Plans will support the delivery of the quantity of the established strategic employment land supply as identified below. Local Development Plans should also ensure that this provides a range and choice of marketable sites to meet anticipated requirements. The development of mixed communities (with residential and compatible employment opportunities jointly provided) on strategic employment sites may be appropriate provided this is justified through an LDP and does not result in a net loss to the overall strategic land supply.

Sub Regional Area Hectares*

Regional Core 247

East Coast 76

Fife Forth** 411

Midlothian / Borders 124

West Lothian 123

SESplan Total 981

Local Development Plan Hectares*

City of Edinburgh 186

East Lothian 76

Fife 411

Midlothian 129

Scottish Borders 56

West Lothian 123

SESplan Total 981

* Site sourced from Figure 13, Economy Technical Note

** Fife Forth excludes Mossmorran allocation of 250 ha

Adopted Local Development Plan 2016

Policy ED1: Protection of Business and Industrial Land

The Council aims to maintain a supply of business and industrial land allocations in the Scottish Borders (see Table 1). There is a presumption in favour of the retention

of industrial and business use on strategic and district sites, including new land use proposals for business and industrial land.

1. Strategic Sites

The Council rigorously protects strategic business and industrial sites for employment uses.

a) Strategic High Amenity Sites

Development on Strategic High Amenity Sites will be predominantly for Class 4 use. Other complementary commercial activity e.g. offices, call centres and high technology uses may be acceptable if it enhances the quality of the business park as an employment location.

b) Strategic Business and Industrial Sites

Development for uses other than Classes 4, 5 and 6 on strategic business and industrial sites in the locations identified in Table 1 will generally be refused. Uses other than Class 4, 5 or 6 can be considered if clearly demonstrated as contributing to the efficient functioning of the allocated site.

2. District Sites

Although District sites do not merit the same level of stringent protection as Strategic sites there remains a preference to retain these within employment uses.

However, development other than Classes 4, 5 and 6 may be accepted on district business and industrial sites identified in Table 1 in order to, where appropriate, allow a more mixed use area.

Proposals for development outwith Class 4, 5 and 6 will be considered against the following criteria:

- a) the loss of business and industrial land does not prejudice the existing and predicted long term requirements for industrial and business land in the locality, and
- b) the alternative land use is considered to offer significant benefits to the surrounding area and community that outweigh the need to retain the site in business and industrial use, and
- c) there is a constraint on the site whereby there is no reasonable prospect of its becoming marketable for business and industrial development in the future, or
- d) the predominant land uses have changed owing to previous exceptions to policy such that a more mixed use land use pattern is now considered acceptable by the Council.

3. Local Sites

Although Local sites are allocated for business and industrial use, these are considered to have a lower priority and need for retention in the hierarchy of all business and industrial sites. Consequently alternative uses are likely to be supported.

Development other than Classes 4, 5 and 6 are likely to be supported on local business and industrial sites identified in Table 1. Retail may be acceptable on local sites where they are located within or adjacent to town centres.

In all business and industrial land site categories development must:

- a) respect the character and amenity of the surrounding area, and be landscaped accordingly, and
- b) be compatible with neighbouring business and industrial uses

Shops and outright retail activities will not be allowed on Strategic or District sites. The only retailing permissible on these sites will be that which is considered to be ancillary to some other acceptable activity (e.g. manufacture; wholesale). For the purposes of this policy, ancillary is taken as being linked directly to the existing use of the unit and comprising no more than 10% of the total floor area.

Policy PMD2: Quality Standards

All new development will be expected to be of high quality in accordance with sustainability principles, designed to fit with Scottish Borders townscapes and to integrate with its landscape surroundings. The standards which will apply to all development are that:

Sustainability

- a) In terms of layout, orientation, construction and energy supply, the developer has demonstrated that appropriate measures have been taken to maximise the efficient use of energy and resources, including the use of renewable energy and resources such as District Heating Schemes and the incorporation of sustainable construction techniques in accordance with supplementary planning guidance. Planning applications must demonstrate that the current carbon dioxide emissions reduction target has been met, with at least half of this target met through the use of low or zero carbon technology,
- b) it provides digital connectivity and associated infrastructure,
- c) it provides for Sustainable Urban Drainage Systems in the context of overall provision of Green Infrastructure where appropriate and their after-care and maintenance,
- d) it encourages minimal water usage for new developments,
- e) it provides for appropriate internal and external provision for waste storage and presentation with, in all instances, separate provision for waste and recycling and, depending on the location, separate provision for composting facilities,
- f) it incorporates appropriate hard and soft landscape works, including structural or screen planting where necessary, to help integration with its surroundings and the wider environment and to meet open space requirements. In some cases agreements will be required to ensure that landscape works are undertaken at an early stage of development and that appropriate arrangements are put in place for long term landscape/open space maintenance,
- g) it considers, where appropriate, the long term adaptability of buildings and spaces.

Placemaking & Design

- h) It creates developments with a sense of place, based on a clear understanding of the context, designed in sympathy with Scottish Borders architectural styles; this need not exclude appropriate contemporary and/or innovative design,
- i) it is of a scale, massing, height and density appropriate to its surroundings and, where an extension or alteration, appropriate to the existing building,
- j) it is finished externally in materials, the colours and textures of which complement the highest quality of architecture in the locality and, where an extension or alteration, the existing building,
- k) it is compatible with, and respects the character of the surrounding area, neighbouring uses, and neighbouring built form,
- l) it can be satisfactorily accommodated within the site,

- m) it provides appropriate boundary treatments to ensure attractive edges to the development that will help integration with its surroundings,
- n) it incorporates, where appropriate, adequate safety and security measures, in accordance with current guidance on 'designing out crime'.

Accessibility

- o) Street layouts must be designed to properly connect and integrate with existing street patterns and be able to be easily extended in the future where appropriate in order to minimise the need for turning heads and isolated footpaths,
- p) it incorporates, where required, access for those with mobility difficulties,
- q) it ensures there is no adverse impact on road safety, including but not limited to the site access,
- r) it provides for linkages with adjoining built up areas including public transport connections and provision for buses, and new paths and cycleways, linking where possible to the existing path network; Travel Plans will be encouraged to support more sustainable travel patterns,
- s) it incorporates adequate access and turning space for vehicles including those used for waste collection purposes.

Greenspace, Open Space & Biodiversity

- t) It provides meaningful open space that wherever possible, links to existing open spaces and that is in accordance with current Council standards pending preparation of an up-to-date open space strategy and local standards. In some cases a developer contribution to wider neighbourhood or settlement provision may be appropriate, supported by appropriate arrangements for maintenance,
- u) it retains physical or natural features or habitats which are important to the amenity or biodiversity of the area or makes provision for adequate mitigation or replacements.

Developers are required to provide design and access statements, design briefs and landscape plans as appropriate.

Policy PMD3: Land Use Allocations

Development will be approved in principle for the land uses allocated on the Land Use Proposals tables and accompanying Proposals Maps.

Development will be in accordance with any Council approved planning or development brief provided it meets the requirements for the site and its acceptability has been confirmed in writing by the Council.

Sites proposed for redevelopment or mixed use may be developed for a variety of uses subject to other local plan policies. Where there is evidence of demand for specific uses or a specific mix of uses, these may be identified in a Planning Brief and the site requirements detailed within the Local Plan.

Within new housing allocations other subsidiary uses may be appropriate provided these can be accommodated in accordance with policy and without adversely affecting the character of the housing area. Planning Briefs and site requirements detailed within the Local Plan may set out the range of uses that are appropriate or that will require to be accommodated in specific allocations.

Any other use on allocated sites will be refused unless the developer can demonstrate that:

- a) it is ancillary to the proposed use and in the case of proposed housing development, it still enables the site to be developed in accordance with the indicative capacity shown in the Land Use Proposals table and/or associated planning briefs, or
- b) there is a constraint on the site and no reasonable prospect of its becoming available for the development of the proposed use within the Local Plan period, or
- c) the alternative use offers significant community benefits that are considered to outweigh the need to maintain the original proposed use, and
- d) the proposal is otherwise acceptable under the criteria for infill development.

Policy IS7 – Parking Provision and Standards

Development proposals should provide for car and cycle parking in accordance with approved standards.

Relaxation of technical standards will be considered where appropriate due to the nature of the development and/or if positive amenity gains can be demonstrated that do not compromise road safety.

In town centres where there appear to be parking difficulties, the Council will consider the desirability of seeking additional public parking provision, in the context of policies to promote the use of sustainable travel modes.

Other Material Considerations

None

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