

Public Document Pack



LOCAL REVIEW BODY MONDAY, 22 JANUARY 2018

A MEETING of the LOCAL REVIEW BODY will be held in the COUNCIL CHAMBER, COUNCIL HEADQUARTERS, NEWTOWN ST BOSWELLS, TD6 0SA on MONDAY, 22 JANUARY 2018 at 10.00 am

J. J. WILKINSON,
Clerk to the Council,

12 January 2018

BUSINESS		
1.	Apologies for Absence.	
2.	Order of Business.	
3.	Declarations of Interest.	
4.	<p>Continuation: Hearing in respect of application to erect dwellinghouse on land NE of and incorporating J. Rutherford Workshop, Rhymers Mill, Mill Road, Earlston. 17/00479/FUL. 17/00037/RREF.</p> <p>Copies of the following papers attached:-</p>	
	(a) Statements from and on behalf of applicant	(Pages 3 - 6)
	(b) Statement from Planning Officer	(Pages 7 - 10)
	(c) Statement from Council's Flood Risk Officer	(Pages 11 - 14)
	(d) Letter from SEPA	(Pages 15 - 16)
	(e) Review Papers	(Pages 17 - 74)
	<p>Copies of papers re-circulated as follows:-</p> <p>Notice of Review – page 17 Decision Notice - page 31 Officer's Report – page 45 Consultations – page 53 List of Policies – page 69</p>	
5.	Consider request for review of refusal of planning application to vary planning condition 9 of planning consent 10/00172/FUL relating to occupancy of building. 17/01007/FUL. 17/00052/RREF.	

	Copies of the following papers attached:-		
	(a) Notice of Review	(Pages 75 - 120)	
	Including:- Decision Notice – page 93 Officer’s Report – page 95		
	(b) Papers referred to in officer's report	(Pages 121 - 148)	
	(c) List of Policies	(Pages 149 - 154)	
6.	Any Other Items Previously Circulated		
7.	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 T. Miers (Chairman), S. Aitchison, A. Anderson, J. A. Fullarton, S. Hamilton, H. Laing, S. Mountford, C. Ramage and E. Small

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

From: Barry <barry@austin-travel.co.uk>
Sent: 15 December 2017 08:48
To: localreview
Cc: David Burgher
Subject: Hearing Statement

To Whom it may concern

Austin Coach Travel has been based in Earlston for over 50 years started in August 1966 by our late father Alex Austin and over this time we have built the business through good and bad times and continue to progress during the current tough economic situation that the country has been enduring since 2007/8. In this time we have courageously continued with ongoing investment in our staff, (now at approx. 20) vehicles and our new garage facility the former Rutherford's Agricultural premises on Mill road and in doing so save the mill and workshops from falling into a derelict state. We also hope to reveal the old mill in time as funds permit once again showing its lovely façade to public view and retaining part of Earlston history.

We are very proud of our Earlston roots and are able to trace back my mothers family well over 100 years and we will hopefully still be here in our local village for many years to come.

Our plans for this residential property are part of our plan to help with a sustainable infrastructure on our land whilst encouraging other local business to flourish and grow. Whilst I appreciate the points raised namely the flood concerns I have been conducting some research into this and my findings have produced the same result :-
1/ In my own experience I have never seen the site flood (I am now 59 years old)
2/ From other local residents of some greater years 80+ the only time any flooding was noted was 1947/48 which was due to heavy snow fall and a rapid thaw whilst this would not have been a problem had the old railway bridge parapet not been choked with falling trees. Since the old bridge structure was totally removed I have not come across one Earlstonian who can remember our site at Mill Rd flooding.

On closing I would just like to add that The Austin family are in Coach and Tourism we are not and will not become developers we continue to concentrate our efforts on our business that in itself provides me with enough challenges on a daily basis. We are a Borders based business owned by a Borders family and we wish to continue in our chosen profession we are NOT HERE FOR A QUICK BUCK in the property developer world.

Kindest Regards
Barry Austin

Austin Coach Travel

01896 849360
barry@austin-travel.co.uk

Rhymers Mill,
Mill Road,
Earlston.
TD4 6DG

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Resources,
Council Headquarters,
Newtown St Boswells,
Melrose,
TD6 0SA

By e-mail only

Date: 14th December 2017

Dear Sir / Madam,

PLANNING APPLICATION APPEAL

PLANNING REF: 17/00479/FUL

APPEAL REF: 17/00037/RREF

**ERECTION OF DWELLINGHOUSE FOR AUSTON TRAVEL
J RUTHERFORD WORKSHOP AND LAND NORTH EAST OF J RUTHERFORD
WORKSHOP, RHYMERS MILL, EARLSTON, SCOTTISH BORDERS**

Introduction

Following on from a letter issued by Fiona Walling of the Council Local Review Body, dated 19th October, we provide the following statement with respect to the work carried out at the above site.

Two matters are raised in the aforementioned letter;

- Discrepancies between the flood risk assessment submitted on behalf of the applicant and the consultation replies from SEPA and the Council's flood officer in respect of flood risk to the site; and
- The finished floor level required to preserve a freeboard to mitigate against a 1 in 200 year flood event and blockage of the Clatteringford Bridge.

The site has been subject to a number of additional flood risk assessments subsequent to the initial correspondence in July 2016 and the report issued in December 2016. The latest of these iterations was issued in May 2017.

The complexity of the site with respect to the risk of flooding is acknowledged by all parties. As a result of the initial discussions between the Council, SEPA and Terrenus Land & Water Ltd, the estimated peak flow for the design storm event was revised from a high in excess of 360m³s to an agreed more realistic value of 292m³s.

The historic flooding events dating back to 1948 were investigated by Terrenus, including interviews with residents who remember the events resulting in a robust understanding of the impact of extreme storm events on the local area.

In its latest FRA iteration Terrenus provides additional modelling of the recent 2016 storm event and concludes that the Clatteringford Bridge was significantly blocked during this event. The model indicates that, during the 1 in 200 year event with no blockage of the Clatteringford Bridge, the site is not at risk of inundation. The site does not therefore form part of the functional flood plain. The hydraulic model does however indicate that a significant blockage of the Clatteringford Bridge may result in the activation of an overland flood routing pathway from the Rhymer's Cottage access road but that the flow pathway would likely convey flood waters east across the road and directly return the flood waters to the Leader Water downstream of the bridge or to flow along the confines of the bridge roadway to the north until the access road into the Austin Travel yard. Such sheet flow is robustly considered in the proposed development design with final floor levels placed at least 600mm above any potential overland flow water.

It is important to note that the hydraulic model presented by Terrenus represents the best and most accurate representation of fluvial activity around the site during an extreme storm event. Other estimates of peak water levels are not based on hydraulic models.



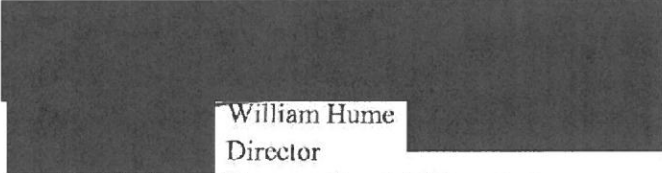
terrenus
land&water

Similarly, we state that our intention remains that the development of this land is in line with the requirements of the Scottish Planning Policy. Our aim is to provide robust development that is not at risk of flooding whilst placing no additional flood risk on the local environment. The proposed development has been designed to avoid the risk of flooding and is equipped with safe access and egress.

Finally, we note that, as a consultancy, we take pride in providing the best available assessment of the risk of flooding to the development process based on the available information which in this instance is as good or better than any other source.

-oo000oo-

Yours Sincerely,


William Hume
Director
Terrenus Land & Water Ltd

LOCAL REVIEW BODY
HEARING STATEMENT OF APPOINTED OFFICER
17/00479/FUL
Erection of dwellinghouse

ISSUES TO BE CONSIDERED:

For further consideration to be given to:

- 1) Discrepancies between the flood risk assessment submitted on behalf of the applicant and the consultation replies from SEPA and the Council's flood officer in respect of flood risk to the site; and
- 2) The finished floor level required to preserve a freeboard to mitigate against a 1 in 200 year flood event and blockage of the Clatteringford Bridge.

RESPONSE:

- 1) ***Discrepancies between the flood risk assessment submitted on behalf of the applicant and the consultation replies from SEPA and the Council's flood officer in respect of flood risk to the site.***

Further to their review of the supporting flood risk assessment presented in support of Planning Application 17/00479/FUL, both SEPA and the Local Flood Prevention Authority have maintained their objections in principle to the proposal on the grounds that the site cannot be developed acceptably for residential use in flood risk terms.

Unacceptable flood risk was only one of the bases on which Planning Application 17/00479/FUL was refused. The other three reasons relate to: the poor layout of the proposal relative to its site and surroundings; inadequate access and parking provision; and a lack of reassurance that a dwellinghouse could be accommodated at the site, without its amenity being unacceptably impacted by operations within the neighbouring workshop building.

In the event of the appeal being successful contrary to any objection maintained by SEPA, the Local Review Body's decision would require referral to the Scottish Government.

- 2) ***The finished floor level required to preserve a freeboard to mitigate against a 1 in 200 year flood event and blockage of the Clatteringford Bridge.***

It is considered that any assessment of how the flood risk impacts might be appropriately mitigated, should take full account of the implications of any such mitigation requirements for the layout and design of the proposal, and the accommodation of the latter within the surrounding streetscape.

Any excessive under-build and/or any make up of ground levels required to accommodate a particular finished floor level, has potential to impact unacceptably,

both upon the visual amenities of the site and surrounding area, and upon the residential amenity of surrounding properties.

This would be a particular concern were the levels of the windows, eaves and roof ridge height all liable to be notably raised such as to be 'read' in views from the public realm as being obviously out-of-alignment with the same features on neighbouring properties. Further, any obviously artificially-raised site (within what is otherwise a relatively level area) and/or any excessive amount of under-build (affecting the massing of the building) would also be liable to impact adversely upon the visual amenities of the site and surrounding area, introducing incongruous elements, at odds with the wider built environment.

Some account would also need to be had of the potential for impacts upon the private residential amenity of surrounding properties as a consequence of any daylighting, sunlighting and/or overlooking impacts that might arise, or be accentuated, as a consequence of any exaggeration of the finished heights of the house relative to those of neighbouring properties.

There is also potential for unacceptable cumulative impacts upon the amenity and environment of the site and surrounding area as a consequence of the addition of the above noted impacts to those that have already been identified amongst the reasons for refusal, with respect to the orientation of the building and lack of parking provision.

For the above noted reasons, and in the event that the Local Review Body is minded to support the appeal subject to a particular finished floor level being achieved, it is recommended:

Firstly, that consideration should be given to the above noted design and layout concerns; as well as to the other design and layout considerations that were identified within the other reasons for refusal of Planning Application 17/00479/FUL; and,

Secondly, that it is not made a simple requirement by planning condition that a particular finished floor level should be achieved; at least not without the Applicant first having been required to account for the full implications of this achievement within a revised design, describing in appropriate detail, all proposed revisions required to the design of the house and/or any proposed make up of levels on the site. These revised proposals should ideally, also be described relative to surrounding properties and the wider streetscape, to ensure a satisfactory and sympathetic finished appearance and accommodation of the proposal in its environs.

Finally, and given both the degree of uncertainty and wider concerns with the proposed design and layout (including with respect to the accommodation of parking at the site and the proposed building's orientation), it is strongly recommended that these design considerations would in fact be most appropriately addressed within a new planning application - even if it is ultimately concluded by the Local Review Body that a raised finished floor level would suffice to address the flood risk impacts.

SUPPORTING DOCUMENTS:

- 1) Adopted Scottish Borders Council Local Development Plan:

https://www.scotborders.gov.uk/info/20051/plans_and_guidance/121/local_development_plan

2) Planning Officer's Delegated Report of Handling:

<https://eplanning.scotborders.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=ONJ5MLNLTQ00>

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LOCAL REVIEW BODY
HEARING STATEMENT OF FLOOD RISK OFFICER
17/00479/FUL
Erection of dwellinghouse, J Rutherford Workshop, Rhymers Mill, Mill Road, Earlston

ISSUES TO BE CONSIDERED:

For further consideration to be given to:

- 1) Discrepancies between the flood risk assessment submitted on behalf of the applicant and the consultation replies from SEPA and the Council's flood officer in respect of flood risk to the site; and
- 2) The finished floor level required to preserve a freeboard to mitigate a 1 in 200 year flood event and blockage of the Clatteringford Bridge.

RESPONSE:

- 1) **Discrepancies between the flood risk assessments submitted on behalf of the applicant and the consultation replies from SEPA and the Council's flood officer in respect of flood risk to the site.**
 - The proposed site lies within SEPA's 1 in 10 year (10% chance of flooding in any given year) flood hazard map and is considered to be at high risk of flooding. SEPA's flood map suggests that the site is likely to flood to a depth of up to 1m during the 1 in 10 year event (Figure. 1).
 - Scottish Planning Policy (paragraph 255) clearly states that the planning system should promote flood avoidance by locating development away from the functional floodplain and in areas that are at high risk of flooding.
 - A Flood Risk Assessment was submitted on behalf of the applicant December 2016.
 - There is a well-documented history of flooding on the Leader Water and the area surrounding Rhymers Mill in Earlston. The report refers to a number of sources of information which demonstrates the site was subject to flooding in during 'The Great Borders Flood' in August 1948 however the FRA also states that snowmelt was a contributing factor to this flood despite the event being in August. There are also records of this area flooding in 1881, 1890, 1948, 1956, 1984, 1990, 2002 and 2012.
 - Hydraulic modelling of the Leader Water was undertaken to provide site specific flood risk analysis of the proposed site. However, it was found that there were a number of shortcomings within the report which meant that Officer was unable to support the application
 1. Hydraulic modelling had been completed without the undertaking of a full topographic survey of the river channel and flood plain. Without detailed topographic information there are serious concerns of the accuracy of the model, and in turn the impact upon the results of the model and flood levels at the proposed site.
 2. Issues relating to modelling approach including hydrology, sensitivity analysis and model calibration (detailed in SEPA response from December 2016 and June

2017).

3. Further inconsistencies in information presented in the original Flood Risk Assessment and Addendum Letter (May 2017) primarily related to use and inclusion of topographic information and calibration of the hydraulic model.

- Given the uncertainties within the Flood Risk Assessment, Addendum Letter and the modelling undertaken as well as the historical evidence of flooding at the site I am of the opinion that the site is within the 1:200 year functional floodplain and at medium to high risk of flooding from the Leader Water.
- The FRA suggests a proposed finished floor level of 102.45mAOD. The Addendum Letter suggests a finished floor level of 102.1mAOD. While the Addendum Letter suggests slightly higher flood levels on the Leader Water this has not been transferred to the proposed floor levels which are actually lower than the initial recommendation in the first Flood Risk Assessment and would seem to be incorrect.
- Clarification on a number of points within the FRA and Addendum Letter, including the finished floor levels, was sought from the Consultant/Applicant however this was not forthcoming.

2) **The finished floor level required to preserve a freeboard to mitigate a 1 in 200 year flood event and blockage of the Clatteringford Bridge.**

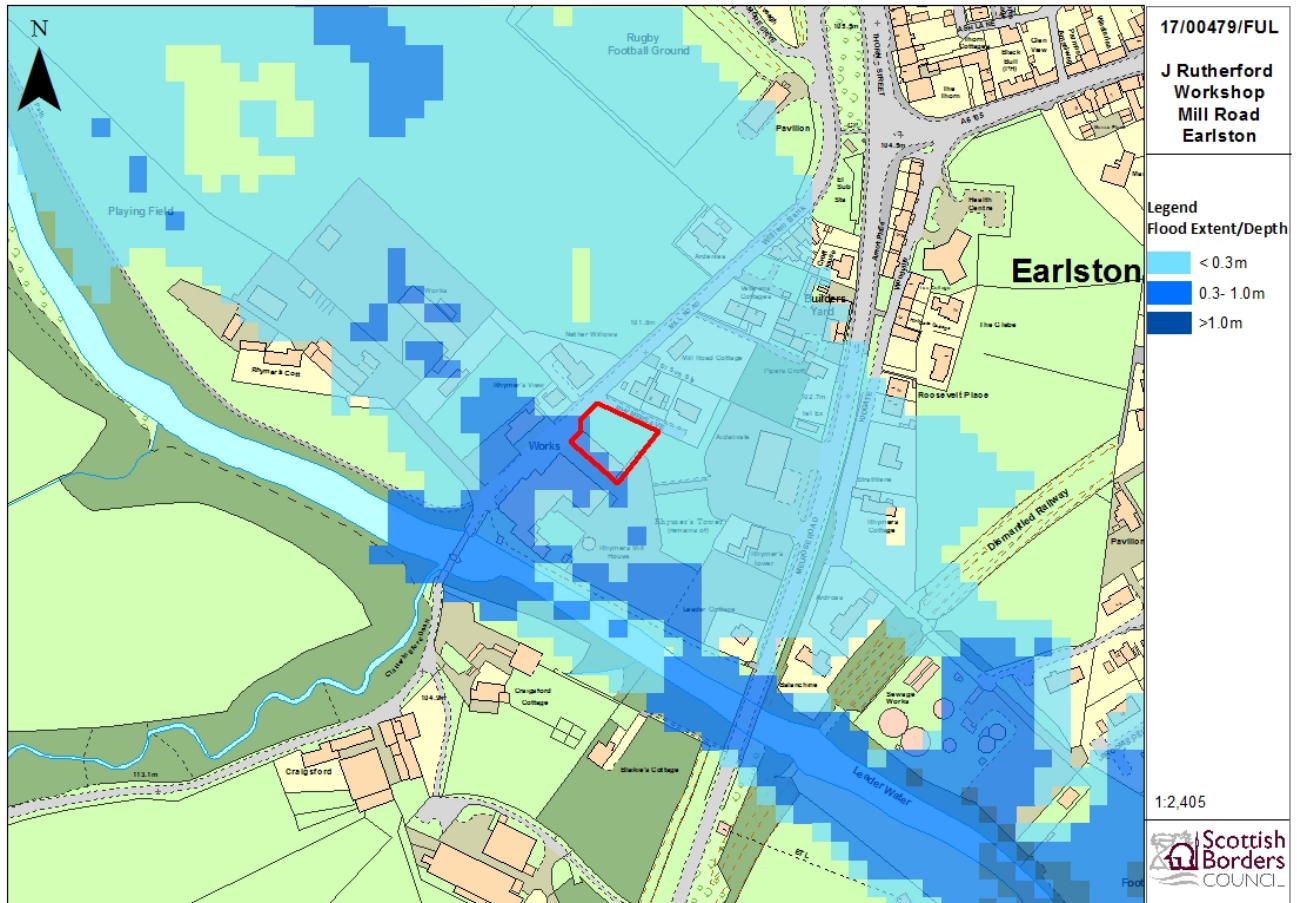
The Flood Risk Assessment and Addendum Letter both recommend finished flood levels for proposed development. As discussed in Point 1 there are inconsistencies between the levels suggested in the Flood Risk Assessment of December 2016 and the Addendum Letter of May 2017. Clarification of the preferred level was sought from the Consultant/Applicant however this was not forthcoming.

Notwithstanding, there are a series of issues discussed in Point 1 which raise a number of questions with regards to the shortcomings of the Flood Risk Assessment and the accuracy of the results presented in the report. With this in mind it is not possible to establish or recommend a finished floor level for the proposed development.

Regarding blockage of the Clatteringford Bridge, it is known that blockage of this bridge does occur and indeed blockage did contribute to the flooding observed in the Mill Meadow area of Earlston in November 2016. While blockage of the Clatteringford Bridge has been considered in the Flood Risk Assessment, as is it good practice to do so, and blockage of the A68 road bridge should also be considered.

For any Flood Risk Assessment it is expected that bridge blockage is considered for within the hydraulic modelling undertaken and I would expect the increased water level as a result of blockage to be made explicitly clear within the Flood Risk Assessment. The required addition of 600mm freeboard to the 1:200 year flood level should provide further reassurance that occurrences such a bridge blockage are accounted for in mitigating flood risk.

Figure 1: SEPA Flood Hazard Map, 1:10 year flood extent. High risk of flooding



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Our ref: PCS/155715
Your ref: 17/00479/FUL

If telephoning ask for:
Paul Lewis

27 October 2017

Fiona Walling
Scottish Borders Council
Planning & Economic Development
Council Headquarters
Newtown St Boswells
Melrose
TD6 0SA

By email only to: fwalling@scotborders.gov.uk

Dear Ms Walling

Town and Country Planning (Scotland) Acts
Planning application: 17/00479/FUL
Erection of dwellinghouse
Land North East of and Incorporating J Rutherford Workshop, Rhymers Mill, Mill Road, Earlston, Scottish Borders.

Thank you for your letter of 19 October 2017 in which you informed SEPA that there will be a hearing session by the Local Review Body of planning application 17/00479/FUL on Monday 22 January 2018.

We do not intend to attend the hearing, but should the Local Review Board want any clarification of the advice we have given Scottish Borders Council on this proposed development we will be happy to provide it.

If you have any queries relating to this letter, please contact me by telephone on 0131 273 7334 or e-mail at planning.se@sepa.org.uk.

Yours sincerely

Paul Lewis
Senior Planning Officer
Planning Service

Continued....



Chairman
Bob Downes
Page 15
Chief Executive
Terry A'Hearn

SEPA Edinburgh Office

Silvan House, 3rd Floor, 231 Corstorphine Road,
Edinburgh EH12 7AT.

www.sepa.org.uk • customer enquiries 03000 99 66 99

Disclaimer

This advice is given without prejudice to any decision made on elements of the proposal regulated by us, as such a decision may take into account factors not considered at this time. We prefer all the technical information required for any SEPA consents to be submitted at the same time as the planning or similar application. However, we consider it to be at the applicant's commercial risk if any significant changes required during the regulatory stage necessitate a further planning application or similar application and/or neighbour notification or advertising. We have relied on the accuracy and completeness of the information supplied to us in providing the above advice and can take no responsibility for incorrect data or interpretation, or omissions, in such information. If we have not referred to a particular issue in our response, it should not be assumed that there is no impact associated with that issue. For planning applications, if you did not specifically request advice on flood risk, then advice will not have been provided on this issue. Further information on our consultation arrangements generally can be found on our [website planning pages](#).



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)

Agent (if any)

Name

Name

Address

Address

Postcode

Postcode

Contact Telephone 1

Contact Telephone 1

Contact Telephone 2

Contact Telephone 2

Fax No

Fax No

E-mail*

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

Planning authority's application reference number

Site address

Description of proposed development

Date of application 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:

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:

N/A

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 see 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.

The site was previously allocated for residential use, although the previous owners failed to make representations to have the zoning continued due to the business demise.

An immediate adjacent development was granted (15/00729/FUL) for the substantial rebuilding of a dwelling with a similar floor level.

There are many other dwellings within the immediate vicinity with lower floor levels which have no history of flooding.

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.

Site plan, floor plans, elevations Flood risk assessment Appeal statement

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

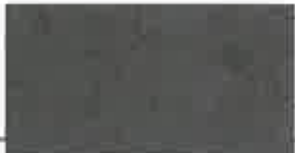
Please mark the appropriate boxes to confirm you have provided all supporting documents and evidence relevant to your review:

- 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	08/09/2017
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The Completed form should be returned to the Head of Corporate Administration, Scottish Borders Council, Council Headquarters, Newtown St. Boswells TD6 0SA.



Erection of Dwellinghouse
Rhymers Mill, Earlston
Scottish Borders, TD4 6DG

Statement of Appeal – September 2017
For Austin Travel
Aitken Turnbull Architects



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- 1.Introduction**
- 2.Reasons for Refusal**
- 3.Grounds of Appeal**
- 4.Conclusion**

Appendices

- 1.Decision Notice**
- 2.Drawings**
- 3.Flood Risk Assessment**



1.0 Introduction

- 1.1 This statement of appeal has been prepared by Aitken Turnbull Architects on behalf of the applicant and owner of the site Austin Travel, who wish to encourage new business and an associated dwelling.
- 1.2 The proposal (17/00479/FUL) for the new dwelling was lodged on 29th March 2017 with a decision, via delegated powers to refuse the application received on 8th June 2017. As such, we now seek to appeal the decision via the Council's Local Review Body.
- 1.3 This statement now responds to the reasons for refusal and, where appropriate, cross referring to the delegated officers report, Development Plan and material considerations. The supporting documentation to this appeal are listed.



2.0 Reasons for Refusal

2.1 Within the 'Decision Notice' the main reason for refusal was:

- 2.1.1 *The proposal does not comply with Adopted Local Development Plan Policy IS8 and Scottish Planning Policy in that the site is subject to a significant flood risk and the development would be both at significant risk of flooding and would materially increase the probability of flooding elsewhere.*
- 2.1.2 *The proposal in the positioning of the dwellinghouse and the overall site layout, does not comply with Adopted Local Development Plan Policies PMD2 and PMD5 in that it would not respect the character of the surrounding area and neighbouring built form.*
- 2.1.3 *The proposal does not comply with Adopted Local Development Plan Policies PMD2 and IS7 in that the access arrangements are unsuitable to serve the development and inadequate provision has been made for the accommodation of the parking of two vehicles within the curtilage of the site, such that there would be adverse impacts upon road safety.*
- 2.1.4 *The proposal does not comply with Adopted Local Development Plan Policies PMD5 and HD3 in that the operation of the workshop building in such close proximity to the proposed dwellinghouse has potential to have unacceptable impacts upon the residential amenity of the occupants of the proposed dwellinghouse.*

3.0 Grounds of Appeal

The principle reason for refusal was on grounds of flood risk (refer to 2.1.1) and matters concerning site layout (2.1.2) and access (2.1.3) were discussed with the Planning Officer and were considered secondary and resolvable. Indeed this was referred to in the email exchange with Stuart Herkes dated 26th May 2017. Attempts were also made to realign the house to relate to the houses on Rhymers Avenue although determination was made prior to discussions being finalised.

A Processing Agreement was put in place to allow for additional flood risk information to be submitted in response to the statutory requests. The site was previously allocated for residential use, although the previous owners failed to make representations to have the zoning continued due to the business demise.



There are many other dwellings within the immediate vicinity with lower floor levels which have no history of flooding, and the development does not conflict with the overall site use (2.1.4).

Terrenus Land & Water Ltd have undertaken a detailed Quantitative Level 3 Flood Risk Assessment for the site and have also issued two subsequent follow up addendum letter reports to revise and update the findings of our original report. The addendum letters address comments raised by SEPA and Scottish Borders Council. The latest

addendum letter report was issued to give confidence to Scottish Borders Council that the hydraulic modelling undertaken for the site robust and that the best available information has been used to determine the flood risk to the site.

The latest hydraulic modelling was calibrated to the most recent known flood event (November 2016), an event which was recorded by Scottish Borders Council personnel. The addendum letter and re-modelling also took cognisance of the comments made previously by SEPA with respect to peak flow estimation and quality, reliability and accuracy of height data used within the model. The findings of the calibrated hydraulic modelling has shown that the approach used by Terrenus Land & Water Ltd is robust and that the peak flood water level for the 1 in 200 year event is not sufficient to over top Clatteringford Bridge under normal hydraulic conditions within the Leader Water. Therefore, the site is out-with the functional flood plain of the Leader Water.

For events greater than the design storm event, or for circumstances where there is a significant blockage of Clatteringford Bridge there is the possibility of overland flow from overtopping upstream of the site. In these instances, the issues with respect to flood risk comprise flood routing and conveyance not of functional flood plain or storage. The November 2016 flood event recorded exceptional blockage at the Clatteringford Bridge with resultant higher than normal peak flood water levels upstream of the site. It is recommended that the local authority consider the clearance or management of the upstream shoaling and vegetation at Clatteringford Bridge to ensure optimum performance of the bridge structure and to minimise any increased risk of flooding in and around the village of Earlston. A benefit to the wider community and the hydraulic conveyance performance of the Leader Water at the structure.

For the proposed development the improved hydraulic modelling confirms the following:

- There is no infringement by the proposed development on the functional flood plain of the Leader Water for the 1 in 200 year design storm event;



- There is dry emergency pedestrian access and egress available to the site for the design storm event and during the 1 in 200 year plus 20% uplift for Global Climatic Change events via the higher ground to the east of the site;
- Development profiling of any gardens and soft landscaping areas will be carried out to encourage overland flow pathways away from the proposed development and emergency access and egress routes;
- A flood routing pathway will be established from the road to the southeast in line with the local topography, as this will encourage flood routing back towards the Leader Water.
- Proposed Final Floor Levels are set sufficiently high (102.1m O.D.) providing a freeboard of at least 600mm at the site.

It is concluded that the proposed development is in accordance with current Scottish Planning Policy.

It is noted roads planning have no objections in principal however they raised concerns over the vehicular access being taken off Rhymers Avenue as this is a private road. Having had further discussions with the applicant they have indicated a new access can be formed off Mill Road and a minimum of two private parking spaces can be provided within the curtilage of the property.

Road planning have indicated in their consultation response an access taken from Mill Road will be acceptable.

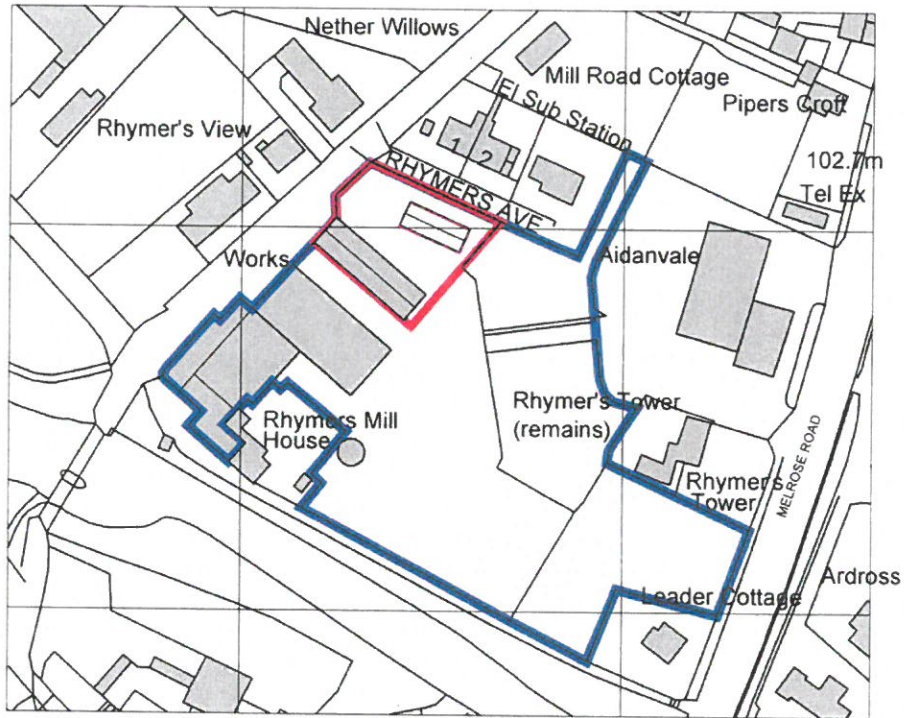


4.0 Conclusion

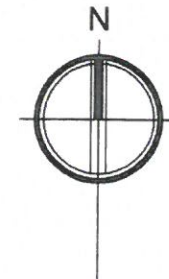
We believe that the subject site represents a sound location for a new dwelling. It relates well to its immediate surroundings and will avail of existing infrastructure provision and public transport services nearby.

We should add that our client is content to meet all the required Developer Contributions.

Taking the 'Grounds of Appeal' note within chapter 3 we therefore respectfully request that the appeal be allowed.



Scale 1:1250



Reproduced from the Ordnance Survey
1:1250 scale map with the permission of
the controller of Her Majesty's Stationery
Office
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LOCATION PLAN

@ 1:1250

Site Boundary
Development Boundary

A - MARCH 2017 - PLANNING RE-SUBMITTED

Revision	Description	By	CHK

Austin Travel
Proposed Dwellinghouse
Rhymer's Mill
Earlston

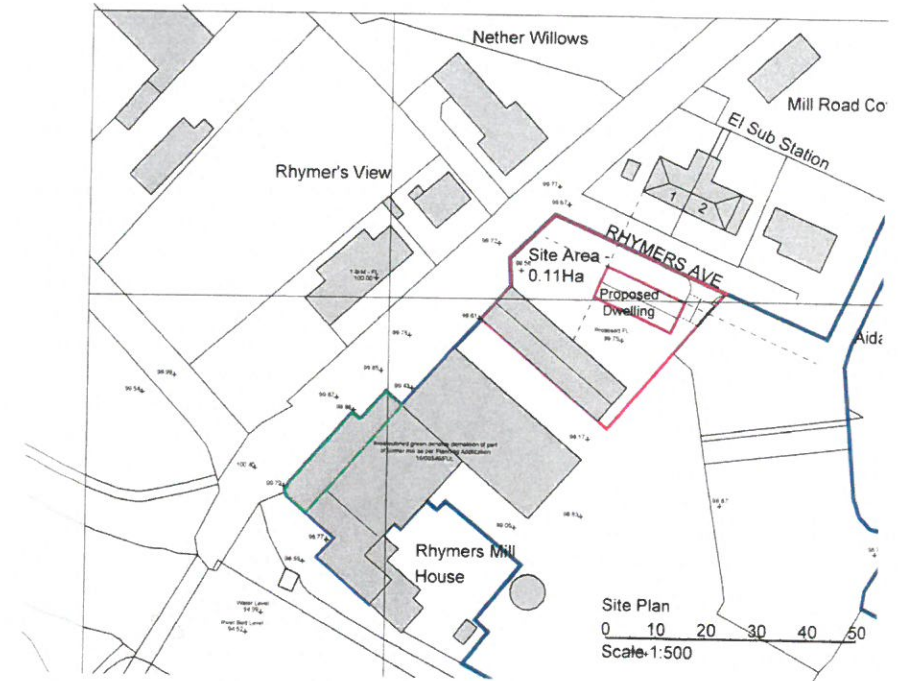
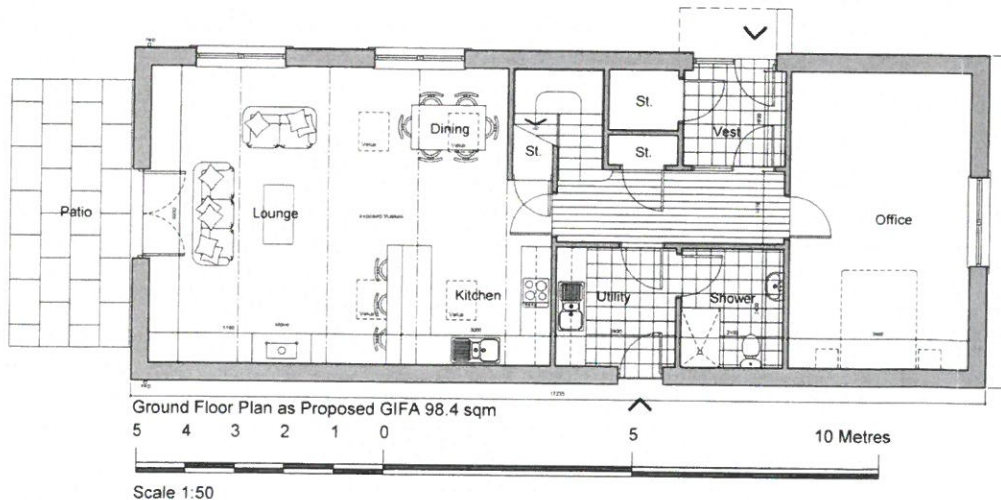
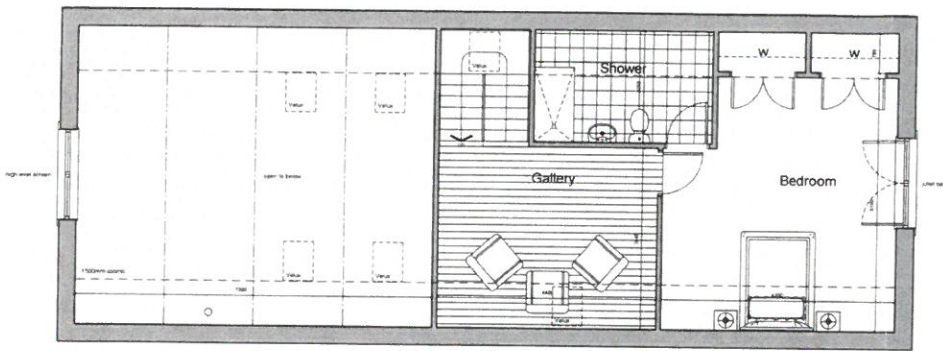
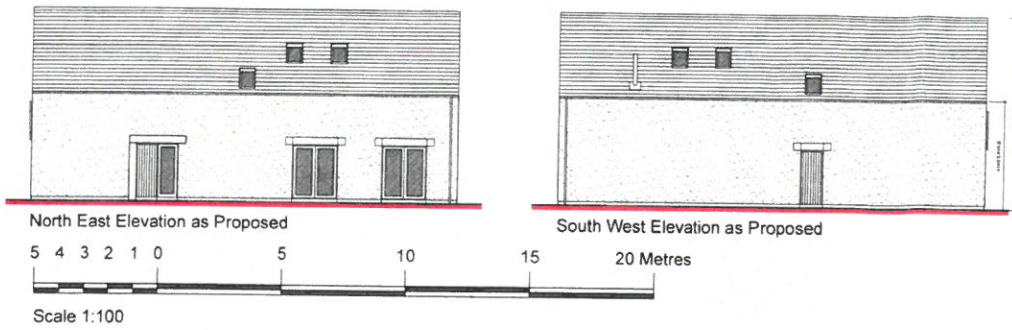
Location Plan

scale	size	date	drawn	checked
1:1250	A3	March 2016	A.W.	

AITKEN TURNBULL ARCHITECTS
9 Bridge Place
Glasgow
TD1 1SN
01896 752700
enquiries@aitken-turnbull.co.uk
www.aitken-turnbull.co.uk
Also at Dumfries & Edinburgh



project no. AT2669 drawing no. LOC-01A



FINISHES SCHEDULE

ROOF FINISH

- Natural slate.

RAINWATER GOODS:

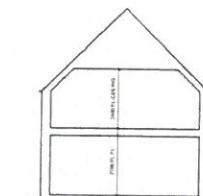
- Aluminium half round gutters and down pipes.

WALLS

- Smooth cement basecourse.
- Wet dash render main walls.

DOORS & WINDOW:

- Velux Rooflights
- New Glazed Screens & French Doors to be UPVC with double glazed units.
- New external grade 'oak style' doors.



Site Boundary

Development Boundary

North



8 - MARCH 2017 - SITE LAYOUT AMENDED - APPLICATION RE-SUBMITTED
 & MAY 2018 - SITE LEVELS ADDED TO SITE PLAN

Austin Travel
 Proposed Dwellinghouse
 Rhymers Mill
 Earliston

Plans, Elevations, Section
 & Site Plan
 as Proposed

Scale: 1:50 1:100 1:500 A1 March 2016 ddp

17/00479/FUL

Scottish Borders Council
 Town And Country
 Planning (Scotland) Act 1997

REFUSED

subject to the
 requirements of the
 associated Decision
 Notice

ATKIN TURNBULL ARCHITECTS
 3 Bridge Place
 Glasgow
 G1 1JH



01886 752780
 atturn@atkin-turnbull.co.uk
 www.atkin-turnbull.co.uk

Atkin at Dumfries & Edinburgh

Project No: AT2669 Drawing No: PP-01B

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

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

Application for Planning Permission

Reference : 17/00479/FUL

**To : Austin Travel per Aitken Turnbull Architects Ltd 9 Bridge Place Galashiels Scottish Borders
TD1 1SN**

With reference to your application validated on **29th March 2017** for planning permission under the Town and Country Planning (Scotland) Act 1997 for the following development :-

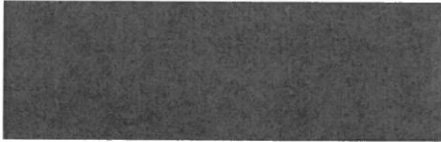
Proposal : Erection of dwellinghouse

**At : Land North East Of And Incorporating J Rutherford Workshop Rhymers Mill Mill Road Earlston
Scottish Borders**

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

**Dated 8th June 2017
Regulatory Services
Council Headquarters
Newtown St Boswells
MELROSE
TD6 0SA**

Signed


.....
Chief Planning Officer

APPLICATION REFERENCE : 17/00479/FUL

Schedule of Plans and Drawings Refused:

Plan Ref	Plan Type	Plan Status
	Location Plan	Refused
	Elevations	Refused

REASON FOR REFUSAL

- 1 The proposal does not comply with Adopted Local Development Plan Policy IS8 and Scottish Planning Policy in that the site is subject to a significant flood risk and the development would be both at significant risk of flooding and would materially increase the probability of flooding elsewhere.
- 2 The proposal in the positioning of the dwellinghouse and the overall site layout, does not comply with Adopted Local Development Plan Policies PMD2 and PMD5 in that it would not respect the character of the surrounding area and neighbouring built form.
- 3 The proposal does not comply with Adopted Local Development Plan Policies PMD2 and IS7 in that the access arrangements are unsuitable to serve the development and inadequate provision has been made for the accommodation of the parking of two vehicles within the curtilage of the site, such that there would be adverse impacts upon road safety.
- 4 The proposal does not comply with Adopted Local Development Plan Policies PMD5 and HD3 in that the operation of the workshop building in such close proximity to the proposed dwellinghouse has potential to have unacceptable impacts upon the residential amenity of the occupants of the proposed dwellinghouse.

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.

Visit <http://eplanning.scotborders.gov.uk/online-applications/>

Aitken Turnbull Architects
9 Bridge Place,
Galashiels,
TD1 1SN

For the attention of Alistair Weir

By e-mail only

Date: 2nd May 2017

Dear Mr Weir,

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACTS
PLANNING APPLICATION: 16/00385/FUL -
ERECTION OF DWELLINGHOUSE
J RUTHERFORD WORKSHOP AND LAND NORTH EAST OF J RUTHERFORD
WORKSHOP, RHYMERS MILL, EARLSTON, SCOTTISH BORDERS**

Introduction

Following on from the Terrenus Land & Water Ltd Flood Risk Assessment report, issued for discussion dated 2nd December 2016, discussions were held with SEPA and Scottish Borders Council with respect to the peak flow for the design storm event and in relation to the November 2016 flood event on the Leader Water.

In order to revise the model and eliminate some of the uncertainties associated with modelling process, Terrenus Land & Water Ltd (Terrenus) updated the hydraulic model with additional survey information and calibrated it to the November 2016 event.

This addendum letter report is provided to give confidence to Scottish Borders Council Planning and Roads, Flooding departments that the model is robust and that the best available information has been used to determine the flood risk to the site.

Site Survey Data

To eliminate uncertainties in the available data for the hydraulic model, additional survey work was requested by Terrenus and undertaken by Messrs Aitken Turnbull Architects. The additional survey work was carried out to an existing local datum and then converted to Ordnance Survey datum. An updated AutoCAD drawing showing the spot height elevation and location to local grid was supplied to Terrenus on the 27th March 2017.

A conversion factor of 1.93m was applied to all local datum spot heights to correct them to Ordnance Datum. The revised location and amended OD height data is shown on Drawing 1601-205-003, which has been enclosed in the appendix of this letter.

November 2016 Flood Event

Discussions with SEPA and Scottish Borders Council highlighted that there have been several large scale flow events recorded on the Leader Water since the original flow estimations were undertaken. The original flow estimations were based primarily on the historic flow data available on-line from the National River Flow Archive (NRFA). Up-to-date data for the Earlston gauging station (Stn. No. 14997) was requested from SEPA, who took over the NRFA gauging stations in 2006. A review of the data provided from SEPA for the gauging station between 2006 and 2016 revealed 11 additional peak flow occurrences. The 2015-2016 water year maximum was recorded on the 22nd November 2016 at 95.12m³/s.

Personnel from Scottish Borders Council attended the area around Rhymers Mill on the 22nd November 2016, immediately following the peak flow event and provided a photographic record of their findings. The photograph included debris build up on the upstream face of Clatteringford Bridge and a trash line on the northern bank of the parkland upstream of the bridge. This photographic evidence was used in conjunction with the additional survey work to determine the peak water level on the ground for the 22nd November event.

2016 Model Calibration

Where additional more up-to-date topographic survey information was available, the relevant cross sections were updated. This amended cross sections from Chainage 552 to Chainage 982, including those immediately upstream and downstream of the Clatteringford Bridge and the A68 Road Bridge.

The peak flow data from the SEPA gauging station for the 22nd November 2016 event was applied to the Leader Water as an inflow hydrograph and the model re-run. The results were then compared to the known extent and height of the trash line generated during the November 2016 event.

Spot heights at two key upstream locations were used to calibrate the model. Spot height determination of the points was undertaken using the photographic evidence, as supplied by Scottish Borders Council, and the updated survey information. The first point taken adjacent to the park bench at the intersection between the trash line and the cross section at Chainage 552. The spot height at this location was determined to be at 102m O.D. The second was taken at the intersection between the trash line and the cross section at Chainage 742. The spot height at this location was determined to be at 100.8m O.D.

Initial model results indicated that the peak water levels at the cross sections upstream of Clatteringford Bridge were too low for the known event, therefore blockage scenarios for the bridge were considered and undertaken to constrain the flow through the Clatteringford Bridge. Constraining the flow through a structure by decreasing the available flow width results in increasing upstream water levels. An iterative process was followed until the known trash line generated during the November 2016 event was replicated.

The final iteration of the model required significant blockage of both the left-hand and right-hand arch ways. The cross sectional area of the left-hand archway was reduced from 61.48m² to 49.83m², a reduction of around 19%, whilst the cross sectional area of the right-hand archway was reduced from 46.97m² to 17.08m², a reduction of around 64%.

Table A, enclosed in the addendum to this letter records the updated model results.

Conclusions and Recommendations

The model results for the calibrated event show that the peak water levels at the bridge do not over top the bridge structure and that the backwater effect is limited to within 125m of the bridge itself.

Whilst the pictures provided by Scottish Borders Council, for the 22nd November 2016 event do record debris and blockage of the Clatteringford Bridge the model indicates that significant blockage of both archways occurred, resulting in the observed trash line upstream of the bridge. It is our opinion that the blockage at the Clatteringford Bridge during the 2016 event was exceptional and is not reflective of the normal flow regime of the Leader Water. The severity of the blockage was likely caused by the significant upstream shoaling and vegetation cover around the right hand bridge archway (looking downstream). Scaring within the upstream shoal shows the uprooting of a mature tree, which would have increased blockage at the right hand archway. These factors are the likely cause of the higher than expected upstream water levels for the 2016 peak storm event.

It is recommended that the local authority consider the clearance or management of the upstream shoaling and vegetation at Clatteringford Bridge to ensure optimum performance of the structure and to minimise any increased risk of flooding in and around the village of Earlston.

Under normal condition, without constriction of the Clatteringford Bridge, the 1 in 200 year peak flood water level at Chainage 742 is noted to be at 101.76m O.D., this is not sufficiently high to overtop the Clatteringford Bridge or the access road to Rhymers Cottage on the upstream northern bank. Consequently, there is no risk of fluvial overtopping from the Clatteringford Bridge for the 1 in 200 year design storm event under normal conditions and the site is therefore not within the functional flood plain of the Leader Water.

The inclusions of the additional updated survey information by Messrs Aitken Turnbull has increased the downstream peak flood water levels at Rhymers Mill, immediately downstream of Clatteringford Bridge. The revised peak water level at Chainage 807 is modelled at 101.25m O.D., which would inundate the ground to the south of the mill building on the northern bank by 0.55m. This would be sufficient to cause inundation of the existing floor level at the mill, which is at 100.70m O.D. and presents a risk of flooding to the adjacent Rhymers Mill House. The additional survey information and re-modelling has increased confidence in the performance of the model at this downstream location.

Whilst the 1 in 200 year event, under normal conditions, does not pose a flood risk to the site, it is prudent to consider blockage of the Clatteringford Bridge as it has occurred in the past. It is in our opinion that the 2016 blockage event was exceptional and does not reflect the typical flow regime of the Leader Water at Clatteringford Bridge. Blockage scenarios for a 20% reduction in the right hand bridge arch, a 10% reduction in both arches and a 20% blockage of both arches were considered. The results of these scenarios are shown on Table A in the Appendix and show that a significant but modest blockage of the Clatteringford Bridge may result in the activation of an overland flood routing pathway from the Rhymer's Cottage access road. The flow pathway would likely convey flood waters east across the road and directly return the flood waters to the Leader Water downstream of the bridge or to flow along the confines of the bridge roadway to the north until the access road into the Austin Travel yard. At this point it would flow generally as sheet flow to the southeast and south back to the Leader Water.

It is known that the historic event, which flooded the site in 1948, was of a magnitude agreed with SEPA to be greater than the 1 in 200 year storm event. It is suspected that historic flooding of the area was most likely due overland flood routing from a breach of the river bank around, Chainage 552. In order to assess the potential flood risk from this source the best available height data for the agricultural land to the north and west of the site was obtained and reviewed.

Aerial Photography Derived 5m Digital Terrain Model (DTM) data was interrogated and spot heights extracted for the area of agricultural land to the north and west of the site, as shown on Figure A. Ground levels at the corner of the field near Chainage 552 are noted to be at 103.13m O.D. The possible activation of an overland flood route pathway from this source does not occur but is albeit marginal for the 1 in 200 year storm event, under normal conditions. The 20% right hand archway blockage and the 10% both archway blockage scenarios increase the peak water level to 103.14m O.D. for. Given the nature of the soils and likely vegetation cover within the agricultural land a 0.01m depth of water is not likely to be sufficient to generate overland flow, therefore, the risk to the site from overland flood routing from this source is considered to be Low.

In conclusion, as the peak flood water levels in and around the site are marginal with respect to the potential for the generation of overland flood routing pathways, any increase in flow or blockage is likely to generate overland flow. The inclusion of a Global Climatic Change (GCC) allowance of 20% to the inflow hydrograph, under normal conditions, increases the peak flood water levels to a point that would activate both the overtopping flood routing pathways noted previously. The results of the 1 in 200year plus 20% event are shown on Table A in the appendix.

In order to successfully develop the site it is recommended that the following requirements are met:

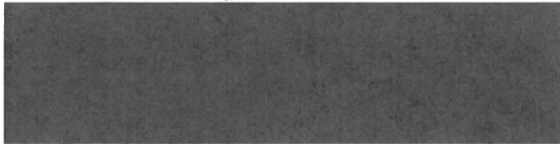
- Dry emergency pedestrian access and egress to the site is established with the higher ground to the east.
- Development profiling of any gardens and soft landscaping areas should be carried out to encourage overland flow pathways away from the proposed development and emergency access and egress routes.
- A flood routing pathway should be established from the road to the south east in line with the local topography, as this will encourage flood routing back towards the Leader Water.
- The proposed final floor level be increased to be at or above 102.1m O.D. thus preserving a freeboard of at least 600mm.



-oo000oo-

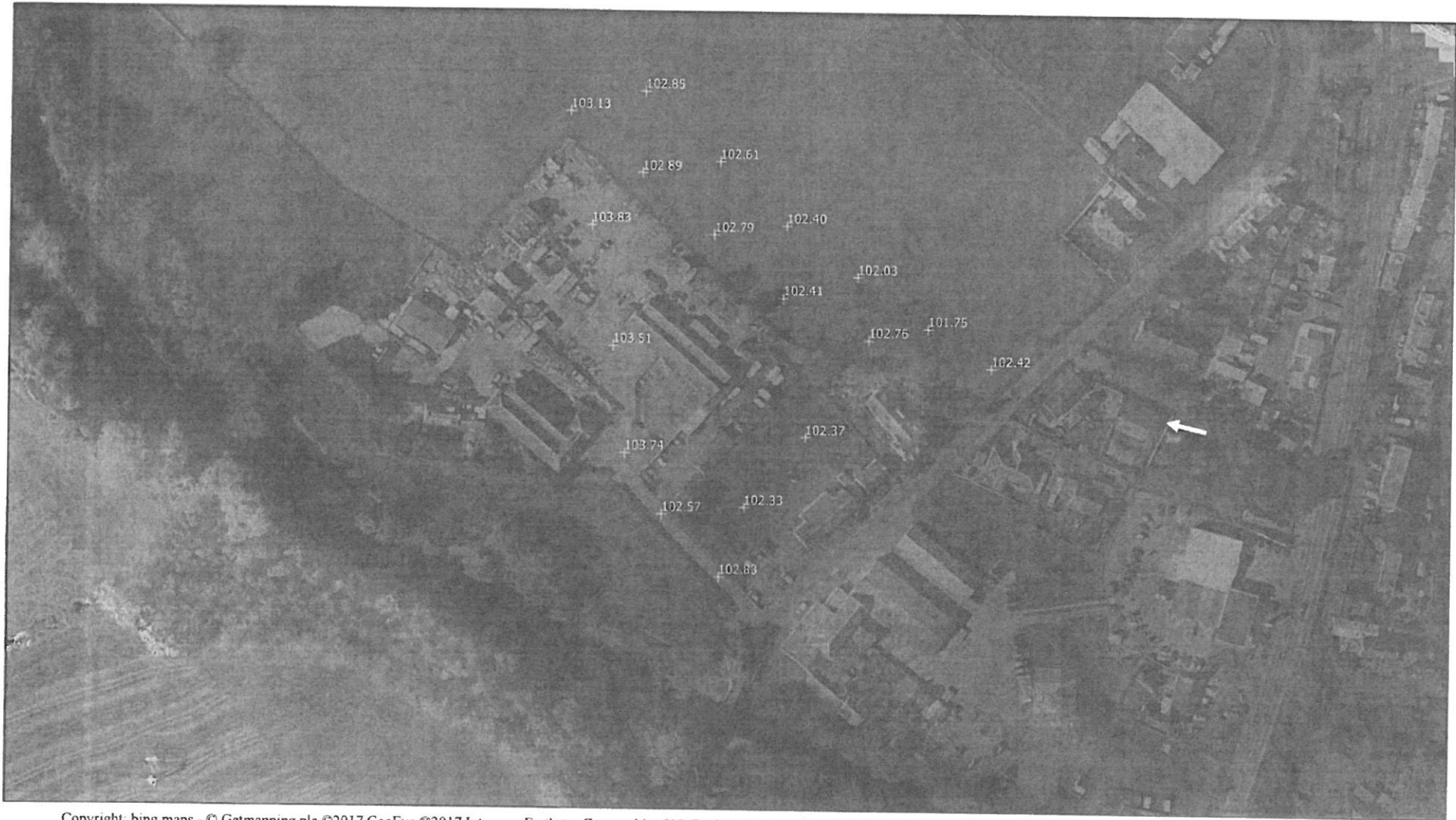
If you should wish to discuss any of the above, or have any queries, then please do not hesitate to contact me.

Yours Sincerely,




Douglas Aitken
Associate Director
Terrenus Land & Water Ltd

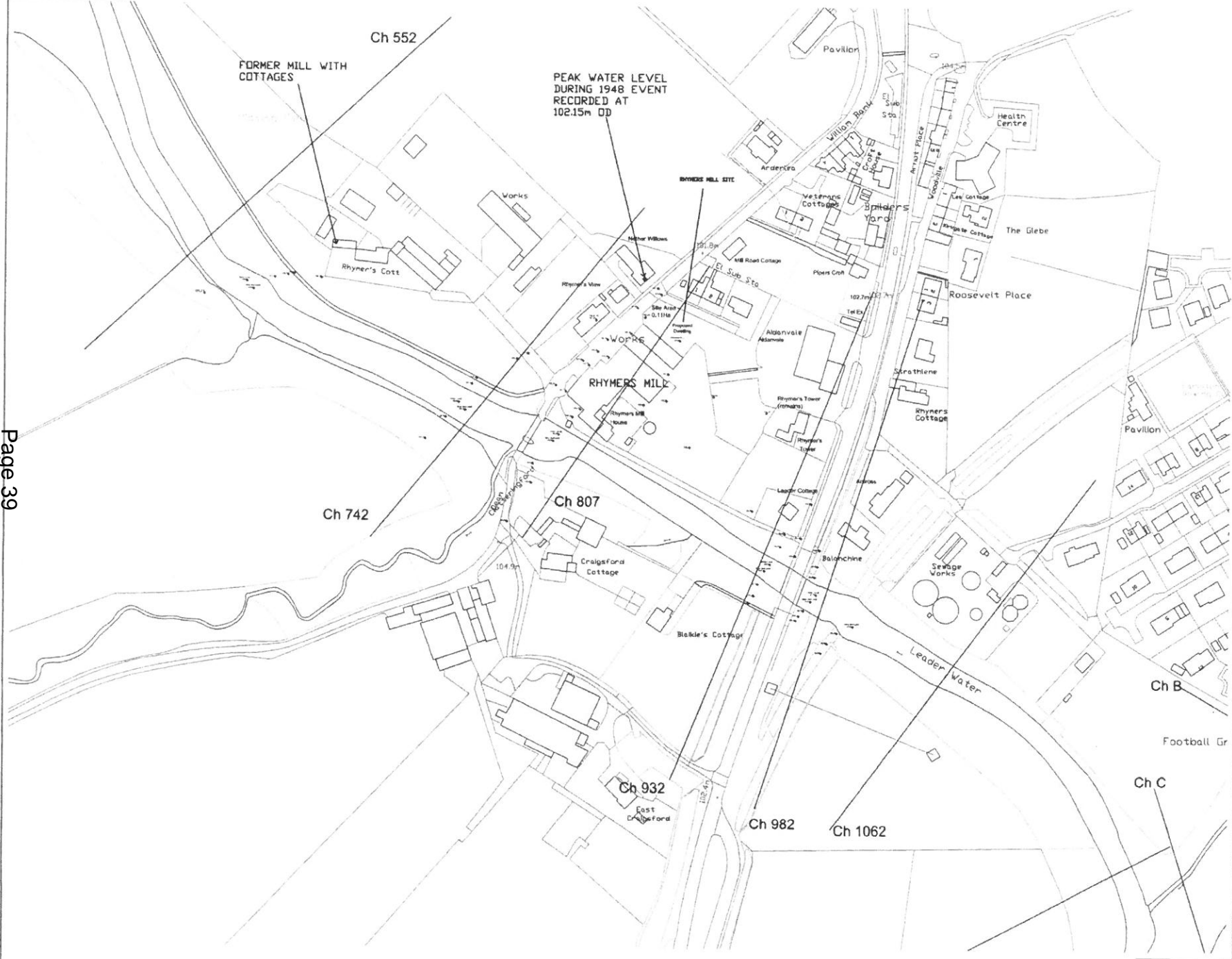
APPENDIX



Copyright: bing maps - © Getmapping plc ©2017 GeoEye ©2017 Intermap Earthstar Geographics SIO Earthstar Geographics SIO ©2017 Microsoft Corporation

Client: Austin Travel	Figure Title: Aerial Photography Derived 5m DTM Spot Height Plan	Prospect Business Centre, Hamilton International Park, Stanley Boulevard, Hamilton, G72 0BN Tel: 01698 822 533	
Project: Rhymers Mill, Earlston – Flood Risk Assessment	Figure A		
Date: 7 th April 2017		DO NOT SCALE	
Grid Ref: NT 57114 38223			
SCALE: N.T.S.			

DO NOT SCALE



- LEGEND**
- SITE BOUNDARY
 - Ch 285 MODEL CROSS SECTION
 - SPOT HEIGHT TO ORDNANCE DATUM (ADJUSTED FROM TBM BY AITKEN TURNBULL)

Page 39

No	Description	By	App	Date



Terrenus Land & Water Ltd
 Prospect Business Centre,
 Hamilton International Park,
 G72 0BN
 www.terrenus.co.uk

Client
 AUSTIN TRAVEL

Project
 RHYMERS MILL,
 EARLSTON

Drawing Title
 SITE DETAIL

Drawn DA	Checked V/H	Approved V/H
----------	-------------	--------------

Date 07-04-17	1601-205-003
Scale NTS	

ORIGINAL A3

Job No: 1601-205
Table A - FRA Model Outputs

		Peak Water Level (mOD) for Existing Ground Levels						Overland flood routing activation level	Comments
		Calibrated Nov'16 (Leader - 95.12m ³ /s)	1 in 200 year under normal conditions	1 in 200 year plus 20% under normal conditions	1 in 200 year with 20% blockage of right hand archway	1 in 200 year with 10% blockage of both archways	1 in 200 year with 20% blockage of both archways		
Leader Water	1	0	105.29	106.49	106.68	106.49	106.49	106.49	
		165	104.92	105.85	106.00	105.85	105.85	105.85	
	2	330	104.25	105.02	105.15	105.02	105.02	105.02	
		441	103.13	104.01	104.15	104.01	104.01	104.01	
	3	552	102.02	103.11	103.30	103.14	103.14	103.19	103.13
	4*	742	100.77	101.76	102.11	102.16	102.17	102.57	102
	4a	760	100.84	101.91	102.46	102.23	102.23	102.58	102
	5a	790	99.60	101.40	101.65	101.40	101.40	101.40	102
	5*	807	99.49	101.25	101.49	101.25	101.25	101.25	100.7
	6	932	99.24	100.76	100.85	100.76	100.76	100.76	
	6a	945	99.00	100.62	100.89	100.62	100.62	100.62	
	7a	965	98.95	100.41	100.67	100.40	100.40	100.41	
	7	982	98.88	100.34	100.60	100.34	100.33	100.34	
	8	1062	97.21	99.15	99.43	99.15	99.15	99.15	
	9	1222	97.00	98.97	99.24	98.97	98.97	98.97	
		1252	96.96	98.94	99.21	98.94	98.94	98.94	
		1252	96.96	98.94	99.21	98.94	98.94	98.94	
		1382	96.79	98.77	99.04	98.77	98.76	98.76	
	10	1512	96.61	98.55	98.84	98.55	98.55	98.55	
		1684	96.29	98.11	98.43	98.11	98.11	98.11	
	1857	95.77	97.34	97.65	97.34	97.34	97.34		
Turford Burn	A	0	100.55	100.55	100.61	100.55	100.55	100.55	
	B	200	98.05	98.94	99.21	98.94	98.94	98.94	
	C	320	96.96	98.94	99.21	98.94	98.94	98.94	
								98.94	Confluence with Leader Water

Key:

- No activation of possible overland flood routing pathways
- 0.01m - 0.3m or greater water depth possible for activation of overland flood routing
- 0.3m or greater water depth possible for activation of overland flood routing

From: SHerkes@scotborders.gov.uk
Sent: 26/05/2017 11:12:54
To: dburgher@aitken-turnbull.co.uk
Cc: barry@austin-travel.co.uk; aweir@aitken-turnbull.co.uk
Subject: RE: 17/00479/FUL - Contribution Letter
Email Ref: EML-INC/AT2669/20170526-113133-255
Project: AT2669
Description: Proposed New Dwelling
Location: Earlston
Client: Mr Barry Austin

David




Noted with thanks

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
Fax: 01835 825158
Email: sherkes@scotborders.gov.uk

To assist us with your enquiry, please quote the relevant Planning Reference Number in your correspondence.

 Explore the Council's new web mapping tool here	 Click here to make your planning application through the Scottish Government's online Portal Make your Building Warrant applications online from August 2016 using the Scottish Government's portal
 Please do not print this e-mail unless absolutely necessary - SAVE PAPER	

Find out more about Scottish Borders Council: [Web](#) | [Twitter](#) | [Facebook](#) | [Flickr](#) | [YouTube](#)

From: David Burgher [<mailto:dburgher@aitken-turnbull.co.uk>]
Sent: 26 May 2017 10:11
To: Herkes, Stuart
Cc: Barry Austin; Alistair Weir
Subject: RE: 17/00479/FUL - Contribution Letter

REFERENCE EML-OUT/AT2669/20170526-101033-010

Stuart

As discussed we can debate the orientation of the house and any other detail post FRA response.

I am content with the processing agreement.

David

From: Herkes, Stuart [<mailto:SHerkes@scotborders.gov.uk>]
Sent: 24 May 2017 14:55
To: David Burgher <dburgher@aitken-turnbull.co.uk>
Cc: Barry Austin <barry@austin-travel.co.uk>; Alistair Weir <aweir@aitken-turnbull.co.uk>
Subject: RE: 17/00479/FUL - Contribution Letter

David

Please find attached a draft PPA agreement. I am yet to receive advice from our Flood Prevention and SEPA but the consultation runs to 30 May, and I would thereafter need to allow a little time for me to present the application for determination. To some extent this agreement is a place-holder in that I need to allow that SEPA or Flood Prevention may seek clarification, while – as previously discussed and confirmed – I do maintain concerns with respect to the orientation of the proposed dwellinghouse, and would allow at this stage (even allowing for satisfactory resolution of the flood risk issues) that the proposal may not be supported on design grounds. However, and since I cannot pre-judge any decision-maker's views on these matters, I have also allowed within the PPA for the application to be supported, which would then require agreement thereafter, as to the type of legal agreement your client would be prepared to enter into.

I can keep the application live (undetermined) for now under this agreement (that is, beyond its target date of the end of the week), until we have the various Flood Risk Authorities responses, which hopefully should be by or before 30 May. Depending on what those responses are, I will need to review, and see whether or not any further information/clarification would be required from you.

I trust that this is in order, but please do not hesitate to contact me if you require further advice/clarification.

Regards

Stuart

Stuart Herkes MRTPI
Planning Officer (Development Management)
Regulatory Services
Scottish Borders Council

PLANNING PROCESSING AGREEMENT

This processing agreement between *Scottish Borders Council* and *Austin Travel* aims to identify the key milestones in the planning application process and sets out the information required to process the application. This processing agreement is not legally binding.

Site Address: *Land North East Of And Incorporating J Rutherford Workshop Rhymers
Mill Mill Road Earlston
Scottish Borders*

Brief description of proposal: *Erection of dwellinghouse*

Decision: Subject to the achievement of the timetable set out in this document, including provision of all necessary information by the applicant and consultees, the application will be referred to the appropriate committee of the Council no later than

APPLICATION DETAILS

Reference number	17/00479/FUL
Site Address	Land North East Of And Incorporating J Rutherford Workshop Rhymers Mill Mill Road Earlston Scottish Borders
Description of development	Erection of dwellinghouse
Application Type	Full Application
Other consents required	Building Warrant, SEPA license
Likely delegate application	No

KEY CONTACTS

The persons identified below are the key contacts between the Council and the Applicant. The key contacts will liaise regularly on the progress of the application and will contact each other as soon as possible should any matter arise which is considered likely to delay progress with processing the application. (Include names, phone numbers and email addresses)

Applicant	Austin Travel Coach & Minibus Hire 1 Station Road Earlston Scotland TD4 6BZ
Agent	Aitken Turnbull Architects Ltd 9 Bridge Place Galashiels Scottish Borders TD1 1SN admin@aitken-turnbull.co.uk
Officer	Stuart Herkes

	<i>Planning Officer</i>
Alternative Local Authority Contact	<i>Ian Aikman (Development Manager, Major Applications)</i>

AGREED ACTIONS

Action		Who/when
1	Re-consultation and Responses back from SEPA and others	Consultees by no later than 30 May 2017
2	Assuming that there is no requirement for further details to be supplied and reviewed, Planning Officer to present application for determination	Planning Officer by no later than 06 June 2017
3	In the event of refusal, Decision Notice to be issued by SBC (no legal agreement)	SBC by no later than 09 June 2017
4	In the event of approval, PPA to be revisited and extended to include appropriate provisions for the conclusion of a legal agreement (s69 or s75). If the latter, this is liable to take the date of issue of any Decision Notice beyond determination, by around 3 months (and therefore into mid September 2017). However, it would be appropriate to revisit the PPA informed by the actual circumstances, which may allow a Decision Notice to be issued more quickly. An S69 could be issued within 10 days to 2 weeks normally.	At the time of writing, it is not anticipated that the current design (principally layout) can be supported, but in the event of approval (the decision-makers' assessment is not pre-judged), there would be ulterior requirements to ensure that an appropriate legal agreement were in place to secure development contributions, which would require arrangements to be put in place for the period from determination to release of consent, which would lie beyond the end of June 2017; this requirement could be updated further to determination and consultation with Legal, and would depend upon whether or not a S69 or S75 legal agreement were ultimately to be concluded.

Signed..... On behalf of
Scottish Borders Council

Signed on behalf of

SCOTTISH BORDERS COUNCIL

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

PART III REPORT (INCORPORATING REPORT OF HANDLING)

REF : 17/00479/FUL

APPLICANT : Austin Travel

AGENT : Aitken Turnbull Architects Ltd

DEVELOPMENT : Erection of dwellinghouse

LOCATION: Land North East Of And Incorporating J Rutherford Workshop
Rhymers Mill
Mill Road
Earlston
Scottish Borders

TYPE : FUL Application

REASON FOR DELAY:

DRAWING NUMBERS:

Plan Ref	Plan Type	Plan Status
	Location Plan	Refused
	Elevations	Refused

NUMBER OF REPRESENTATIONS: 0

SUMMARY OF REPRESENTATIONS:

No representations.

Earlston Community Council: wishes to express and have its concerns noted over the possible impact on both Rhymers Avenue and houses nearby - both for residents and for access. It has also noted the comments made by SEPA and wishes to highlight the content of that response. (Earlier advice from the Community Council was withdrawn, and substituted by its advice above).

Roads Planning Section: no objections in principle but there are some issues of concern. The proposed access appears to be along Rhymers Avenue, which is a private road and is not included within the Applicant's ownership boundary. It is also narrow with no passing provision or turning area. Furthermore, the junction onto Mill Road suffers from poor visibility due to the roadside wall when looking northwards, has no radii, and does not have sufficient width for two vehicles to pass. The submitted site plan is also unsatisfactory as a minimum of two parking spaces would require to be provided within the curtilage of the plot. The site plan currently shows one full space and the second space being impinged upon by the site boundary. Until the Applicants' demonstrate an ability to upgrade the existing Rhymers Avenue to a satisfactory standard and include two parking spaces within the curtilage of the site, Roads is unable to support this proposal. It should be noted that a new access from Mill Road to serve this property is an option that is also likely to be acceptable and easier achieved.

Environmental Health Section: seeks an informative to advise with respect to the installation and operation of the proposed wood burning stove, and seeks the imposition of a suspensively-worded

planning condition to require that the potential for historic land contamination should be appropriately investigated.

Education and Lifelong Learning: seeks development contributions towards the new Earlston High School and extension of Earlston Primary School.

Flood Prevention Section: initially advised that the site is at risk from a flood event with a return period of 1 in 200 years (that is, the 0.5% annual risk of a flood occurring in any one year) and lies within the 1 in 10 year flood extent of the Leader Water, and is therefore at high risk of flooding. Given a location within the functional floodplain of the Leader Water and given compelling historical evidence of flooding, Flood Prevention objected to the proposed development on the basis that the proposal would be contrary to SPP which promotes flood avoidance (Paragraph 255) and states 'piecemeal reduction of the functional floodplain should be avoided given the cumulative effects of reducing storage capacity' (Paragraph 256). It was advised that if the Applicant could show through a Flood Risk Assessment (FRA) that the site is out with the functional floodplain and not at risk of flooding during the 1 in 200 year flood event then Flood Prevention. Further to the submission of a FRA (in reality the FRA submitted at the time of a previous planning application, 16/00385/FUL, updated with an addendum letter), and its review of the latter, Flood Prevention has responded more recently to advise that although it has spoken with the Applicant's agent (Terrenus Land and Water) on 16th May 2017, clarification of a number of points within the FRA and addendum letter, has not been forthcoming. Given the concerns with this site which have previously been detailed (within Flood Prevention's previous response on this and on the previous Planning Application, 16/00385/FUL), Flood Prevention cannot support the proposed development. This is due to the uncertainties regarding the flood risk to the site which the FRA has not adequately explained. Flood Prevention considers that the proposed site is within the functional floodplain of the Leader Water and that approval of the application would be contrary to the SPP.

SEPA: initially responded to object in principle to the application on the grounds of flood risk, maintaining the same grounds as its consultation response of 20 December 2016, which was submitted in response to the public consultation on Planning Application 16/00385/FUL. However, it is specifically advised that the limited information submitted as part of the current application does not allow SEPA to alter its advice that a dwellinghouse on this site would increase the number of people and properties at flood risk. Further to the Applicant's provision of an updated version of the FRA submitted at the time of Planning Application 16/00385/FUL, SEPA has responded more recently to advise that further to its review of the latter, it maintains its object(ion) in principle to the proposed development on the grounds that the proposal would place buildings and persons at flood risk contrary to Scottish Planning Policy. Given the location of the proposed development within the undeveloped/sparsely developed functional floodplain, SEPA does not consider that it meets with the requirements of Scottish Planning Policy and its position will not change. SEPA has a shared duty with Scottish Ministers and other responsible authorities under the Flood Risk Management (Scotland) Act 2009 to reduce overall flood risk and promote sustainable flood risk management. The cornerstone of sustainable flood risk management is the avoidance of flood risk in the first instance. SEPA's assessment and conclusions are set out within a Technical Review included within its second consultation response.

PLANNING CONSIDERATIONS AND POLICIES:

Scottish Borders Council Local Development Plan 2016

Policy PMD1: Sustainability

Policy PMD2: Quality Standards

Policy PMD5: Infill Development

Policy HD3: Residential Amenity

Policy EP16: Air Quality

Policy IS2: Developer Contributions

Policy IS7: Parking Provision and Standards

Policy IS8: Flooding

Policy IS9: Waste Water Treatment Standards and Sustainable Urban Drainage

SBC Supplementary Planning Guidance: Development Contributions (approved April 2015)

Recommendation by - Stuart Herkes (Planning Officer) on 7th June 2017

SITE DESCRIPTION AND PROPOSED DEVELOPMENT

This application proposes a new dwellinghouse within the northwestern section of the curtilage of the former premises of J Rutherford's vehicular sales and repair business within the Development Boundary at Earlston. Although an established mixed use business premises, the site is not allocated or safeguarded for business and industrial use within the Adopted Local Development Plan. An earlier version of this application was withdrawn last year following SEPA's maintenance of its objection in principle on the grounds of unacceptable flood risk impacts.

The particular site in question occupies something of a transitional area between residential properties to the north and west, and the remainder of the Rutherfords business premises to the east and south. The site includes an existing former Rutherfords workshop building which is specifically included within the site boundary of the proposed residential property. The latter is not itself proposed for conversion to a dwellinghouse, and would be fundamentally unsuitable for such a proposal. Instead, the application proposes a new-build dwellinghouse, which would be sited in the northeastern section of the site, aligned to the residential street to the north, Rhymers Avenue. Accordingly it is understood that the proposed residential property would be constituted by the proposed new dwellinghouse and the existing workshop building. No details are given with respect to the proposed landscaping. Access is shown to be from the northeast corner of the site, directly from Rhymers Avenue, where one full and one truncated parking space are indicated.

PLANNING PRINCIPLE

In as much as (i) the site lies within the Development Boundary, (ii) is not allocated for any specific use within the statutory development plan, (iii) is capable of being accessed directly and separately from the public road and (iv) prevails within an area that includes residential development, I would not consider that the proposal raises any concerns in principle. However, there are nonetheless specific aspects of the development that are objectionable.

FLOOD RISK

A previous planning application (16/00385/FUL) for a different version of the proposal was withdrawn because SEPA objected in principle to the development on the grounds that development would have unacceptable flood risk impacts. The Applicant has provided an updated version of the Flood Risk Assessment (FRA) previously submitted at the time of Planning Application 16/00385/FUL. This includes an addendum letter which sets out details of steps taken to revise the hydraulic model developed for the FRA and is intended to address concerns raised by the flood prevention authorities within their consultation responses which were provided at the time of their review of the FRA provided in support of Planning Application 16/00385/FUL. Additionally, topographic survey has been undertaken and additional hydrometric data obtained from SEPA. However, further to its review of these updated details, SEPA maintains its objection in principle to the development of the site on the grounds that any dwellinghouse so sited, would be liable to unacceptable flood risk. These concerns are shared by the Council's own Flood Prevention Section. In light of these statutory consultees' advice that the site cannot be developed acceptably in flood risk terms, the proposal cannot be supported, and the planning application should be refused.

INDUSTRIAL BUILDING

It is unclear how the existing workshop building would be incorporated into the proposed residential property and it could continue in use as a business premises. Depending upon how it is operated, this has potential to impact unacceptably upon the amenity of the proposed dwellinghouse.

In the event of the proposal otherwise having been capable of support, it would have been appropriate to have established with the Applicant what the proposed use of this building would have been. There may also have been some potential to require by planning condition that the two buildings be retained within the same planning unit.

However, in the absence of any information from the Applicant about the proposed workshop use and operation within the proposed residential property, it remains possible that the operation of the workshop would be liable to have unacceptable impacts upon the residential amenity of the proposed dwellinghouse. This would therefore need to be included among the reasons for the application's refusal.

COMPOSITION, LAYOUT AND ORIENTATION

The siting and orientation of the proposed dwellinghouse on the site also raises concerns. The proposed dwellinghouse would have been more satisfactorily accommodated within an L-shaped footprint, predominantly fronting onto Mill Road, while adhering to the same building line as the existing buildings to the southwest, which also front the public road. This would have reconciled its orientation with both the aforementioned existing workshop building and the majority of the surrounding streetscape which fronts one or other side of Mill Road. Instead, the proposed alignment of the house with Rhymers Avenue would establish a new building line, and would in its relationship to the existing workshop building, give the site a notably splayed layout. Within this awkward relationship between the site's two buildings, there would be no internal coherence. The site would in fact be centred on an open central area between the two buildings which has to this point, no description or explanation as to how or why such an area would be necessary or how it would be configured to 'tie' the site together. In short, the site would be liable to appear to be something of an 'awkward corner' left over between two buildings whose coexistence within the same site would be liable to appear fundamentally contrived and awkward. Given that this could have been addressed directly within the proposed design, it is an unsympathetic and, I consider, unacceptable feature of the current version of the proposal.

Alignment of the majority of the house with Mill Road would also see the proposed dwellinghouse more satisfactorily accommodated relative to the properties in Rhymers Avenue which, if the development were realised as proposed, would be confronted with the entire building's lengthwise elevation in front of their principal views. While I would not consider the relationship between the proposed dwellinghouse and its neighbours liable to be unacceptable in terms of its impacts upon the amenity of any surrounding properties, I would nonetheless note that the residential amenity of these neighbouring properties would still be more appropriately conserved if the proposed building were moved to the northwest, and realigned southwest to northeast so as to front Mill Road. This would reduce the extent of building that would face directly towards Rhymers Avenue, to a more ancillary elevation. Such an arrangement would also be liable to help screen views from the public road (Mill Road) of any parking or turning areas, to the rear of the property, particularly if an L-shaped footprint were used.

Taking account of all of these factors, I consider that the site could have been laid out more sympathetically to the character of the site and surrounding area, and that the proposed siting and layout of the property lacks coherence in itself and would appear discordant and incongruous relative to the surrounding streetscape. The proposal would have the appearance of two buildings of notably different character, misaligned to one another around an inexplicable central open space. The cumulative effect would be, I consider, objectionable in its lack of coherence internally and in its unsympathetic relationship to its surroundings (as manifest within the proposed composition, layout, and orientation of the site). All in all, this would be a decidedly incongruous form of development in its character and in its relationship to the surrounding streetscape, and I consider, should be refused on this basis.

ACCESS AND PARKING

The Roads Planning Section has expressed its concern - and on the basis of a lack of information, also its objection - that the site might be accessed directly from Rhymers Avenue, which is a private road. Roads considers that it should instead be accessed from Mill Road, the public road. Roads allows that it might be persuaded by new or additional information from the Applicant, specifically any reassurance that the Applicant can provide to demonstrate that it could use and upgrade the existing access from Rhymers Avenue to Roads' specification. However, the Applicant has not to this point, provided any advice to this effect. Nor has it revised its parking provision layout to address Roads' concern that sufficient provision for two parking spaces be accommodated (as opposed to one of the identified spaces being truncated by the

site boundary). Given that none of these issues has been addressed to Roads' satisfaction, it is therefore reasonable to understand that Roads' objection on these points still stands, and is reasonably included amongst the reasons for refusal.

Theoretically the Applicant's existing layout would still allow access to be taken from Mill Road and space could be found for two parking spaces, all of which could be made a requirement of condition, in the event of approval. It is also possible that any parking provision accessible from Mill Road, could still be accommodated to the rear of any building fronting Mill Road (through the use of a path or driveway leading to rear, for example); albeit that this would only be possible within a revised design proposal. However, unless these matters were resolved within a considered revised layout, it is not apparent that the Applicant could address all matters to both the satisfaction of both Roads and the Planning Authority. It is also material that the Applicant has not to this point, provided any revised or alternative details to address these concerns. Further, and notwithstanding the above, it is also not clear even if the Applicant could carry out improvements to the private access to address Roads' concerns, whether these improvements could then be maintained in future. (Maintenance is liable to be entirely at the discretion of the owner(s) of the private access, and therefore beyond the direct control of the Applicant). All in all, it is unclear whether or not the access and parking concerns identified by Roads, could be addressed to the satisfaction of Roads, and therefore to the satisfaction of the Planning Service. Accordingly, I would consider that the application should also be refused on the basis of the access and parking concerns identified by Roads.

DESIGN OF DWELLINGHOUSE

Although I consider that the layout of the site and orientation of the dwellinghouse are objectionable per se, I would advise that the proposed design approach for the dwellinghouse itself does not raise any particular concerns, notwithstanding a need to consider its adaptation to address some of the concerns noted above - had it indeed been appropriate to seek its re-siting and re-orientation. However, as a building which would only have an immediate relationship with workshops on adjacent land, the proposal that it should have the form of a converted traditional outbuilding works sufficiently well as a design concept, and its adaptation might have been usefully sought had there not been objections in principle to the site's development on flood risk grounds. I would however express reservations with respect to certain aspects: specifically the over-use of patio-type doors and the lack of any porch or other obvious entrance feature. However, these are relatively minor points that might otherwise have been appropriately resolved in discussion with the Applicant, had the proposal otherwise been capable of being supported.

Due to the distance of set back and its confrontation of the public elevations of the properties on Rhymers Avenue and Mill Road, I would not consider that the relationship between the proposed dwellinghouse and its neighbours, would be liable to be unacceptable with respect to impacts upon residential amenity. However, there are some unknown aspects in this respect. There are proposals within the FRA that the finished floor level should be above a particular height but the implications of this relative to the existing levels on the site and the levels within the surrounding streetscape are not addressed. In other circumstances, it would have been appropriate to have clarified the implications of this for the development given the potential for the new house to be raised to a more significant height than the description of the Proposal Drawings indicate, with potential consequences with respect to the appearance of the site, the residential amenity of surrounding properties, and the potential for the building to be out of alignment vertically with surrounding buildings, adding to the discordant character of the development already noted above with respect to the site's layout and the proposed dwellinghouse's orientation. However, this is not a matter that the Applicant has sought to provide full details on, and it is unclear whether or not there would be any unacceptable impacts upon the residential amenity of any surrounding properties, or upon the general visual amenities of the area, as a consequence of the house being raised to any significant height above the existing and surrounding ground levels. Again, had this been the only concern, it would have been appropriate to have referred this matter back to the Applicant for clarification.

OTHER CONCERNS

While some matters may have been addressed by condition in the event of approval (such as boundary features, landscaping, as well as provision of parking spaces), there is a general lack of details with respect to the proposal, which is at best, unhelpful in communicating how the site might have been laid out. However, the concerns noted with respect to the siting of the house and layout of the property, are so significant that these would not have been appropriately mitigated through any matters that might otherwise have been regulated under the requirements of any conditions.

In the event of approval, Environmental Health's concerns would be capable of being addressed by conditions and informatives along the lines it recommends. Other concerns such as drainage and water supply could be appropriately regulated under standard planning conditions.

CONCLUSION

In summary, I am not supportive of this proposal on the basis of the flood risk impacts; the inclusion of a workshop building that would be liable to dominate the site (and which would challenge even the proposed dwellinghouse); the unsympathetic siting of the house and layout of the proposed residential property, which would conflict with the character of the site and surrounding streetscape; and the lack of appropriate provision for the accommodation of parking and access at the site. As noted above, there are other areas of concern, such as finished levels, but the lack of information provided in support of the application does not allow any view to be taken as to whether or not these would or would not have been acceptable in terms of their impacts.

REASON FOR DECISION :

It is considered that the proposal should be refused for the following reasons:

- (1) The proposal does not comply with Adopted Local Development Plan Policy IS8 and Scottish Planning Policy in that the site is subject to a significant flood risk and the development would be both at significant risk of flooding and would materially increase the probability of flooding elsewhere;
- (2) The proposal in the positioning of the dwellinghouse and the overall site layout, does not comply with Adopted Local Development Plan Policies PMD2 and PMD5 in that it would not respect the character of the surrounding area and neighbouring built form;
- (3) The proposal does not comply with Adopted Local Development Plan Policies PMD2 and IS7 in that the access arrangements are unsuitable to serve the development and inadequate provision has been made for the accommodation of the parking of two vehicles within the curtilage of the site, such that there would be adverse impacts upon road safety; and
- (4) The proposal does not comply with Adopted Local Development Plan Policies PMD5 and HD3 in that the operation of the workshop building in such close proximity to the proposed dwellinghouse has potential to have unacceptable impacts upon the residential amenity of the occupants of the proposed dwellinghouse.

Recommendation: Refused

- 1 The proposal does not comply with Adopted Local Development Plan Policy IS8 and Scottish Planning Policy in that the site is subject to a significant flood risk and the development would be both at significant risk of flooding and would materially increase the probability of flooding elsewhere.
- 2 The proposal in the positioning of the dwellinghouse and the overall site layout, does not comply with Adopted Local Development Plan Policies PMD2 and PMD5 in that it would not respect the character of the surrounding area and neighbouring built form.
- 3 The proposal does not comply with Adopted Local Development Plan Policies PMD2 and IS7 in that the access arrangements are unsuitable to serve the development and inadequate provision has been made for the accommodation of the parking of two vehicles within the curtilage of the site, such that there would be adverse impacts upon road safety.
- 4 The proposal does not comply with Adopted Local Development Plan Policies PMD5 and HD3 in that the operation of the workshop building in such close proximity to the proposed dwellinghouse has potential to have unacceptable impacts upon the residential amenity of the occupants of the proposed dwellinghouse.

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

Our ref: PCS/152396
Your ref: 17/00479/FUL

If telephoning ask for:
Paul Lewis

19 April 2017

Stuart Herkes
Scottish Borders Council
Planning & Economic Development
Council Headquarters
Newtown St Boswells
Melrose
TD6 0SA

By email only to: dcconsultees@scotborders.gov.uk

Dear Mr Herkes

Town and Country Planning (Scotland) Acts
Planning application: 17/00479/FUL
Erection of dwellinghouse.
Land North East of and Incorporating J Rutherford Workshop Rhymers Mill, Mill Road, Earlston, Scottish Borders.

Thank you for your consultation which SEPA received on 03 April 2017.

Advice for the planning authority

We **object** to this planning application in principle on the grounds of flood risk.

We objected in principle to a previous application for a dwelling house on this site. Please see our response of 20 December 2016 (our reference PCS/150362) to planning application 16/00385/FUL.

The limited information submitted as part of the current application does not allow us to alter our advice that a dwelling house on this site would increase the number of people and properties at flood risk.

If you have any queries relating to this letter, please contact me by telephone on 0131 273 7334 or e-mail at planning.se@sepa.org.uk.

Yours sincerely

Paul Lewis
Senior Planning Officer
Planning Service

Continued....



Chairman
Bob Downes
Page 53
Chief Executive
Terry A'Hearn

SEPA Edinburgh Office
Silvan House, 3rd Floor, 231 Corstorphine Road,
Edinburgh EH12 7AT.
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Disclaimer

This advice is given without prejudice to any decision made on elements of the proposal regulated by us, as such a decision may take into account factors not considered at this time. We prefer all the technical information required for any SEPA consents to be submitted at the same time as the planning or similar application. However, we consider it to be at the applicant's commercial risk if any significant changes required during the regulatory stage necessitate a further planning application or similar application and/or neighbour notification or advertising. We have relied on the accuracy and completeness of the information supplied to us in providing the above advice and can take no responsibility for incorrect data or interpretation, or omissions, in such information. If we have not referred to a particular issue in our response, it should not be assumed that there is no impact associated with that issue. For planning applications, if you did not specifically request advice on flood risk, then advice will not have been provided on this issue. Further information on our consultation arrangements generally can be found on our [website planning pages](#).

Our ref: PCS/152943
Your ref: 17/00479/FUL

If telephoning ask for:
Paul Lewis

5 June 2017

Stuart Herkes
Scottish Borders Council
Planning & Economic Development
Council Headquarters
Newtown St Boswells
Melrose
TD6 0SA

By email only to: dcconsultees@scotborders.gov.uk

Dear Mr Herkes

Town and Country Planning (Scotland) Acts
Planning application: 17/00479/FUL
Erection of dwellinghouse
Land North East of and Incorporating J Rutherford Workshop, Rhymers Mill, Mill Road, Earlston, Scottish Borders.

Thank you for your consultation which SEPA received on 09 May 2017.

Advice for the planning authority

We **maintain our object in principle** to the proposed development on the grounds that it will place buildings and persons at flood risk contrary to Scottish Planning Policy.

Given the location of the proposed development within the undeveloped/sparsely developed functional floodplain, we do not consider that it meets with the requirements of Scottish Planning Policy and our position will not change. We have a shared duty with Scottish Ministers and other responsible authorities under the Flood Risk Management (Scotland) Act 2009 to reduce overall flood risk and promote sustainable flood risk management. The cornerstone of sustainable flood risk management is the avoidance of flood risk in the first instance.

In the event that the planning authority proposes to grant planning permission contrary to this advice on flood risk, the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009 provides criteria for the referral to the Scottish Ministers of such cases. You may wish to consider if this proposal falls within the scope of this Direction.

Notwithstanding this position we have included our review of the information supplied. Provision of this review does not imply that we consider there to be a technical solution to managing flood risk at this site which meets with Scottish Planning Policy.



1. Flood Risk

Summary

- 1.1 We have received a revised flood risk assessment (FRA) in support of the erection of a single dwelling at Rhymers Mill in Earlston. The initial FRA entitled "Rhymers Mill, Earlston" dated 2nd December 2016, report number 1604-205, was submitted in support of the withdrawn application, 16/00385/FUL. For completeness we refer you to the original FRA.
- 1.2 We maintain our objection in principle to this application for a dwelling on this site. The site was subjected to flooding during the August 1948 event which we believe is a 0.5% annual probability (AP) event and, therefore, the site falls within the functional floodplain. Further details regarding the estimated return period of the August 1948 event can be found in our response of 20 December 2016 (our reference PCS/150362), particularly section 3. Scottish Planning Policy (SPP) clearly states that the planning system should promote flood avoidance by locating development away from the functional floodplain and medium to high risk areas (paragraph 255 of SPP). We have a shared duty with Scottish Ministers and other responsible authorities under the Flood Risk Management (Scotland) Act 2009 to reduce overall flood risk and promote sustainable flood risk management. The cornerstone of sustainable flood risk management is the avoidance of flood risk in the first instance. Enabling this development will increase the number of properties and people at risk of flooding, contrary to SPP and our shared duties under the Flood Risk Management (Scotland) Act 2009.
- 1.3 Furthermore we believe that the FRA shows that the site lies within the functional floodplain. Ignoring all the uncertainties regarding the hydrology, topographic information and roughness values used within the FRA, it is best practice to include a degree of blockage in any structure when determining the functional floodplain; as outlined within our "Technical Guidance for Stakeholders". We would have expected Terrenus to use the predicted flood level of 102.57mAOD as the 200 year event which includes 20% blockage of the bridge. Using a flood level of 102.57mAOD (0.5% AP event with 20% bridge blockage) would result flood water overtopping Mill Road and onto the development site. Therefore, even with significant issues with the hydraulic model the site falls within the functional floodplain hence another reason for our continued objection in principle. Notwithstanding this position we have included our review of the information supplied and the reasoning's why the FRA under predicts the risk of flooding at the site.

Technical Review

- 1.4 Firstly, we would highlight a significant inaccuracy within the revised flood risk assessment. Terrenus state that SEPA agrees that the August 1948 flood event was of a magnitude greater than 1 in 200 years. This is erroneous and we have consistently stated that the August 1948 event was a 0.5% AP (1 in 200 year) flood event within all our previous responses. The site flooded during this event to a depth of around 0.55m and therefore the site falls within the functional floodplain hence our continued objection in principle.
- 1.5 One of the largest uncertainties for assessing the risk of flooding to this site is the hydrology. We previously highlighted that our gauging station on the Leader Water in Earlston is bypassed by flows just above Qmed and therefore there is significant uncertainty attached to the high flow rating. As explained within our response of 20 December 2016, we would have expected the consultant to extend the high flow rating using the hydraulic

model. This has not been undertaken and there remains significant uncertainty over the hydrology used within the hydraulic model.

- 1.6 As outlined in our response of December 2016 (our reference PCS/150362), we had serious concerns regarding the accuracy of the cross sectional information. As a result, additional topographic information has been obtained by Terrenus on 27 March 2017 and this has found that the topographic information contained within the original FRA by Terrenus (dated December 2016) was inaccurate. For example the bed level at cross section 742 (adjacent to the site) was originally modelled as 97.5mAOD, but using the updated survey information the bed is now 98.5mAOD; or, 1m higher. At section 982, the new survey information has the bed level of the Leader Water 2m higher than used within the original FRA. Interestingly, the bank and floodplain spot levels remain unchanged. The impact of having a higher bed level will mean a decrease in the channel size and in turn conveyance capacity resulting in higher flood levels and more frequent and extensive flooding
- 1.7 We would highlight that only a small area has been resurveyed as shown on drawing number 1601-205-003 entitled "Site Detail". Cross sectional details outwith the recently surveyed reach (both upstream and downstream of the site) are derived from Aerial photography DTM and will be inaccurate. As well as the examples described in section 3 above, floodplain topographic information will be incorrect. For example, a spot level taken to the south west of Rhymers View via a topographic survey is shown to be 101.9mAOD and the same spot is 102.83mAOD on the aerial photography DTM. This will ultimately affect the accuracy of the results in the hydraulic model and predicted flood extent. Photogrammetry has a use in undertaking indicative flood mapping but should not be used for site specific flood risk assessments where accurate flood levels and safe finished floor levels are required.
- 1.8 No revised cross sectional information has been provided and therefore we are unsure whether the cross sectional information has been altered within the hydraulic model. Review of the revised predicted 0.5% AP flood levels, generally flood levels have increased slightly compared to the December 2016 flood levels apart from cross section 552 where there has been a 100mm decrease which is unexpected.
- 1.9 The consultants have tried to increase the confidence in the hydraulic model by calibrating the model to the November 2016 flood event. It is best practice to calibrate hydraulic model, but it is more important to have accurate topographic information used within the model which does not appear to be the case in this hydraulic model.
- 1.10 No photographs have been provided of the November 2016 event within the report. Two flood levels have been established: one at section 552; and another at 742. The November 2016 flood level at section 552 was 102mAOD and at 742 the flood level was 100.8mAOD. Extremely limited out of bank topographic spot levels have been taken as shown on drawing 1601-205-003 and therefore it is likely the consultant has interpolated levels between two surveyed points to estimate the flood level which is not best practice. We would have expected the surveyors to take a specific level at the trash line as this is far more accurate than interpolating levels.
- 1.11 Initial calibration results showed that the hydraulic model was under predicting flood levels. To increase flood levels, blockage of the bridge was then included with the right archway blocked by 64% and the left archway blocked by 19%. Blockage to this degree is significant, however due to the nature of the catchment with tree lined banks, it is possible. We acknowledge that calibrating the hydraulic model in this area will be difficult as establishing

the degree of blockage on the bridge during the November 2016 event is near impossible. One modelling parameter which should be adjusted when calibrating the hydraulic model is roughness and we previously stated that the roughness values used within the hydraulic model were too low (section 11 of our response dated 20 December 2016, reference PCS/150362). By having more realistic roughness values, i.e. increasing the roughness, the flood levels would in turn increase.

- 1.12 In the conclusion of the revised FRA, it is stated that without constriction of Clatteringsford Bridge, the flood level at 742 is 101.76mAOD. This statement could be misleading as it could imply that the bridge has not been included within the hydraulic model as the bridge naturally acts as a constriction on flows. We presume that the consultant means that the 0.5% AP flood level with no blockage on Clatteringsford Bridge is 101.76mAOD. Ignoring all the uncertainties regarding the hydrology, topographic information and roughness values, we would have expected Terrenus to use the predicted flood level of 102.57mAOD as the 0.5% AP event. This 200 year flood level is derived when both archways are blocked by 20%. As outlined within section 4.9 of our "Technical Flood Risk Guidance for Stakeholders", *'it is the view of SEPA that all land liable to flooding during a flood event up to and including the 200 year flood, even if caused by the blockage of a structure should be considered functional floodplain.'* There is clearly a history of blockage on this bridge and therefore a degree of blockage should be included within the bridge when determining the functional floodplain. Using a flood level of 102.57mAOD (0.5% AP event with 20% bridge blockage) would result flood water overtopping Mill Road and onto the development site. Therefore, even with significant issues with the hydraulic model (topographic information, roughness and hydrology), the site falls within the functional floodplain hence another reason for our continued objection in principle.
- 1.13 As well as direct flooding from the Leader Water at Clatteringsford Bridge, another flow path could exist which has not accurately been assessed. Between sections 0 to 552, the left bank is significantly lower and there is significant out of bank flow. For example at section 330 there will be 1m depth out of bank flow on the left bank (flood level of 105.02mAOD and bank level of 104.1mAOD). There is a risk of this flood water reaching the site via overland flow. Although the consultants have looked into this risk for section 552 (see comments below), this source of flooding has not been assessed for out of bank flow at the upstream sections. Based upon the review of figure A, spot levels at the 'works' are higher than surrounding ground levels and therefore a flow path could exist to the north of this area and enter the site via Mill Road at Nether Willows.
- 1.14 To assess the likely flow path at section 552, Terrenus have again used aerial photography DTM. As highlighted above in this response, it is clear that spot levels derived from the aerial photography DTM are overestimated and a topographic survey is required to accurately measure the topography in this area. Furthermore, we have serious concerns with regards to the accuracy of the 0.5% AP flood level at section 552. Although the bed levels of the cross sections within the model have increased by between 1 to 2m, the flood level at section 552 has reduced by 100mm compared to the December 2016 FRA flood levels. This is inconstant with every other cross section flood level which have all increased in light of the higher bed levels of the Leader Water.
- 1.15 The consultant proposed a finished floor level for the property of 102.1mAOD. This is lower than the August 1948 flood level and we cannot support it. We therefore continue to object in principle to this planning application.

Caveats & Additional Information for Applicant

- 1.16 Please note that we are reliant on the accuracy and completeness of any information supplied by the applicant in undertaking our review, and can take no responsibility for incorrect data or interpretation made by the authors.
- 1.17 The advice contained in this letter is supplied to you by SEPA in terms of Section 72 (1) of the Flood Risk Management (Scotland) Act 2009 on the basis of information held by SEPA as at the date hereof. It is intended as advice solely to Scottish Borders Council as Planning Authority in terms of the said Section 72 (1). Our briefing note entitled: "*Flood Risk Management (Scotland) Act 2009: Flood risk advice to planning authorities*" outlines the transitional changes to the basis of our advice inline with the phases of this legislation and can be downloaded from www.sepa.org.uk/planning/flood_risk.aspx

If you have any queries relating to this letter, please contact me by telephone on 0131 273 7334 or e-mail at planning.se@sepa.org.uk.

Yours sincerely

Paul Lewis
Senior Planning Officer
Planning Service

ECopy to:

Stuart Herkes, Scottish Borders Council – SHerkes@scotborders.gov.uk

Disclaimer

This advice is given without prejudice to any decision made on elements of the proposal regulated by us, as such a decision may take into account factors not considered at this time. We prefer all the technical information required for any SEPA consents to be submitted at the same time as the planning or similar application. However, we consider it to be at the applicant's commercial risk if any significant changes required during the regulatory stage necessitate a further planning application or similar application and/or neighbour notification or advertising. We have relied on the accuracy and completeness of the information supplied to us in providing the above advice and can take no responsibility for incorrect data or interpretation, or omissions, in such information. If we have not referred to a particular issue in our response, it should not be assumed that there is no impact associated with that issue. For planning applications, if you did not specifically request advice on flood risk, then advice will not have been provided on this issue. Further information on our consultation arrangements generally can be found on our [website planning pages](#).

EARLSTON COMMUNITY COUNCIL



Stuart Herkes
Scottish Borders Council
Planning & Economic Development
Council Headquarters
Newtown St Boswells
Melrose
TD6 0SA

01 May 2017

Dear Mr Herkes

Re: Planning application: 17/00479/FUL

Erection of dwelling house J Rutherford Workshop and Land North East of J Rutherford Workshop, Rhymers Mill, Earlston, Scottish Borders

The above planning application was discussed at the Earlston Community Council meeting on Thursday 20th April 2017.

Scottish Borders Council requested our observations on the application and they are as follows:

The Community Council wishes to express and have our concerns noted over the possible impact on both Rhymers Avenue and houses nearby - both for residents and for access.

The Community Council have also noted the comments made to Scottish Borders Council by SEPA and wish to highlight the content of that response.

Yours sincerely

Mrs S M Gibb
Secretary
Earlston Community Council

ENVIRONMENT AND INFRASTRUCTURE

To: HEAD OF PLANNING AND REGULATORY SERVICE

FAO: Stuart Herkes **Your Ref:** 17/00479/FUL

From: HEAD OF ENGINEERING & INFRASTRUCTURE **Date:** 5th April 2017

Contact: Lauren Addis **Ext:** 6517 **Our Ref:** B48/2313

Nature of Proposal: Erection of dwellinghouse
Site: Land north east of and incorporating J Rutherford Workshop, Rhymers Mill, Mill Road, Earlston, Scottish Borders

In terms of information that this Council has concerning flood risk to this site, I would state that The Indicative River, Surface Water & Coastal Hazard Map (Scotland) known as the “third generation flood mapping” prepared by SEPA indicates that the site is at risk from a flood event with a return period of 1 in 200 years. That is the 0.5% annual risk of a flood occurring in any one year.

The Indicative River & Coastal Flood Map (Scotland) has primarily been developed to provide a strategic national overview of flood risk in Scotland. Whilst all reasonable effort has been made to ensure that the flood map is accurate for its intended purpose, no warranty is given.

Due to copyright restrictions I cannot copy the map to you however, if the applicant wishes to inspect the maps they can contact me to arrange a suitable time to come in and view them.

Review of the application shows that the proposed site lies within the 1 in 10 year flood extent of the Leader Water and therefore at high risk of flooding. Earlston has a long history of flooding from the Leader Water and Trufford Burn, with the flood event of 2002 inundating the garden ground of Rhymers Mill Cottage. This area was also affected by flooding in 1948, 1984 and 2012. Given the location of the proposed development within the functional floodplain and compelling historical evidence of flooding I object to the proposed development on the basis that the proposal is contrary to SPP which promotes flood avoidance (Paragraph 255) and states ‘piecemeal reduction of the functional floodplain should be avoided given the cumulative effects of reducing storage capacity’ (Paragraph 256).

If the applicant can show through a Flood Risk Assessment that the site is out with the functional floodplain and not at risk of flooding during the 1 in 200 year flood event then I would be in a position to remove my objection. However I would note that undertaking an FRA may only further support the evidence indicating the site is at risk of flooding. It should also be noted that an FRA for a new dwellinghouse on this site was recently submitted in December 2016.

Please note that this information must be taken in the context of material that this Council holds in fulfilling its duties under the Flood Risk Management (Scotland) Act 2009.

**Lauren Addis
Technician
Flood Risk and Coastal Management**

Consultation Reply



ENVIRONMENT AND INFRASTRUCTURE

To: HEAD OF PLANNING AND REGULATORY SERVICE

FAO: Stuart Herkes

Your Ref: 17/00479/FUL

From: HEAD OF ENGINEERING & INFRASTRUCTURE

Date: 6th June 2017

Contact: Lauren Addis

Ext: 6517

Our Ref: B48/2313

Nature of Proposal: Erection of dwellinghouse
Site: J Rutherford Workshop and land north east of J Rutherford Workshop
Rhymers Mill, Earlston, Scottish Borders

Further to our previous response for this application an addendum letter has been provided in support of the Flood Risk Assessment, completed by Terrenus Land and Water, provided for a previous application at this site (16/00385/FUL).

The addendum letter provides details of steps taken to revise the hydraulic model developed for the FRA and address concerns raised in our previous consultation response. A topographic survey has been undertaken and additional hydrometric data obtained from SEPA.

Having spoken with Terrenus Land and Water on 16th May 2017, clarification of a number of points within the FRA and addendum letter has not been forthcoming. Given the concerns with this site which have been detailed my previous response to this application and application 16/00385/FUL, I find I cannot support the proposed development due to the uncertainties regarding the flood risk to the site which the FRA has not adequately explained. It is my opinion that the proposed site is within the functional floodplain of the Leader Water and that approval of the application would be contrary to SPP.

I also note that SEPA have maintained their objection to the proposal and highlight a number of issues with the content of the Flood Risk Assessment.

Please note that this information must be taken in the context of material that this Council holds in fulfilling its duties under the Flood Risk Management (Scotland) Act 2009.

Lauren Addis
Technician
Flood Risk & Coastal Management

REGULATORY SERVICES



To: **Development Management Service**
FAO Stuart Herkes

Date: 12 April 2017

From: **Roads Planning Service**
Contact: **Keith Patterson**

Ext: 6637

Ref: 17/00479/FUL

**Subject: Erection of Dwellinghouse, Land North East of And
Incorporating J Rutherford Workshop, Rhymers Mill, Mill
Road, Earliston.**

Whilst I have no objections in principle to this proposal, there are some issues that concern me. The proposed access appears to be along Rhymers Avenue, which is a private road and is not included within the applicant's ownership boundary. It is also narrow with no passing provision or turning area. Furthermore, the junction onto Mill Road suffers from poor visibility due to the road side wall when looking northwards, has no radii and does not have sufficient width for two vehicles to pass. The submitted site plan is also unsatisfactory as I require a minimum of two parking spaces to be provided within the curtilage of the plot, the site plan currently shows one full space and the second space being impinged upon by the site boundary.

Until the applicants demonstrate an ability to upgrade the existing Rhymers Avenue to a satisfactory standard and include two parking spaces within the curtilage of the site I am unable to support this proposal. It should be noted that a new access from Mill Road to serve this property is an option that is also likely to be acceptable and easier achieved.

AJS

PLANNING CONSULTATION

On behalf of: Director of Education & Lifelong Learning

From: Service Director Assets & Infrastructure
Contact: Neil Hastie, Estates Manager

To: Head of Planning & Building Standards

Date: 31st March 2017

Contact: Stuart Herkes ☎ 01835 825039

Ref: 17/00479/FUL

PLANNING CONSULTATION

Name of Applicant: Austin Travel

Agent: Aitken Turnbull Architects Ltd

Nature of Proposal: Erection of dwelling house

Site: Land North East of and Incorporating J Rutherford Workshop, Rhymers Mill, Mill Road
Earlston, Scottish Borders

OBSERVATIONS OF: Education & Lifelong Learning (Neil Hastie)

CONSULTATION REPLY

I refer to your request for Educations view on the impact of this proposed development, which is located within the catchment area for Earlston Primary School and Earlston High School.

A contribution of £2,438 is sought for the Primary School and £3,428 is sought for the High School, making a total contribution of £5,866.

Rolls over 90% place strain on the schools 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 each financial year and may be changed to reflect changes in the BCIS index – therefore, we reserve the right to vary the level of the contributions.

If you require any further information please do not hesitate to contact me by emailing estatementanagement@scotborders.gov.uk

Scottish Borders Council

Regulatory Services – Consultation reply

Planning Ref	17/00479/FUL
Uniform Ref	17/00844/PLANCO
Proposal	Erection of dwellinghouse
Address	Land North East Of And Incorporating J Rutherford Workshop, Rhymers Mill, Mill Road, Earliston
Date	10th April 2017
Amenity and Pollution Officer	Forbes Shepherd
Contaminated Land Officer	Gareth Stewart

Amenity and Pollution

Assessment of Application

*Odour
Air Quality*

Wood Burning Stoves

It was noted from the plans that a stove was to be installed and so long as it is less than 45kW no further information needs to be provided. If it is greater than 45kW then the applicant needs to declare this and provide additional information so that a screening assessment can be carried out.

Informative

Stoves and Use of Solid Fuel

These installations can cause smoke and odour complaints and any Building and Planning Consents for the installation do not indemnify the applicant in respect of Nuisance action. In the event of nuisance action being taken there is no guarantee that remedial work will be granted building/planning permission.

Accordingly this advice can assist you to avoid future problems.

The location of the flue should take into account other properties that may be downwind.

The discharge point for the flue should be located as high as possible to allow for maximum dispersion of the flue gasses.

The flue should be terminated with a cap that encourages a high gas efflux velocity.

The flue and appliance should be checked and serviced at regular intervals to ensure that they continue to operate efficiently and cleanly.

The appliance should only burn fuel of a type and grade that is recommended by the manufacturer. If you live in a Smoke Control Area you must only use an Exempt Appliance <http://smokecontrol.defra.gov.uk/appliances.php?country=s> and the fuel that is Approved for use in it <http://smokecontrol.defra.gov.uk/fuels.php?country=s>

In wood burning stoves you should only burn dry, seasoned timber. Guidance is available on - [http://www.forestry.gov.uk/pdf/eng-woodfuel-woodasfuelguide.pdf/\\$FILE/eng-woodfuel-woodasfuelguide.pdf](http://www.forestry.gov.uk/pdf/eng-woodfuel-woodasfuelguide.pdf/$FILE/eng-woodfuel-woodasfuelguide.pdf)

Treated timber, waste wood, manufactured timber and laminates etc. should not be used as fuel.

Paper and kindling can be used for lighting, but purpose made firelighters can cause fewer odour problems.

Recommendation

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
--

Contaminated land

Assessment of Application

The above application appears to be proposing the redevelopment of land which was previously a 'works' and which appears to have held a license for the storage of petroleum. 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

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
--

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.

List of Policies

Local Review Reference: 17/00037/RREF

Planning Application Reference: 17/00479/FUL

Development Proposal: Erection of dwellinghouse

Location: Land North East of and incorporating J Rutherford Workshop, Rhymer's Mill, Mill Road, Earlston

Applicant: Austin Travel

SCOTTISH BORDERS LOCAL DEVELOPMENT PLAN 2016

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,

List of Policies

- 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.

List of Policies

POLICY PMD5: INFILL DEVELOPMENT

Development on non-allocated, infill or windfall, sites, including the re-use of buildings within Development Boundaries as shown on proposal maps will be approved where the following criteria are satisfied:

- a) where relevant, it does not conflict with the established land use of the area; and
- b) it does not detract from the character and amenity of the surrounding area; and
- c) the individual and cumulative effects of the development can be sustained by the social and economic infrastructure and it does not lead to over-development or 'town and village cramming'; and
- d) it respects the scale, form, design, materials and density in context of its surroundings; and
- e) adequate access and servicing can be achieved, particularly taking account of water and drainage and schools capacity; and
- f) it does not result in any significant loss of daylight, sunlight or privacy to adjoining properties as a result of overshadowing or overlooking.

All applications will be considered against the Council's Supplementary Planning Guidance on Placemaking and Design. Developers are required to provide design statements as appropriate.

POLICY EP16 AIR QUALITY

Development proposals that, individually or cumulatively, could adversely affect the quality of air in a locality to a level that could potentially harm human health and wellbeing or the integrity of the natural environment, must be accompanied by provisions that the Council is satisfied will minimise such impacts to an acceptable degree. Where it is considered appropriate the Council may request that an Air Quality Assessment is undertaken to assist determination of an application.

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 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.

List of Policies

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 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 IS8: FLOODING

At all times, avoidance will be the first principle of managing flood risk. In general terms, new development should therefore be located in areas free from significant flood risk. Development will not be permitted if it would be at significant risk of flooding from any source or would materially increase the probability of flooding elsewhere. The ability of functional flood plains to convey and store floodwater should be protected, and development should be located away from them.

List of Policies

Within certain defined risk categories, particularly where the risk is greater than 0.5% annual flooding probability or 1 in 200 year flood risk, some forms of development will generally not be acceptable. These include:

- a) development comprising essential civil infrastructure such as hospitals, fire stations, emergency depots etc., schools, care homes, ground-based electrical and telecommunications equipment unless subject to an appropriate long term flood risk management strategy;
- b) additional built development in undeveloped and sparsely developed areas.

Other forms of development will be subject to an assessment of the risk and mitigation measures.

Developers will be required to provide, including if necessary at planning permission in principle stage:

- a) a competent flood risk assessment, including all sources of flooding, and taking account of climate change; and
- b) a report of the measures that are proposed to mitigate the flood risk.

The information used to assess the acceptability of development will include:

- a) information and advice from consultation with the council's flood team and the Scottish Environment Protection Agency;
- b) flood risk maps provided by the Scottish Environment Protection Agency which indicate the extent of the flood plain;
- c) historical records and flood studies held by the council and other agencies, including past flood risk assessment reports carried out by consultants and associated comments from the Scottish Environment Protection Agency, also held by the council;
- (d) the Scottish Environment Protection Agency's Land Use Vulnerability

POLICY IS9: WASTE WATER TREATMENT STANDARDS AND SUSTAINABLE URBAN DRAINAGE

WASTE WATER TREATMENT STANDARDS

The Council's preferred method of dealing with waste water associated with new development will be, in order of priority:

- a) direct connection to the public sewerage system, including pumping if necessary, or failing that:
- b) negotiating developer contributions with Scottish Water to upgrade the existing sewerage network and/or increasing capacity at the waste water treatment works, or failing that:
- c) agreement with Scottish Water and SEPA where required to provide permanent or temporary alternatives to sewer connection including the possibility of stand alone treatment plants until sewer capacity becomes available, or, failing that:
- d) for development in the countryside i.e. not within or immediately adjacent to publicly seweraged areas, the use of private sewerage treatment may be acceptable, providing it can be demonstrated that this can be delivered without any negative impacts to public health, the environment or the quality of watercourses or groundwater.

In settlements served by the public foul sewer, permission for an individual private sewage treatment system will normally be refused unless exceptional circumstances prevail and the conditions in criteria (d) above can be satisfied.

List of Policies

Development will be refused if:

- a) it will result in a proliferation of individual septic tanks or other private water treatment infrastructure within settlements,
- b) it will overload existing mains infrastructure or it is impractical for the developer to provide for new infrastructure.

SUSTAINABLE URBAN DRAINAGE

Surface water management for new development, for both greenfield and brownfield sites, must comply with current best practice on sustainable urban drainage systems to the satisfaction of the council, Scottish Environment Protection Agency (where required), Scottish Natural Heritage and other interested parties where required. Development will be refused unless surface water treatment is dealt with in a sustainable manner that avoids flooding, pollution, extensive canalisation and culverting of watercourses. A drainage strategy should be submitted with planning applications to include treatment and flood attenuation measures and details for the long term maintenance of any necessary features.

OTHER MATERIAL CONSIDERATIONS

- Scottish Planning Policy
- SBC Supplementary Planning Guidance on Placemaking & Design 2010
- SBC Supplementary Planning Guidance on Development Contributions 2011
- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006



Newtown St Boswells Melrose TD6 0SA Tel: 01835 825251 Fax: 01835 825071 Email: ITSystemAdmin@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 100079721-001

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:	Ericht Planning & Property Consultants		
Ref. Number:	<input type="text"/>	You must enter a Building Name or Number, or both: *	
First Name: *	Kate	Building Name:	The Office - Gifford House
Last Name: *	Jenkins	Building Number:	<input type="text"/>
Telephone Number: *	07795 974 083	Address 1 (Street): *	Bonnington Road
Extension Number:	<input type="text"/>	Address 2:	<input type="text"/>
Mobile Number:	<input type="text"/>	Town/City: *	Peebles
Fax Number:	<input type="text"/>	Country: *	United Kingdom
		Postcode: *	EH45 9HF
Email Address: *	kate@kjenkins.co.uk		

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

Individual Organisation/Corporate entity

Applicant Details

Please enter Applicant details

Title:	Mr	You must enter a Building Name or Number, or both: *	
Other Title:		Building Name:	
First Name: *	David	Building Number:	47
Last Name: *	Lee	Address 1 (Street): *	Highgate
Company/Organisation		Address 2:	West Hill
Telephone Number: *		Town/City: *	LONDON
Extension Number:		Country: *	England
Mobile Number:		Postcode: *	N6 6DB
Fax Number:			
Email Address: *			

Site Address Details

Planning Authority:	Scottish Borders Council
Full postal address of the site (including postcode where available):	
Address 1:	THE PAVILION
Address 2:	COLDINGHAM
Address 3:	
Address 4:	
Address 5:	
Town/City/Settlement:	EYEMOUTH
Post Code:	TD14 5NZ

Please identify/describe the location of the site or sites

--	--

Northing	666713	Easting	391647
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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)

Section 42 Application (17/01007/FUL) in relation to Planning Consent 10/00172/FUL. Application for a new planning permission with different conditions, namely amendment of condition 9 (Occupancy Condition).

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 Supporting Statement to Notice of Review

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)

Notice of Review Supporting Statement 17/01007/FUL Supporting Statement 17/01007/FUL Officer's Report 17/01007/FUL
Decision Notice 17/01007/FUL Site Plan

Application Details

Please provide details of the application and decision.

What is the application reference number? *

17/01007/FUL

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

13/07/2017

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

29/11/2017

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 will be greatly beneficial in enabling Members to understand the holiday nature of the property and its context which are important aspects in this review.

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)

A private walkway through a gate leads down to the site.

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 Kate Jenkins

Declaration Date: 22/12/2017

PAVILION NORTH EAST OF DUNLAVEROCK HOUSE, COLDINGHAM

Supporting Statement to Notice of Review

in relation to Scottish Borders Council's refusal of:

**Section 42 Application (17/01007/FUL) in relation to Planning Consent 10/00172/FUL
Application for a new planning permission with different conditions, namely amendment
of condition 9 (Occupancy Condition)**

on behalf of: Mr David Lee, 47 Highgate, West Hill, London, N6 6DB "The Appellant"
21st December, 2017



SUMMARY

The fundamental aim of this appeal is to allow a London-based owner of holiday accommodation which is located in countryside above Coldingham Bay to use his property with his immediate family, his extended family and his friends for the holiday periods which they wish, typically being school holidays (including half term breaks), and occasional weekends.

The property, pictured on the cover page, gained planning permission in 2010, with a revised design to that originally consented in 2009. The Appellant has owned the property since 2016. This Notice of Local Review is submitted on behalf of Mr David Lee, the Appellant, against the decision of Scottish Borders Council to refuse application 17/01007/FUL on 29th November, 2017 which effectively sought amendment to condition 9 of the 2010 planning permission.

The proposed amendment would enable occupation of the property only by genuine holiday makers and would prevent use of the property as a sole or main residence. It would, however, enable the Appellant, his immediate and extended family and friends to occupy the property as holidaymakers during holidays and occasional weekends and thus prevent the property being forced to stand empty for 36 weeks of the year.

The proposed condition reads:

"The occupation of the building shall be restricted to holiday purposes and shall be used by genuine holiday makers only. The building shall not be used as a sole or main residence. A register of holidaymakers shall be kept and made available for inspection by an authorised Officer of the Council at all reasonable times."

The Planning Authority's reasons for refusal of the Application are:

- Amendment would be contrary to Policy ED7 (rural tourism policy) of the Scottish Borders Local Development Plan in that it would enable the use of the building for purposes which would not constitute direct tourism purposes;
- This would result in loss of a tourism development that had the potential to generate year round economic benefit to the surrounding area.

The Appellant is NOT seeking permission to use the property as a main dwellinghouse; it will strictly be used for genuine holiday use only. The Planning Authority must acknowledge that the primary residence of persons is easily established, with relevant factors including: an occupier's correspondence address, where the occupier is registered with their GP, where an occupier's children attend school, where an

occupier is registered to vote, where an occupier pays full Council Tax and where an occupier's main place of employment is located. The Appellant's home is indisputably in London.

The concept of "second home" does not exist within planning law – it is thus not helpful or constructive to discuss that concept. The principles which should be discussed relate to (a) the status of the Appeal subjects in terms of being holiday accommodation as opposed to being a main residence/ full time dwelling and (b) rural tourism development policy and its aims and objectives.

The property is not let on a commercial basis. It is only used by the Appellant, his immediate and wider family and certain friends who travel there to play golf, use the beach at Coldingham Sands and generally behave as holidaymakers do. Occupation of the property is currently restricted by way of planning condition which (under the interpretation of the Planning Authority) only enables this group of people to occupy the property for a maximum four weeks in each quarter-year; thus a total of 16 weeks per year. For the remaining 36 weeks, the planning condition means that the property is unoccupied as it is not let on a commercial basis. There is thus a loss to the local economy.

The Lee family (The Appellant owner is one of five children) would like to be able to use the property, together with friends, more than the existing condition allows, for holiday purposes and considers it odd that policy, designed to encourage tourism, is being used to restrict holiday use by an extended family and friends.

The Appellant fully accepts that the property was permitted under "tourism" policy and not under "housing in the countryside policy" with the effect that the property must be used for 'holiday' uses and not as a full time/ permanent/ main residence. The Appellant only requires use of the property for "holiday purposes" together with his family and friends and would like it to be available for more holiday use rather than see it stand empty for 36 weeks – there is simply no other motive.

The remainder of this Statement explains the detail of the case and sets out three reasoned Grounds of Appeal.

Members are urged to agree to hold a **site visit** in order to understand the nature of the holiday accommodation and see for themselves that the premises would not constitute a suitable permanent dwelling.

1.0 INTRODUCTION – THE APPLICATION AND ITS REFUSAL

The Application – Identification of Planning Condition

1.1 The application which has been refused sought an amendment to a planning condition (an ‘occupancy condition’) which is attached to a 2010 planning permission (10/00172/FUL) for a holiday pavilion located above Coldingham Bay. The property has been owned by the Appellant since January, 2016.

1.2 The planning condition reads:

The occupation of the building shall be restricted to holiday purposes only for individual periods not exceeding 4 weeks in total within any consecutive period of 13 weeks. A register of holidaymakers shall be kept and made available for inspection by an authorised officer of the Council at all reasonable times.
Reason: A permanent residential site in this location would conflict with the established planning policy for this rural area.

1.3 The proposed planning condition reads:

The occupation of the building shall be restricted to holiday purposes and used by genuine holiday makers only. The building shall not be used as a sole or main residence. A register of holidaymakers shall be kept and made available for inspection by an authorised Officer of the Council at all reasonable times.

1.4 The application was refused by Scottish Borders Council on 17th January, 2017 on the basis set out below.

The proposed variation of Condition 9 of planning permission 10/00172/FUL would be contrary to Policy ED7 of the Scottish Borders Local Development Plan 2016 in that it would enable the use of the building for purposes which would not constitute direct tourism purposes, which would result in a loss of a tourism development that has the potential to generate year round economic benefit to the surrounding area. Other material considerations do not justify a departure from the Development Plan in this case.

2.0 BACKGROUND AND PRACTICAL EXPLANATION FOR APPLICATION 17/01007/FUL

- 2.1 The Appellant purchased the property with the specific aim of using it as holiday accommodation for him, his immediate family, his wider family and also friends during holiday periods. At present, it is not let on a commercial basis as self-catering holiday accommodation.
- 2.2 The Appellant has no intention of seeking permission to use the property by himself or by others as a permanent dwelling, recognising the basis under which the property was granted planning permission in 2009 and 2010. The use of the property as a 'mainstream' dwelling would be contrary to Local Development Plan policy as planning permission was granted under policy on "*business, leisure and tourism in the countryside*" for a holiday property, as opposed to being granted under "housing in the countryside policy" for a dwelling used as permanent accommodation.
- 2.3 The issue faced by the Appellant's family is a practical one. The Appellant's immediate family resides, works and is educated in and around London and visits Coldingham for extended holiday breaks away from the City and occasional weekends. The Appellant's extended family (in Scotland and the North East) also uses the property intermittently for holidays. Together, between the various family groups which include the Appellant's family, a sibling's family and a parent, desired use by the group as a whole can extend beyond 4 weeks in any quarter year, particularly given the variation in English/ Scottish school holidays. Friends also use the unit. At other times the unit is empty for extended periods.
- 2.4 Typical use of the accommodation, based on maximum permitted use, currently includes:
- Weekend visits e.g. Friday evening to Sunday evening once a month outside of school holidays;
 - Two week to four week stays over the summer and Easter periods;
 - Use by extended family (siblings of the Appellant and their own families and a parent) who live in Scotland and north-east England.

2.5 This use does not fulfill the users' needs, as illustrated in the examples below:

Example 1

2.6 If the Appellant's family spends 4 weeks at the holiday accommodation in the summer (the English School holidays ending in early September), then it is not possible, due to the planning condition, for anyone to return to the holiday accommodation for the October half-term break. Further, summer holidays can span from late June to early September; a period of approximately ten weeks. Extended family may wish to occupy the property for more than 4 weeks in total over the summer break.

Example 2

2.7 In the event that the Appellant's family spends the Easter school holidays at the accommodation it may not be possible to spend subsequent weekends there. English and Scottish school holidays put together usually span a 4 week period at Easter-time.

Example 3

2.8 Under the planning condition, the Appellant's family/ extended family are likely to be treated as one entity when there may, in fact, be overlapping stays by (a) the immediate London family, (b) a Newcastle based family, (c) an Edinburgh based family and (d) a Scottish-based parent. The Appellant may return to London for work, while the remainder of his family stays on in the summer holidays with other close family. Given the random combinations of occupants and overlapping stays it is rarely possible to clearly differentiate periods of occupancy unique to one or other aspect of the extended family.

2.9 Instead, therefore, of being used as often as a rental property (which is encouraged by the Planning Authority), the Appellant is forced to leave the property empty for extended periods when it could instead be being used by family and friends for genuine tourist purposes.

2.10 It cannot be right that "a tourist" has to pay rent to a third party to be considered as such.

3.0 GROUNDS FOR APPEAL

3.1 There are 3 Grounds for Appeal, the details of which are set out in this section:

Ground 1: The proposed amendment would not be contrary to rural tourism development policy: the proposed amendment would only enable use of the building for genuine tourism purposes, and the proposed use would not lead to loss of a tourism development;

Ground 2: The existing condition does not meet the Circular 4/1998* tests (**The Use of Conditions in Planning Permissions*);

Ground 3: The proposed condition is consistent with a recent Reporter decision.

GROUND 1 – THE PROPOSED AMENDMENT WOULD NOT BE CONTRARY TO RURAL TOURISM DEVELOPMENT POLICY. THE PROPOSED AMENDMENT WOULD ONLY ENABLE USE OF THE BUILDING FOR GENUINE TOURISM PURPOSES AND THE PROPOSED USE WOULD NOT LEAD TO LOSS OF A TOURISM DEVELOPMENT.

3.2 It is accepted that a condition which prevents the full time occupation of the accommodation as a permanent residence is necessary for a planning purpose. The development was permitted for use as a holiday unit and not as a permanent dwelling. The Appellant, however, is not seeking to be able to occupy the unit as a full time, main or permanent residence: it is simply the case that the wording of the condition at present does not permit the reasonable holiday use desired by the Appellant.

3.3 The Officer's Report clearly states that "*Neither the condition, nor the Planning Authority's interpretation of it, makes any differentiation between owners of the accommodation or other holidaymakers.*" The Appellant disputes this statement. Owing to the relatively small 'pool' of extended family members and friends, as compared to a potential pool of commercial holiday makers, the condition is considered to discriminate against genuine *family and friends* holiday use. Family holidaymakers can only use the property for 16 weeks a year; it must remain unoccupied for the rest of the year (36 weeks) if use by family and friends is the only use.

- 3.4 It is not unreasonable for the Appellant's family and friends to seek to use the property for more than 16 weeks a year. Rather, the Appellant believes that it is odd to require the property to stand empty for such extended periods just to evidence something that is easily proved (i.e. that the unit is not a main residence). The primary residence of persons is easily established, with relevant factors including: an occupier's correspondence address, where the occupier is registered with their GP, where an occupier's children attend school, where an occupier is registered to vote, where an occupier pays full Council Tax and where an occupier's main place of employment is located. The Appellant's home is indisputably in London.
- 3.5 The Appellant's desired use is reasonable and genuine holiday use. There is no risk of the property being used as a permanent dwelling if the proposed planning condition is implemented.
- 3.6 It is an undisputable fact that the Appellant, his immediate and his wider family and friends only seek to use the Pavilion for holiday purposes. The wording of the proposed condition is clear – use is to only be by genuine holidaymakers. The Appellant is also willing to provide the Planning Authority with a record of occupation, as stated in the proposed condition. The Appellant is not seeking to establish a permanent dwelling “by the back door”; he is merely seeking to be able to use his property as a genuine holiday maker along with family and friends – a situation which will benefit the local economy just as much as if someone was renting the property.
- 3.7 Planning conditions are frequently used to control/ restrict use. The Planning Authority states that there would not be sufficient protection to prevent the building being used for a use which was contrary to policy (i.e. as a main residence). This is disputed – the wording of the condition could not be clearer as to who may use the property, namely only “genuine holidaymakers”. There is no desire or suggestion that the Appellant seeks to establish a permanent dwelling, indeed the proposed condition states that it cannot be used as a sole or main residence. It is much easier to verify that the property is not a permanent dwelling than to verify the current unclear situation.
- 3.8 The introduction of discussion, within the Officer's Report of the ‘second home’ or ‘holiday home’ concepts is not constructive. The Officer himself acknowledges that *“Planning law does not distinguish between a permanent dwellinghouse for use as a main residence and a holiday/ second home”*. What is relevant is that the Appellant is seeking to be able to use his property, and have friends and family use it, for holiday

purposes and not have the property stand empty for the thirty-six weeks which the current condition requires. Debate must be about acceptability of use in terms of 'rural tourism development' policy as opposed to against terms which have no foundation in planning law (or in Scottish Borders adopted planning policy) such as "second home".

- 3.9 The Officer's Report states that the proposal would more reasonably be considered through an application for change of use to a dwellinghouse, following his logic that the Appellant is seeking use as a "holiday/ second home" and thus as a "permanent dwelling". This point is strongly disputed by the Appellant. The Appellant does not desire or seek a change of use to a permanent dwellinghouse and is willing to accept a planning condition which clearly restricts use to use for holiday purposes by genuine holiday makers. The Pavilion is firmly holiday accommodation. The Planning Authority has made it clear that there is no differentiation between 'owner tourists' and other types of tourists yet insists on an unduly restrictive rotational requirement (effectively requiring the property to stand empty for thirty-six weeks) which is wholly unsuited to owner holiday makers and to the local economy.
- 3.10 On that basis that the Planning Authority claims to treat 'owner holidaymakers no differently to 'other holidaymakers' the Appellant, his immediate family, his extended family and his friends should be regarded no differently to other potential (commercial) holidaymakers. This appears, however, not to be the case, illustrated, in part, by comments relating to economic benefits deriving from different types of holidaymakers. The Planning Authority appears to believe that the 'owner holidaymakers', in terms of each stay, would not bring equal economic benefit to the area as 'other holidaymakers'. This is asserted without any evidence and is, by definition, imposing a differentiation between the two types of holidaymakers, both of which are as genuine as each other.
- 3.11 According to the Oxford English Dictionary "A tourist" is "*a person who is travelling or visiting a place for pleasure*". It is thus clear that when the Appellant, his immediate or his wider family and friends are visiting the property on holiday they are, by definition, "tourists". They play golf at Eyemouth, go horse riding, swim and surf on the beach, as do other visitors. A "tourist" does not have to be paying rent to a third party to be defined as such.
- 3.12 The Appellant wishes it to be noted that his direct contribution to the local economy includes the hiring of builders to do maintenance, hiring of a gardener to plant and maintain the garden, hiring of a cleaner to clean and hiring of a window cleaner to

keep the considerable amount of glazing clean (all needed due to the fact that he lives in London) as well as the more usual expenditure locally when on holiday such as using local shops, playing golf and visiting pubs and restaurants.

- 3.13 The Planning Officer, in his Report, cites the Scottish Government Reporter's decision in case PPA-140-2057 where the Reporter imposed an occupancy condition (on timber camping lodges) which restricted occupation for genuine holiday makers/ tourists for "individual periods" not exceeding 3 months in total within any consecutive period of 12 months. Whilst this condition is worded with the same ambiguity as that being challenged (see Ground 2), it is understood that this condition would allow a total of 12 weeks occupation by the Appellant in any one year had the Planning Authority's "offer" to accept this condition been taken up by the Appellant. This is more restrictive than the total of 16 weeks which are currently available so was not acceptable.
- 3.14 The proposed use would certainly not lead to **loss of a tourism development** as is stated in the ground for refusal. The property will remain as a tourism development and will be used for genuine tourism purposes by the Appellant, his immediate family, his wider family and his friends. In future years, it may well be that the unit is let on a commercial basis.

GROUND 2: THE EXISTING CONDITION DOES NOT MEET THE CIRCULAR 4/1998* TESTS. * "THE USE OF CONDITIONS IN PLANNING PERMISSIONS"

- 3.15 The following words, extracted from the existing occupancy condition (below) are ambiguous. *"The occupation of the building shall be restricted to holiday purposes only for individual periods not exceeding 4 weeks in total within any consecutive period of 13 weeks."*

The occupation of the building shall be restricted to holiday purposes only for individual periods not exceeding 4 weeks in total within any consecutive period of 13 weeks. A register of holidaymakers shall be kept and made available for inspection by an authorised officer of the Council at all reasonable times.
Reason: A permanent residential site in this location would conflict with the established planning policy for this rural area.

PLANNING & PROPERTY CONSULTANTS

- 3.16 **Meaning 1:** This could reasonably be interpreted to mean that **holiday use can only be made for 4 weeks out a 13 week block**. That is, after all, exactly what the condition says. It does not refer to use for that period by set 'individuals' or 'groups of individuals' or even tourists. This interpretation would mean that the unit could only be occupied for holiday purposes for a total maximum of 16 weeks in an entire calendar year. For the remaining 36 weeks, the unit could not be used for holiday purposes – that is what the condition actually says, even if it may not be the intention.
- 3.17 **Meaning 2:** It is understood from discussions with the Planning Authority that their intended meaning is different from the above meaning. The Officer is of the view that the meaning is that that **any particular individual occupant or group of occupants could only reside in the unit for a maximum of 4 weeks in any 13 week (quarter year) period**. This is, however, not what the condition says.
- 3.18 In terms of Circular 4/1998 '*The Use of Conditions in Planning Permissions*', planning conditions should only be imposed where they are:-
- Precise;
 - Necessary;
 - Relevant to planning;
 - Relevant to the development to be permitted;
 - Enforceable;
 - Reasonable in all other respects.
- 3.19 Given that the meaning of the condition is not precise, the enforceability of the condition is also questionable. The Officer's Report offers the defence that the condition is widely used within the Scottish Borders. Such 'established use' appears to prevent the Planning Authority reviewing what the condition *actually* says and noticing its consequent ambiguity. Habitual use of an imprecise and potentially unenforceable condition in different circumstances to this should not make such use acceptable everywhere and at all times.
- 3.20 A maximum stay (by an individual or group of individuals) of 4 weeks within any 13 week period (a maximum 16 week annual occupancy) is an extreme way of providing the Planning Authority with sufficient reassurance that the unit will not be used as a permanent dwelling (and discriminates against owner-holiday makers). It only succeeds in restricting the amount of tourist use, as the property stands empty for extended periods if this approach is followed. The condition is considered to be unreasonable in its highly restrictive nature in seeking to achieve its fundamental aim of preventing the property being used as a main or permanent residence. It is thus

not clearly (or logically) related to the planning purpose of preventing the unit being a permanent residence.

GROUND 3: THE PROPOSED CONDITION IS CONSISTENT WITH A RECENT REPORTER DECISION.

Appeal Decision: PPA-170-2094. Decision date 04/09/14

- 3.21 The Appellant wishes to draw Member's attention to a recent (2014) Scottish Government Reporter decision which is directly in line with the condition being sought.

Proposal: Campsite including 12 pitches, 4 of which were static ('shepherd's hut) style caravans and manager's temporary accommodation.

1. No caravan or tent pitches hereby granted planning permission shall be used as a sole or main residence; they shall be for holiday use only. The operator of the site shall maintain a register of guests (including the name, address, dates of arrival and departure) of those staying at the site. On request, this guest register shall be made available to the Council as planning authority for inspection.

Reason: to define the consent and ensure that the site is not used for permanent residential occupation.

- 3.22 There is no reference to a 'no return' period or a specific time period on the 'shepherd's hut' holiday units or the pitches. The Reporter has assessed that **the restrictions set out within the condition are sufficient to restrict the use to holiday accommodation and appropriate to meet the tests set out within Circular 4/1998**. The proposed condition in respect of the Appeal subjects is clearly consistent.
- 3.23 The original Supporting Statement pertaining to application 17/01007/FUL provides several further recent examples where rural Planning Authorities have been willing to impose planning conditions very similar to that being proposed. The restrictions prevent the property being used as a permanent / sole or main residence and generally require there to be an up to date register of guests maintained. Reference should be made to pages 15 to 19 of the Application Supporting Statement which is included with this Appeal.

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

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

Application for Planning Permission

Reference : 17/01007/FUL

**To : Mr David Lee per Erich Planning & Property Consultants Per Kate Jenkins 57 Northgate
Peebles EH45 8BU**

With reference to your application validated on **18th July 2017** for planning permission under the Town and Country Planning (Scotland) Act 1997 for the following development :-

Proposal : Variation of planning condition 9 of planning consent 10/00172/FUL relating to occupancy of building

At : The Pavilion Coldingham Eyemouth Scottish Borders TD14 5NZ

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

**Dated 29th November 2017
Regulatory Services
Council Headquarters
Newtown St Boswells
MELROSE
TD6 0SA**

Signed



.....
Depute Chief Planning Officer

APPLICATION REFERENCE : 17/01007/FUL**Schedule of Plans and Drawings Refused:**

Plan Ref	Plan Type	Plan Status
	Location Plan	Refused

REASON FOR REFUSAL

- 1 The proposed variation of Condition 9 of planning permission 10/00172/FUL would be contrary to Policy ED7 of the Scottish Borders Local Development Plan 2016 in that it would enable the use of the building for purposes which would not constitute direct tourism purposes, which would result in the loss of a tourism development that has the potential to generate year-round economic benefit to the surrounding area. Other material considerations do not justify a departure from the Development Plan in this case.

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

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

PART III REPORT (INCORPORATING REPORT OF HANDLING)

REF : 17/01007/FUL

APPLICANT : Mr David Lee

AGENT : Ericht Planning & Property Consultants

DEVELOPMENT : Variation of planning condition 9 of planning consent 10/00172/FUL relating to occupancy of building

LOCATION: The Pavilion
Coldingham
Eyemouth
Scottish Borders
TD14 5NZ

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 were received.

CONSULTATIONS:

Community Council: No response.

Legal Services: No response.

PLANNING CONSIDERATIONS AND POLICIES:

Local Development Plan 2016:

ED7: Business, Tourism, and Leisure Development in the Countryside#

HD2: Housing in the Countryside

HD3: Protection of Residential Amenity

IS2: Developer Contributions

Other considerations

Scottish Planning Policy

Circular 4/98 'The Use of Conditions in Planning Permission'

Recommendation by - Paul Duncan (Assistant Planning Officer) on 24th November 2017

SITE DESCRIPTION

The Pavilion is a detached holiday development of contemporary design which sits on steeply sloping ground above Coldingham Sands bay. The building is predominantly glazed to the front elevation which is prominent on the hillside when viewed from the beach below. The building features a modern V-shaped metal roof and timber and stone finishes to the rear and side elevations. The building is accessed by foot via a popular path which runs from the group of dwellinghouses on higher ground to the west of the site down past the site towards the beach to the south-east.

PLANNING HISTORY

The development has a lengthy and complex planning history. Approval for a new holiday pavilion (08/01490/FUL) was first granted in 2009, replacing a derelict building which previously sat on the site and was adversely affecting both the amenity of the area and the setting of the bay. The use of the development, which was assessed against the relevant tourism policies of the time and was approved as a holiday development, was controlled by two conditions:

7. This purpose-built holiday unit shall not be occupied for the purposes of human habitation between the 9th January and 9th February, in each calendar year.

Reason: The establishment of a permanent residential unit on this site would conflict with the established policy for new dwellings in this location.

8. The occupation of the building shall be restricted to holiday purposes only for individual periods not exceeding 4 weeks in total within any consecutive period of 13 weeks. A register of holidaymakers shall be kept and made available for inspection by an authorised officer of the Council at all reasonable times.

Reason: A permanent residential site in this location would conflict with the established planning policy for this rural area.

In 2009 an application (09/00959/FUL) to remove condition 7 was approved.

In 2010 an amended design was granted approval (10/00172/FUL) and condition 8 of the previous planning permission controlling use of the building was also attached to that consent. The 2010 approval was implemented and that condition (condition 9) controls the use of the development today. Condition 9 reads as follows:

"The occupation of the building shall be restricted to holiday purposes only for individual periods not exceeding 4 weeks in total within any consecutive period of 13 weeks. A register of holidaymakers shall be kept and made available for inspection by an authorised officer of the Council at all reasonable times.

Reason: A permanent residential site in this location would conflict with the established planning policy for this rural area."

This current application seeks to vary this condition to afford the current owner use of the building for holiday purposes in line with the requirements of the current users, who are the applicant, his family and his friends.

POLICY PRINCIPLE

The original redevelopment proposal in 2008 was for a holiday/ tourism development and was assessed against the relevant tourism policies of the time, including Local Plan policy D1.

This current application does not formally seek permission to use the property as a dwellinghouse (either as a main residence or a holiday/ second home), which would require a change of use and assessment against relevant housing in the countryside policies, nor does the proposal seek permission for any other use. The building is therefore to remain a holiday development and any proposal must be assessed accordingly.

As the use has not changed, any modification of Condition 9 must continue to satisfy the aims and requirements of relevant rural tourism policy. The current relevant tourism policy is Local Development Plan

Policy ED7 (Business, Tourism and Leisure in the Countryside). Any modification of Condition 9 which could mean the development would not be used directly for tourism purposes, would be not comply with this policy. Inherent in the aims of tourism policy is the potential economic benefit that tourism development can offer. The existing condition ensures a regular rotation of holidaymakers to the property, which is considered to support this aim, given patterns of activity and spend associated with medium and short-stay holidaymakers. This would not be the case if the property was used as a permanent residential site (either as a main residence or a holiday/second home). It should be noted however that use of the property is not required to be for commercial holidaymaking purposes only, so long as the rotational requirements of the policy are met. Neither the condition nor the Planning Authority's interpretation of it makes any differentiation between owners of the accommodation or other holidaymakers. Owners of the accommodation are equally entitled to use the accommodation within the time period specified by the condition.

PROPOSAL

The proposal being considered by this application is to modify Condition 9 with the aim of affording more practical use of the property to the owner, who purchased the property for use as holiday accommodation for himself, his immediate and wider family and also friends. The supporting statement provided with the application states that the property is not currently let on a commercial basis as self-catering holiday accommodation. It also states that there is no intention to occupy the unit as a permanent dwelling and that this would be contrary to Local Development Plan policy.

The purpose of modifying the condition is instead to enable more flexible use of the property. The supporting statement sets out three problematic circumstances where Condition 9 controls use which the applicant wishes to change. These are summarised as follows:

- (1) if the applicant's family spends 4 weeks at the property in the summer it is not possible to return in the October break or extend the summer holiday beyond 4 weeks;
- (2) if the applicant's family spends the Easter holiday at the property it may not be possible to spend subsequent weekends there; and
- (3) where overlapping visits to the property occur by different parties it is difficult to identify when the 4 week block starts and stops.

The supporting statement also argues that the existing conditions fails the six tests of planning conditions as set out in Circular 4/98 'The Use of Conditions in Planning Permission'.

The applicant has asked for the application to be determined against the following proposed modification to Condition 9:

"The occupation of the building shall be restricted to holiday purposes and used by genuine holiday makers only. The building shall not be used as a sole or main residence. A register of holidaymakers shall be kept and made available for inspection by an authorised Officer of the Council at all reasonable times."

ASSESSMENT

It is fully accepted that the applicant has no intention to occupy the unit on a permanent basis as a sole residence. However, as noted above, any variation to Condition 9 should not lead to the use of the development conflicting with the aims and requirements of Policy ED7 (Business, Tourism and Leisure in the Countryside). The proposed condition would remove all rotational requirements of the existing condition. Some degree of rotational requirement is considered essential to achieving the economic benefits associated with tourism development and to ensure year round occupation for self-catering accommodation is secured whilst preventing long term occupation. . Instead, the proposed condition could allow the use of the property as a holiday home/ second home for up to six months a year. Whilst use would be restricted to 'genuine holidaymakers only', this wording alone may not prevent the use of the building for purposes which would be in conflict with tourism policy. Furthermore, as planning law does not generally distinguish between a permanent dwellinghouse for use as a main residence and a holiday home/ second home, this proposal, which would essentially allow use as a holiday home/ second home, would more reasonably be considered through an application for change of use to dwellinghouse. This would be assessed against relevant housing policies and would likely incur development contributions for education.

This proposed modification cannot therefore be supported. The issues identified within the supporting statement in terms of the 'six tests' of planning conditions are noted, but the existing planning condition is regularly used within the Scottish Borders and is considered an appropriate and reasonable means of achieving planning policy aims and requirements. It is noted that a Scottish Government Reporter recently applied a condition similar to Condition 9 (PPA-140-2057 condition 4) to an unrelated tourism development elsewhere in the Scottish Borders. This condition allowed occupation for genuine holidaymakers/ tourists for individual periods not exceeding 3 months in total within any consecutive period of 12 months, whilst also maintaining that the property should not be used for permanent residential occupation. Given that this less restrictive rotational requirement would seem to address many of the applicant's concerns, and given it would still satisfy planning policy aims and requirements, the applicant was offered the opportunity to modify Condition 9 to a similar effect, but this was ultimately declined.

CONCLUSION

The Planning Authority has been open to finding a mutually agreeable modification to the condition which might allow more practical use of the property in line with the applicant's wishes, without undermining policy aims and requirements. The Planning Authority has also previously allowed the removal of one of the two conditions which originally controlled the use of the building. The proposed modification to the remaining condition would however severely weaken control of the development, conflicting with Policy ED7 in failing to ensure the future use of the development for direct tourism purposes. This would risk the loss of an existing tourism development which has the potential to generate year-round economic benefit to the surrounding area, in conflict with planning policy aims and requirements.

REASON FOR DECISION :

The variation of condition 9 of planning permission 10/00172/FUL would be contrary to Policy ED7 of the Scottish Borders Local Development Plan 2016, in that the proposed variation of condition would enable the use of the building for purposes which would not constitute tourism. Other material considerations do not justify a departure from the Development Plan in this case.

Recommendation: Refused

- 1 The proposed variation of Condition 9 of planning permission 10/00172/FUL would be contrary to Policy ED7 of the Scottish Borders Local Development Plan 2016 in that it would enable the use of the building for purposes which would not constitute direct tourism purposes, which would result in the loss of a tourism development that has the potential to generate year-round economic benefit to the surrounding area. Other material considerations do not justify a departure from the Development Plan in this case.

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

PAVILION NORTH EAST OF DUNLAVEROCK HOUSE, COLDINGHAM

Supporting Statement

**Section 42 Application in relation to Planning Consent 10/00172/FUL
Application for a new planning permission with different conditions from those attached
to the previous permission including amendment of condition 9 (Occupancy Condition)**

**on behalf of
Mr David Lee, 47 Highgate, West Hill, London, N6 6DB "The Applicant"**

12th July, 2017

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1.0 INTRODUCTION

The Application – Identification of Planning Condition

1.1 This Supporting Statement supports an application to amend a planning condition which is attached to a 2010 planning permission for a holiday pavilion to the north east of Dunlaverock House. The application reference is 10/00172/FUL, granted on 7th April, 2010.

1.2 This application seeks a new planning consent for the development, with the amended condition, as per the definition of a Section 42 application within Circular 3/2013. *“An application for a new planning permission or new planning permission in principle for a development but with different conditions from those attached to a previous permission for that development.”*

1.3 The planning condition which the Applicant is seeking to be amended is condition no. 9 which reads:

The occupation of the building shall be restricted to holiday purposes only for individual periods not exceeding 4 weeks in total within any consecutive period of 13 weeks. A register of holidaymakers shall be kept and made available for inspection by an authorised officer of the Council at all reasonable times.
Reason: A permanent residential site in this location would conflict with the established planning policy for this rural area.

1.4 The occupancy condition applies to the holiday pavilion to the north east of Dunlaverock House, which has been in the ownership of the Applicant since January, 2016.

2.0 BACKGROUND AND PRACTICAL EXPLANATION FOR APPLICATION

2.1 The Applicant purchased the property with the specific aim of using it as holiday accommodation for him, his immediate family, his wider family and also friends. At present, it is not let on a commercial basis as self-catering holiday accommodation. This situation may change in future years.

2.2 The Applicant wishes to stress that he has no intention of seeking occupation of the unit by himself or others as a permanent dwelling, recognising that permission for a 'mainstream' dwelling would be contrary to Local Development Plan policy. It is also noted that the owner/ family must be treated the same as any other 'visitor occupant' in the implementation of the condition in order to ensure that the condition is as relevant to any potential future scenario and on the basis of fairness and consistency.

2.3 The issue faced by the Applicant's family is a practical one. Two examples are provided below. The Applicant's immediate family resides, works and is educated in and around London and visits Coldingham for extended breaks away from the City. The Applicant's extended family also uses the property intermittently. Together, between the various family groups which include the Applicant's family, a sibling's family and a parent, desired use can extend beyond 4 weeks, particularly given the variation in English/ Scottish school holidays. Friends also use the unit. At other times the unit is empty for extended periods.

2.4 Typical use of the accommodation, based on maximum permitted use, currently includes:

- Weekend visits e.g. Friday evening to Sunday evening once a month outside of school holidays;
- Two week to four week stays over the summer and Easter periods;
- Use by extended family (siblings of the Applicant and their own families and a parent) who live in Scotland and north-east England.

2.5 This use does not fulfill the users' needs. Examples are provided below.

Example 1

2.6 As matters currently stand, if the Applicant's family spends 4 weeks at the holiday accommodation in the summer (the English School holidays ending in early September), then it is not possible, due to the planning condition, to return to the

holiday accommodation for the October half-term break as such would fall within the “no return” 13 week period. Further, summer holidays can span from late June to early September; a period of approximately ten weeks. The Applicant may wish to allow his extended family to occupy the property for more than 4 weeks in total over the summer break.

Example 2

- 2.7 In the event that the Applicant’s family spends the Easter school holidays at the accommodation it may not be possible to spend subsequent weekends there.

Example 3

- 2.8 Mr Lee, the owner, may return to London for work reasons, while the remainder of his family stays on in the summer holidays with other close family. The ‘start and stop’ time of stays is difficult to determine, and given the 4 week restriction in any 13 week period, this is problematic. Under the planning condition, the Applicant’s family/ extended family are likely to be treated as one entity when it may, in fact, give rise to overlapping stays by (a) the immediate London family, (b) a Newcastle based family, (c) an Edinburgh based family and (d) a Scottish-based parent. Given overlapping stays it is rarely possible to clearly differentiate/ define periods of occupancy unique to one or other aspect of the extended family. It should also be noted that English and Scottish school holidays put together usually span a 4 week period at Easter-time.

3.0 PLANNING HISTORY

2008: Planning Permission 08/01490/FUL

- 3.1 This permission established that the principle of redevelopment at this location as a holiday unit was acceptable. The permission carried two conditions which related to occupancy as shown below, together with reasoning for imposition:

Condition 7: *This purpose built holiday unit shall not be occupied for the purposes of human habitation between 9th January and 9th February, in each calendar year.*

Reason: *The establishment of a permanent residential unit on this site would conflict with the established policy for new dwellings in this location*

Condition 8: *The occupation of the building shall be restricted to holiday purposes only for individual periods not exceeding 4 weeks in total within any consecutive period of 13 weeks. A register of holidaymakers shall be kept and made available for inspection by an authorised officer of the Council at all reasonable times.*

Reason: *A permanent residential site at this location would conflict with the established planning policy for this rural area.*

2009: Planning Permission 09/00959/FUL

- 3.2 This permission allowed the removal of condition 7 pertaining to 08/01490/FUL as set out above. The condition restricted habitation between 9th January and 9th February each year and was considered, by the Applicant's agent, to be: unduly restrictive, not to serve a planning purpose and also to be unreasonable.

- 3.3 The reason for the decision included the wording:

(The remaining) "condition 8 of the planning permission ref. 08/01490/FUL is adequate to enable the Planning Authority to retain effective control over the nature and duration of accommodation within this unit of holiday accommodation."

- 3.4 Within the Officer's Report it is stated

"It must be acknowledged that the British self-catering market is now a year-round operation and that it would be unreasonable to reject this proposal".

- 3.5 The Officer's report also sets out the Council's position as to why the unit should not become a permanent accommodation – a principle which the then-Applicant and the current Applicant accept.

"It would conflict with rural housing and other environmental policy principally because purpose-build holiday accommodation has less of a demand on its locale in terms of space needed for amenity, and the inevitable alterations that are made to increase comfort and easy access to permanent dwellings, which have a visual impact of their own. For example, fencing, storage buildings, washing lines, play areas and equipment."

- 3.6 It was further reiterated that permitted development rights had been removed by way of condition 10 of 08/01490/FUL, linked to issues surrounding visual impact.

2010: Planning Permission 10/00172/FUL

- 3.7 This permission allowed the replacement of a derelict pavilion with a holiday pavilion which was a change in type from that previously approved by way of 08/01490/FUL.

- 3.8 The Decision Notice sets out an identical condition to condition no. 8 of 08/01490/FUL and identical reasoning for its imposition. For completeness this states, as condition 9 of 10/00172/FUL:

Condition 9: The occupation of the building shall be restricted to holiday purposes only for individual periods not exceeding 4 weeks in total within any consecutive period of 13 weeks. A register of holiday makers shall be kept and made available for inspection by an authorised officer of the Council at all reasonable times.

- 3.9 Permitted development rights relating to extension, enlargement and other alterations including the creation of detached outbuildings, were once again, removed by way of condition as in the original 08/01490/FUL permission.

2015: Correspondence between Planning Authority and Seller (2015)

- 3.10 In 2015, the holiday unit was in the process of being sold. Following discussions between purchaser and seller, the seller approached the Planning Authority to discuss amendment of condition 9. The alternative condition suggested by the seller was not deemed to be suitable in terms of the Circular 4/1998 tests. The condition proposed by the then-seller is set out below.

"The occupation of the building shall be restricted to holiday purposes only. The average period of occupation for any person that year, other than the owner and immediate family, shall not exceed a month for that year, excluding periods of school holidays. The owner and immediate family may not occupy the building (other than for essential maintenance) for the period from 10th January to 10th February in a year".

- 3.11 Particular parts of the suggested wording were considered by the Planning Authority to be vague and thus not "precise" or "enforceable", and the lack of clear restriction sought for family members resulted in a view that the proposed wording was "not relevant to planning" in that the condition did not serve the planning function of ensuring the accommodation met with development plan policy.

- 3.12 **2016: Correspondence between Planning Authority and Applicant's legal agent**
In October, 2016 Davidson Chalmers, the Applicant's legal agent, corresponded with the Planning Authority, requesting that condition 9 of 10/00172/FUL be amended by way of non-material variation. The proposed wording of the condition is set out below:

"The building shall be used for holiday use only and shall not be used as a person's sole of main residence or as temporary or permanent residential accommodation. The applicant shall maintain an up to date register of the names of all holiday makers staying in the [cabin/ chalet] and their home addresses and shall make this information available for inspection by an authorised officer of the Planning Authority at all reasonable times."

- 3.13 In October, 2016 the Planning Authority responded to Davidson Chalmers' request for amendment of condition 9. Mr Aikman refers to a letter of 10th December, 2014 in which he indicated that the following was stated:

"While the wording could perhaps have been expressed more clearly, the intent is clear in that its purpose is to prevent the building from being occupied as a persons' full time residence, which would have been contrary to policy in this location. The condition therefore restricts the use of the development for holiday makers only, but it is the use of the words "individual periods not exceeding 4 weeks in total" that should be afforded the greatest emphasis in the condition: It is the intention of the condition to allow occupancy of the building by holiday makers/ groups of holiday makers but only for periods of no more than 4 weeks within any consecutive 13 week period. Our view is that this would still permit continuous occupancy of the building within the stated 13 week period, but not by the same people (who cannot return until that 13 week period

is complete). This is to enable the development to provide for year-round self-catering accommodation while preventing any long term occupancies. This is consistent with the decision taken on 09/00959/FUL which acknowledged the aspiration for all-round occupancy of the property, but subject to the limitation set out in condition 9 of 10/00172/FUL."

- 3.14 No variation was made to the condition, it being noted that any request for variation would appropriately be dealt with by way of formal application.

4.0 GROUNDS FOR AMENDMENT TO CONDITION NO. 9 OF APPLICATION 10/00172/FUL

4.1 Consideration is now given to the condition's wording and its implications against the Planning Authority's requirements, adopted policy and guidance and the Circular 4/1998 tests.

4.2 Conditions imposed on a grant of planning permission can enable many development proposals to proceed where it would otherwise have been necessary to refuse planning permission. In terms of Circular 4/1998 '*The Use of Conditions in Planning Permissions*', planning conditions should only be imposed where they are:-

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

4.3 The present wording of the condition is considered to be, (i) not precise (ii) not relevant to planning purpose and therefore (iii) unreasonable. These grounds are set out below.

GROUND 1: THE CONDITION IS NOT PRECISE

4.4 The meaning of the condition is ambiguous.

The occupation of the building shall be restricted to holiday purposes only for individual periods not exceeding 4 weeks in total within any consecutive period of 13 weeks. A register of holidaymakers shall be kept and made available for inspection by an authorised officer of the Council at all reasonable times.
Reason: A permanent residential site in this location would conflict with the established planning policy for this rural area.

"The occupation of the building shall be restricted to holiday purposes only for individual periods not exceeding 4 weeks in total within any consecutive period of 13 weeks."

- 4.5 **Meaning 1:** This could reasonably be interpreted to mean that **holiday use (“purposes”)** can only be made for 4 weeks out a 13 week block. That is, after all, exactly what the condition says. It does not refer to ‘individuals’ or ‘individual groups’ of people. This interpretation would mean that the unit could only be occupied for holiday purposes for a total maximum of four 4 week periods in an entire calendar year. For the remaining 36 weeks, the unit could not be used for holiday purposes.
- 4.6 **Meaning 2:** An alternative intended meaning, (but a less obvious one given the wording), could mean that **any particular occupant or group of occupants could only reside in the unit for a maximum of 4 weeks in any 13 week (quarter year) period.** This is, however, not what the condition says, but apparently what was intended by the Planning Authority given the content of Mr Aikman’s email referred to in parag. 3.13 above.
- 4.7 Given that the meaning of the condition is not precise, the **enforceability** of the condition is also questionable.

GROUND 2: THE CONDITION IS NOT RELEVANT TO PLANNING PURPOSE

- 4.8 It is accepted that a condition which prevents the full time occupation of the unit as a permanent residence is necessary for a planning purpose; that planning purpose primarily being set out by Local Development Plan policy. The development was permitted as a holiday unit and not a permanent dwelling as the latter would have been, and would still be, contrary to adopted policy HD2. This is accepted.
- 4.9 The Applicant is not seeking to be able to occupy the unit as a full time or permanent residence: it is simply the case that the wording of the condition at present does not permit the holiday use required by the Applicant, as outlined in section 2.
- 4.10 For the purposes of this section, it has been assumed, on the basis of previous correspondence with the Planning Authority (see parag. 3.13) and planning history which has been highlighted, that the second potential meaning of the condition set out above (parag 4.6) is that which was intended by the Planning Authority, despite there being considerable ambiguity in the condition’s wording.

- 4.11 There is significant ground between the extremes of (a) a maximum stay (by an individual or group of individuals) of 4 weeks within any 13 week period combined with a “no return” restriction within that 13 week period and (b) providing the Planning Authority with sufficient reassurance that the unit will not be used as a permanent dwelling or sole or main residence. For this reason, the condition is considered unnecessarily restrictive in seeking to achieve its fundamental aim of preventing the property being used as a sole, main and/ or permanent residence and it is thus not directly related to the planning purpose of preventing the unit being a permanent residence.
- 4.12 Various reasons which have been expressed by the Planning Authority, (in Decision Notices and available written correspondence), for the imposition of condition no. 9 of 10/00172/FUL (and the identical earlier condition no. 8 within 08/01490/FUL) between 2008 and 2016 are quoted below.

1. ***“A permanent residential site at this location would conflict with the established planning policy for this rural area.”***

Comments

The Applicant agrees with the principle of this reason.

2. ***“In order to retain effective control over the nature and duration of accommodation within this unit of holiday accommodation.”***

Comments

It is necessary to retain such effective control, but the restriction of 4 weeks’ occupation of the unit within a 13 week period is not necessary in order to do this. The fundamental purpose is to prevent the unit being used as a sole or main residence or as permanent accommodation.

3. Without the condition ***“It would conflict with rural housing and other environmental policy principally because purpose-build holiday accommodation has less of a demand on its locale in terms of space needed for amenity, and the inevitable alterations that are made to increase comfort and easy access to permanent dwellings, which have a visual impact of their own. For example, fencing, storage buildings, washing lines, play areas and equipment.”***

Comments

The reasoning stated here is imprecise. A holiday unit could have the same requirements for fencing to keep children/ pets safe and is likely to require a washing line. The impact on visual amenity was dealt with in the design process and by the removal of permitted development rights within a separate planning condition. This stated reason for the condition would appear to have no bearing on the restriction of a maximum 4 weeks stay within any consecutive 13 weeks period.

4. ***“To prevent the building from being occupied as a persons’ full time residence, which would have been contrary to policy in this location. The condition therefore restricts the use of the development for holiday makers only”.***

Comments

It has been established through previous correspondence with the Planning Authority that the Applicant and his family/ extended family are no different (in planning terms) to other potential holiday makers for planning purposes. A family group, is however (even in the largest families) a smaller group than the overall pool of potential holiday renters. Return is therefore more likely with family and friends using a property, whilst being a long way in circumstantial terms from being a permanent residence.

A restriction of a 4 week stay within in a consecutive 13 week period is therefore unreasonable and unnecessary to ensure that the unit does not become a permanent dwelling. The condition discriminates against family holiday use due to the point made in the above paragraph. The restriction is not reasonably related to the purpose which the Planning Authority is seeking to achieve. The Applicant has demonstrated the practical problems which the condition gives rise to and it is preventing reasonable holiday use of the unit by the Applicant and his extended family.

5. ***“To enable the development to provide for year-round self-catering accommodation while preventing any long term occupancies.”***

Comments

The Applicant acknowledges the removal of the previous ‘9th January to 9th February’ restriction and agrees that, were the unit ever let on a commercial basis in the future by a different owner, it is reasonable, and reflects

demand, to be able to offer year-round use by holiday guests. It is also agreed that, for planning policy reasons, long term occupancies (including by way of a short assured tenancy/ future Scottish Private Residential Tenancy) or permanent/ near-permanent occupation by the owner must be prevented.

The 4 week restriction in any 13 week period, is however unnecessarily restrictive in terms of the planning purpose which the Planning Authority seeks to achieve. It is possible to meet the aims of planning policy without imposing this restriction and thus enabling the Applicant and his extended family to use the property as they require, particularly to meet with the timings and durations of school holidays and mid-term breaks.

GROUND 3: THE CONDITION IS UNREASONABLE

- 4.13 On the basis of the points made under Grounds 1 and 2, the condition is also considered to be unreasonable in terms of its unnecessarily restrictive nature and the fact that it does not relate directly to the fundamental planning purpose of preventing a permanent residence.
- 4.14 It has been asserted by the Planning Authority (Mr Aikman's email of 28th October, 2016) that *"The wording of the condition, nor our interpretation of it, makes any differentiation between owners of the accommodation or other holidaymakers."* Owing to the relatively small 'pool' of extended family members, however, as compared to the pool of holiday makers who may wish to rent a beach holiday unit, the condition is considered to discriminate against *family* holiday use (as compared to 'mainstream' commercial letting holiday use). There is an inevitability of the Applicant wishing to return within a 13 week period after a stay of only 4 weeks in any single quarter-year. This is by no means unreasonable holiday use of the unit and there is no risk of the unit becoming a permanent dwelling if the planning condition, as proposed at the end of this document (parag. 4.36), is used.

REVIEW OF RELEVANT DECISIONS**Appeal Decision: PPA-170-2094. Decision date 04/09/14**

- 4.15 Proposal: Campsite including 12 pitches, 4 of which were static ('shepherd's hut') style caravans and manager's temporary accommodation.

1. No caravan or tent pitches hereby granted planning permission shall be used as a sole or main residence; they shall be for holiday use only. The operator of the site shall maintain a register of guests (including the name, address, dates of arrival and departure) of those staying at the site. On request, this guest register shall be made available to the Council as planning authority for inspection.

Reason: to define the consent and ensure that the site is not used for permanent residential occupation.

- 4.16 **Comment:** There is no reference to a 'no return' period or a specific time period on the 'shepherd's hut' holiday units or the pitches. The Reporter has assessed that the restrictions set out within the condition are sufficient to restrict the use to holiday accommodation and appropriate to meet the tests set out within Circular 4/1998. A condition to this effect, worded to apply to the Coldingham holiday unit, is considered to be appropriate.
- 4.17 A selection of examples of conditions used by certain rural Planning Authorities are noted below. In order to ensure the examples are of relevance, they generally comprise independent holiday accommodation, as opposed to being functionally ancillary or tied to a 'parent' dwelling.
- Example 1: The Highland Council: 17/00289/S42. Decision date 20/04/17**
- 4.18 Proposal: Application under S42 to amend Condition 3 (occupancy) of planning permission 05/00511/FULRC- Erection of Holiday Letting Unit. This decision is very recent and was made over 2 years after the above noted appeal decision.
- 4.19 Planning permission was sought under Section 42 to amend the wording of the occupancy condition within a 2007 planning permission (05/00511/FULRC). The development approved under that permission involved the erection of an independent holiday letting unit. The original occupancy condition stated:

"The units hereby approved shall not be made available for occupation as a permanent residence, nor shall they be occupied for more than three consecutive months, nor for more than six months in total in any calendar year by the same persons or groups of persons. Reason: In order that the Planning Authority can retain effective control over the site in recognition of the Development Plan Policies regarding housing in the countryside. The site is located in an area where Council policy restricts new housing and in the interests of compliance with this restriction, it is expedient to preclude permanent occupancy of the units."

- 4.20 It was accepted that there was a continuing requirement, in the interests of maintaining compliance with the development plan, that occupancy of the accommodation be restricted. It was, however, acknowledged by the Planning Authority that there should be a degree of flexibility in the manner in which the accommodation may be occupied, **provided that it not used as permanent unrestricted accommodation or as a primary place of residence.**
- 4.21 The wording of the condition was amended to:

"Notwithstanding Class 9 of the schedule to the Town and Country Planning (Use Classes) (Scotland) Order 1997, the residential unit shall be used to provide holiday accommodation only and shall not be used as permanent unrestricted accommodation or as a primary place of residence.

The amended wording continues to restrict the occupancy, as required by the development plan policies and statutory supplementary guidance, thereby ensuring that the development continues to accord with the development plan."

- 4.22 **Comment:** There is no reference to a 'no return' period or a specific time period. The Planning Authority has assessed that the restrictions set out within the condition are sufficient to restrict the use to holiday accommodation and appropriate to meet the tests set out within Circular 4/1998. A condition to this effect is considered to be suitable for the Coldingham holiday unit and such would be consistent with the above-noted DPEA decision.

Example 2: Dumfries and Galloway. 16/P/4/0109. Decision date 14/07/16

- 4.23 Proposal: Erection of three holiday chalets, installation of septic tank and soakaways and alterations to existing access. Howslack, Moffat

That none of the chalets hereby granted planning permission shall be occupied as the sole, main or permanent residence of the occupant(s) and they shall be used for holiday use only.

In order to define the terms of this planning permission and to comply with the requirements of Policy ED10 of the Local Development Plan, which has a presumption against tourism accommodation being used for permanent residence.

- 4.24 **Comment:** There is no reference to a 'no return' period or a specific time period. The Planning Authority has assessed that the restrictions set out within the condition are sufficient to restrict the use to holiday accommodation and appropriate to meet the tests set out within Circular 4/1998. A condition to this effect is considered to be suitable for the Coldingham holiday unit and such would be consistent with the above-noted DPEA decision.

Example 3: Dumfries and Galloway. 15/P/2/0310. Decision date 24/02/15

- 4.25 Proposal: Erection of holiday lodge with associated access track, car parking and landscaping. Kipp Paddock, Kippford, Dalbeattie.

That the lodge hereby granted planning permission shall not be occupied as the sole or main residence of the occupant and it shall be used for holiday use only. The operator of the said lodge shall maintain a register of guests (including the name, address, dates of arrival and departure) of those staying at the lodge. On request, this guest register shall be made available to the Council as planning authority for inspection.

In order to define the terms of this planning permission.

- 4.26 **Comment:** There is no reference to a 'no return' period or a specific time period. The Planning Authority has assessed that the restrictions set out within the condition are sufficient to restrict the use to holiday accommodation and appropriate to meet the tests set out within Circular 4/1998. A condition to this effect is considered to be suitable for the Coldingham holiday unit and such would be consistent with the above-noted DPEA decision.

Example 4: Scottish Borders Council: 16/00842/FUL. Decision date 08/09/16

- 4.27 Proposal: Erection of log cabin for holiday let. Land south east of Priestrig Croft, Hawick

The holiday cabin shall be occupied for holiday use only and shall not be used as a person's sole or main residence or as temporary or permanent residential accommodation. The applicant shall maintain an up-to-date register of the names of all holiday makers staying in the cabin and their main home addresses, and shall make this information available for inspection by an authorised officer of the Planning Authority at all reasonable times. The cabin shall be used in connection with Priestrig Croft and kept within the same ownership as that dwellinghouse and not to be sold from that dwellinghouse. Reason: The accommodation on the site is not designed for permanent occupation and permanent residential use would be contrary to the Council's housing in the countryside policies.

- 4.28 A similar condition was imposed in **16/00424/FUL. Decision date 31/05/16**
Proposal: Erection of holiday chalet. Land North Of Singdean Shop, Newcastleton
- 4.29 **Comment:** The first part of these conditions would be acceptable to the Applicant, would meet the Circular 4/1998 tests and would be consistent with the above-noted DPEA decision.
- 4.30 The second part is not relevant because the holiday unit is not associated with an existing dwelling. The position which appears to be asserted by Scottish Borders Council (in email correspondence from Mr Aikman to Davidson Chalmers dated 28th October, 2016) that a planning distinction can be made between (a) functionally ancillary holiday accommodation or (b) holiday accommodation in close geographical proximity to an existing 'parent' house and (c) a standalone holiday property (such as the subject of this application) is disputed.
- 4.31 The Officer stated that the above two referenced Scottish Borders Council planning permissions "*appear to relate to holiday accommodation which is associated with a dwellinghouse by ownership and location. As far as I am aware, the Pavilion is a standalone property therefore there is no dwellinghouse to tie this holiday accommodation to. While these examples are of some relevance, they also demonstrate that each application has to be assessed on its own merits and in the case of this proposal, planning conditions must be relevant to each specific development and remain enforceable. Ultimately, the suitability of the alternative condition must be fully considered through the application process and the final decision could rest with the Planning Committee.*"

4.32 The Applicant’s planning and legal agents share the view that there is no planning distinction to be made between the two scenarios. In terms of ‘planning purpose’ and ‘relevance to the development’ it is simply necessary to prevent both from being used as permanent accommodation in order to comply with development plan policy. The issue with both is thus identical. The imposition of a maximum continuous stay of 4 weeks in any 13 week period where there is no ‘parent’ house/ facility is unnecessary and unreasonable, particularly as it has not been used in the above examples.

Summary of Occupancy Restriction Examples

4.33 Based on the examples illustrated within this statement, a summary of the key aspects of occupancy planning conditions imposed recently by decision makers is provided below.

DECISION MAKER	KEY COMPONENTS OF RESTRICTION	COMMENT
DPEA (Appeal)	Holiday use only and maintain register of holiday guests. (Note: NO time limit, NO no-return period).	Appropriate.
Scottish Borders	Maximum stay of 4 weeks in 13 weeks, holiday use only and maintain guest register OR tie to an existing dwelling, holiday use only, not sole of main residence and maintain guest register.	Unreasonable, not precise, not relevant to planning purpose.
Highland	S42 decision: holiday accommodation only and not permanent/ sole or main residence.	S42 decision is wholly in line with DPEA decision. Appropriate.
Dumfries & Galloway	Not sole or main residence, holiday use only and maintain guest register.	In keeping with DPEA decision. Appropriate.

4.34 The Planning Authority must acknowledge that the **primary residence** of persons is easily established, with relevant factors including: an occupier’s correspondence address, where the occupier is registered with their GP, where an occupier’s children attend school, where an occupier is registered to vote and where an occupier pays full Council Tax.

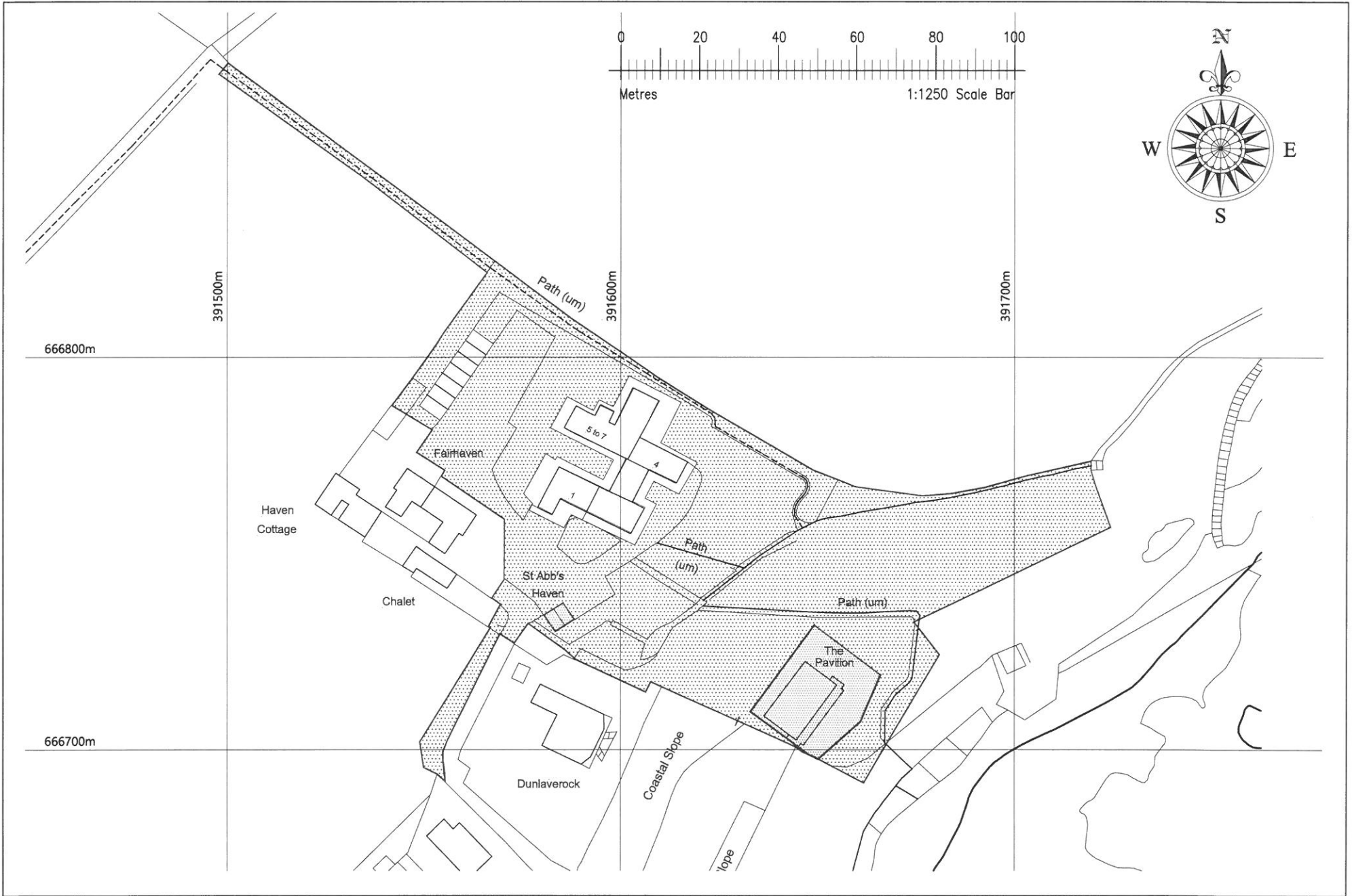
- 4.35 The appropriate occupancy restriction is considered to be one based upon the principles set down in the DPEA decision noted herein. The DPEA decision appears to have been followed, in the examples provided, by two predominantly rural planning Authorities: Highland Council and Dumfries and Galloway Council.
- 4.36 The existing and the proposed planning conditions are set out below.

Existing condition 9 of 10/00172/FUL

The occupation of the building shall be restricted to holiday purposes only for individual periods not exceeding 4 weeks in total within any consecutive period of 13 weeks. A register of holidaymakers shall be kept and made available for inspection by an authorised officer of the Council at all reasonable times.
Reason: A permanent residential site in this location would conflict with the established planning policy for this rural area.

PROPOSED CONDITION 9

The occupation of the building shall be restricted to holiday purposes only and it shall not be used as a sole or main residence. A register of holidaymakers shall be kept and made available for inspection by an authorised Officer of the Council at all reasonable times.



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*Planning and
Economic Development*

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

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

Application for Planning Permission

Reference : 08/01490/FUL

To : Mr Nesbitt per GLM 58 Castle Street Edinburgh EH2 3LU

With reference to your application validated on **9th September 2008** for planning permission under the Town and Country Planning (Scotland) Act 1997 for the following development :-

Proposal : Replacement of derelict pavilion with holiday pavillon

at : Pavilion North East Of Dunlaverock House Coldingham 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 24th February 2009
Planning and Economic Development
Council Headquarters
Newtown St Boswells
MELROSE
TD6 0SA**

Signed


.....
Head of Planning & Building Standards

- 1** The development hereby permitted shall not be carried out otherwise than in complete accordance with the plans and specifications approved by the Local Planning Authority.
Reason: To ensure that the development is carried out in accordance with the approved details.
- 2** 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, windows, doors and roofs of the buildings, including all finished paint or stain colours, have been submitted to and approved in writing by the 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 within an Area of Great Landscape Value.
- 3** No development shall be commenced until details have been submitted to, and approved in writing by the Planning Authority, relating to the proposed improvements to the right of way to be utilised as an access to the development. Said details will include proposals for lighting of the right of way, including lighting levels and structures proposed to house the lighting.
Reason: In the interests of amenity and safety of users.
- 4** The existing right of way shall not be blocked, obstructed or diverted prior to, during or after development unless specific legal entitlement to do so has been obtained from the Planning Authority.
Reason: In the interests of the amenity of users of said right of way, which is considered to be of significant public importance.
- 5** 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 (as appropriate):

 - 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.

Reason: To enable the proper form and layout of the development and the effective assimilation of the development into its wider surroundings.
- 6** The building shall not be occupied until works for the disposal of sewage have been provided on the site to serve the development hereby permitted in accordance with details to be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that satisfactory arrangements are made for the disposal of surface and foul water.

- 7 This purpose-built holiday unit shall not be occupied for the purposes of human habitation between the 9th January and 9th February, in each calendar year.
Reason: The establishment of a permanent residential unit on this site would conflict with the established policy for new dwellings in this location.
- 8 The occupation of the building shall be restricted to holiday purposes only for individual periods not exceeding 4 weeks in total within any consecutive period of 13 weeks. A register of holidaymakers shall be kept and made available for inspection by an authorised officer of the Council at all reasonable times.
Reason: A permanent residential site in this location would conflict with the established planning policy for this rural area.
- 9 Before any works commence a scheme shall be submitted to and approved in writing by the Local Planning Authority indicating proposals for the satisfactory storage of refuse in accordance with BS.5906. Such proposals as shall be agreed shall be implemented upon occupation of the development and thereafter retained.
Reason: To ensure the provision of satisfactory facilities for the storage of refuse.
- 10 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(Scotland) Order 1992 (or amendments or re-enactment or re-enactment thereof) no extension, enlargement, or other alteration of the dwelling including the erection of detached outbuildings shall be carried out without the prior written consent of the Council, to whom a planning application must be made.
Reason: The development hereby permitted is the maximum that can be reasonably allowed without causing detriment to the local environment in this sensitive location, and for this reason would wish to control any future proposals, alterations or extensions.

It should be noted that:

The applicant is reminded that this permission does not convey approval for works affecting third party rights which may exist on the land or any adjoining. The applicant is therefore advised to seek the approval of any parties having an interest in any land affected by this permission.

The attention of the developer is drawn to the Section 75 Agreement relating to the permanent provision of 2 no. parking spaces as identified in the plans accompanying the agreement, which in turn form part of this planning permission.

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

SCOTTISH BORDERS COUNCIL

BERWICKSHIRE AREA COMMITTEE

16th DECEMBER 2008

APPLICATION FOR PLANNING PERMISSION

ITEM:	REFERENCE NUMBER: 08/01490/FUL
OFFICER:	J Hiscox
WARD:	East Berwickshire
PROPOSAL:	Replacement of derelict pavilion with holiday pavilion
SITE:	Pavilion North East of Dunlaverock House, Coldingham
APPLICANT:	Mr Nesbitt
AGENT:	GLM

SITE DESCRIPTION:

The site is situated close to the building group known as Coldingham Bay, partway between the beach and the general area of dwellings, and presently contains the remains of a former pavilion, used historically in association with the former St Abbs Haven Hotel, which has now been converted into six dwellings (now simply The Haven).

It is accessed only by pedestrian pathways, from above near The Haven and from below from the foreshore. The paths are not suited to any users other than able-bodied pedestrians.

The site is within an Area of Great Landscape Value.

PROPOSED DEVELOPMENT:

The submitted drawings show a rectangular-plan, gable-ended, dual-pitched building which, it is proposed, would be utilised as a single unit of 'purpose-built' holiday accommodation. A permanent residence is not applied for.

Access would be available from both the shore and from above. Within the existing car park serving the Haven, two unallocated spaces would be set aside only for users of the new unit.

PLANNING HISTORY:

Although the site itself has not previously been the subject of any planning applications, a significant amount of pre-application dialogue took place during which the view was expressed, without prejudice, that the principle of one unit of purpose-built holiday accommodation may be acceptable here.

REPRESENTATION SUMMARY:

A total of four individual letters of representation have been submitted in relation to this planning application. Whilst 2 are clearly submitted as objections, 2 are precautionary on their nature and tend to make recommendations to ensure that the intentions of the application, and any resultant permission granted are fully understood. However, due to the detailed nature not only of the objections, but also of the precautionary submissions, it is considered to be prudent

to present this application to Members for determination. Furthermore, the uniqueness of the application is such that it demands very careful consideration.

A summary of the issues raised in objection would be as follows:

- proposed modern style is not empathetic with surrounding Edwardian housing and bathing units;
- general adverse impact on amenity;
- planning permission should restrict size of structure to same as present pavilion (footprint);
- development would lead to long-term increase in pedestrian and vehicular traffic within The Haven (grounds) and give rise to adverse impact on residential amenity;
- problems caused by construction traffic during development (also prejudicing residential amenity);
- changes necessary to provide services would cause disruption;
- proposed two parking spaces unlikely to be adequate to serve development of this size;
- lack of clarity relating to bin storage;
- site only suitable for day pavilion, not commercial development of this nature.

A summary of the issues raised as concerns rather than as objections would be:

- uncertain what form improvement to public path will occur, including lighting;
- any lighting proposed should be discrete, given the natural surroundings;
- not clear who will upkeep the footpath;
- lack of clarity relating to 'landscaping';
- lack of clarity relating to bin storage and meter boxes;
- congestion caused by workers could threaten safety of residents, including children;
- not convinced that design approach is appropriate as does not appear to reflect others in vicinity;
- lack of clarity relating to services;
- present access road might need to be upgraded to accommodate additional development;
- concern relating to safety of pedestrians using right of way during development;
- plans show no provision for disabled access – is this not necessary in holiday homes?

APPLICANTS' SUPPORTING INFORMATION:

Two letters have been submitted on the applicant's behalf, the first at the time of the application as a supporting statement, the second in the context of much of the objection received from the public and at least one consultee. The letters give the following information considered to be of significance/relevance:

- design responds to objectives to make use of seaward views and solar gain for energy efficiency;
- would bring development benefits in terms of restoration of the local landscape, upgrade/repair of path and steps and an overall contribution to the tourism facilities in the area;
- development would not set a precedent for similar development, as there are no other previously developed sites of this nature in the locale;
- responses to letters of representation, on various issues.

CONSULTATION RESPONSES:

Scottish Borders Council Consultees:

Director of Technical Services (Road User Manager): Comments as follows:

- generally supportive of application, given its intended use and seasonal nature;
- would not be supportive of this proposal if it were for a private dwellinghouse;
- concerns relating to the access to the pavilion via the unlit, unmade and steep grass footpath;
- providing a legal agreement or conditions are attached to any consent preventing the house being converted to a private dwelling, no objection to the application as long as the following would be incorporated into the design:
 - o two parking spaces to be provided.
 - o existing footpath to be upgraded to provide suitably stepped access with handrail.

Director of Technical Services (Flood Risk Officer): No objection but advises in relation to potential sources of flooding not directly related to the sea.

Director of Education and Lifelong Learning: No observations.

Statutory Consultees

St Abbs Community Council: No objections or observations.

SEPA: No objection, but gives advice relating to:

- flood risk
- foul drainage
- surface water drainage
- landscaping
- waste management
- recycling
- pollution prevention

Other Consultees

None.

DEVELOPMENT PLAN POLICIES:

Scottish Borders Structure Plan 2001-2011:

Policy N7 – Protection of Nature Conservation Interest

Policy N11 – Areas of Great Landscape Value

Policy N12 – Coastline

Policy N20 – Design

Policy E21 – Tourism Development

Policy C8 – Access Network

Policy I11 – Parking Provision in New Development

Policy I12 – Provision of Water and Sewerage Services

Scottish Borders Local Plan: September 2008:

Policy G1 – Quality Standards for New Development

Policy NE3 – Local Biodiversity

Policy EP2 – Areas of Great Landscape Value

Policy EP4 – Coastline

Policy H2 – Protection of Residential Amenity

Policy Inf2 – Protection of Access Routes
Policy Inf4 – Parking Provisions and Standards
Policy D1 – Business, Tourism and Leisure Development in the Countryside

OTHER PLANNING CONSIDERATIONS:

None to list.

KEY PLANNING ISSUES:

- whether the development proposal is compatible with development plan policies relating to land-use;
- if the development is considered to be compatible in terms of land-use, whether there are any other issues which would prevent the principle of the development from being supported;
- if there are no reasons why the principle may not be supported, whether the specific details of the development are considered to be acceptable;
- if any issues raised in representation would influence the planning recommendation.

ASSESSMENT OF APPLICATION:

Land-Use

There are no Policies within the development plans which would preclude the principle of this development being supported. The site is clearly previously developed, may be described as an eyesore in its present state, and the site would benefit from some method of positive restoration or development to improve the local environment.

Specifically, Policies E21 of the Structure Plan and D1 of the Local Plan would permit the principle of a tourism-related development to be considered.

Access to the Site:

It is unusual to be required to consider a site which will inevitably involve domestic vehicle use on a normal basis, but to have no parking area set aside within it. Ultimately, users will have no alternative but to use an existing right of way leading to and from two car parking spaces allocated within the car park serving The Haven. The developer's proposal is that two such spaces will be allocated on a permanent basis. In the event of planning permission being granted, because these are not within the site they would need to be secured via a legal agreement. It is understood that the developer is willing to enter into such an agreement.

This arrangement is considered to be acceptable from a planning point of view, in these specific circumstances.

It should be noted that the right of way is not managed or promoted by SBC, but that due to a long history of customary public use and no contest against public use it may be afforded similar protection to a public right of way.

Nature of Proposed Development:

The accommodation would be utilised for overnight accommodation, and as a result would adopt a different role to other local accommodation due to its unique position and to the presence of the beach huts below, which are all unsuitable for overnight accommodation due to their size and site.

The development may give rise to a low level of change to the lighting of the seaward slope, but in reality this would not generally be seen by the public, as the beach is not used readily in darkness. For this reason, the nature of the proposed development is considered to be acceptable.

Design:

The simple and understated modern design would give the development subtle and positive appearance. It would recede in the public view whilst not disappearing. This design approach is considered to reflect the dimensions and character of the pavilion it would replace. The slight increase in footprint is negligible – it would not in itself enable an objection to be sustained.

It is not necessary to mimic the characteristics of the previous pavilion, or to attempt to copy local Edwardian traits, which in themselves present a sometimes eclectic and confused view of the upper seaward slope.

Other Planning Issues:

It is considered that there are no overriding planning concerns arising from consultation responses.

Issues Raised in Representation:

If not specifically listed, issues raised in representation have been given coverage in earlier sections of this planning report. Other issues may not be specifically listed if they may be overcome straightforwardly by the use of appropriate planning conditions.

Design/Visual Impact:

This issue has been given specific coverage in earlier sections of the report.

Amenity of Existing Residents:

It is not considered that the re-development of this site would give rise to such a level of disturbance or intensification of usage in its vicinity, that refusal could be sustained on private or public amenity grounds. Development will normally attract a level of disturbance, but this in itself will not often give rise to grounds to resist.

Adequacy of Parking Spaces:

The Director of Technical Services has indicated that the level of parking should be two spaces for this development. As this is clearly achievable, albeit by legal agreement, this would not give rise to a sustainable objection.

Bin Storage:

Although it is not clear from the submitted application where bin storage is proposed, in the event of planning permission being granted, this information can be obtained by planning condition.

CONCLUSION:

The unique nature of this site, the desire to take advantage of an opportunity to obtain an appropriate replacement use for it, the suitable nature of the development proposed and the lack of other similar future precedent sites in the locale make this development supportable.

The impact of the development would be positive, and the level of development compatible with both the site and the locale.

The issues raised in representation are not considered to outweigh the general acceptability of this planning proposal, which is considered to accord with the objectives of the above-listed development plan policies.

On this basis, approval of the planning application is recommended.

RECOMMENDATION BY HEAD OF PLANNING AND BUILDING STANDARDS:

I recommend the application is approved subject to a legal agreement addressing required parking provisions, and the following conditions:

- 1 The development hereby permitted shall not be carried out otherwise than in complete accordance with the plans and specifications approved by the Local Planning Authority.
Reason: To ensure that the development is carried out in accordance with the approved details.
- 2 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, windows, doors and roofs of the buildings, including all finished paint or stain colours, have been submitted to and approved in writing by the 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 within an Area of Great Landscape Value.
- 3 No development shall be commenced until details have been submitted to, and approved in writing by the Planning Authority, relating to the proposed improvements to the right of way to be utilised as an access to the development. Said details will include proposals for lighting of the right of way, including lighting levels and structures proposed to house the lighting.
Reason: In the interests of amenity and safety of users.
- 4 The existing right of way shall not be blocked, obstructed or diverted prior to, during or after development unless specific legal entitlement to do so has been obtained from the Planning Authority.
Reason: In the interests of the amenity of users of said right of way, which is considered to be of significant public importance.
- 5 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 (as appropriate):
 - 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.Reason: To enable the proper form and layout of the development and the effective assimilation of the development into its wider surroundings.

- 6 The building shall not be occupied until works for the disposal of sewage have been provided on the site to serve the development hereby permitted in accordance with details to be submitted to and approved in writing by the Local Planning Authority.
Reason: To ensure that satisfactory arrangements are made for the disposal of surface and foul water.
- 7 This purpose-built holiday unit shall not be occupied for the purposes of human habitation between the 9th January and 9th February, in each calendar year.
Reason: The establishment of a permanent residential unit on this site would conflict with the established policy for new dwellings in this location.
- 8 The occupation of the building shall be restricted to holiday purposes only for individual periods not exceeding 4 weeks in total within any consecutive period of 13 weeks. A register of holidaymakers shall be kept and made available for inspection by an authorised officer of the Council at all reasonable times.
Reason: A permanent residential site in this location would conflict with the established planning policy for this rural area.
- 9 Before any works commence a scheme shall be submitted to and approved in writing by the Local Planning Authority indicating proposals for the satisfactory storage of refuse in accordance with BS.5906. Such proposals as shall be agreed shall be implemented upon occupation of the development and thereafter retained.
Reason: To ensure the provision of satisfactory facilities for the storage of refuse.
- 10 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(Scotland) Order 1992 (or amendments or re-enactment or re-enactment thereof) no extension, enlargement, or other alteration of the dwelling including the erection of detached outbuildings shall be carried out without the prior written consent of the Council, to whom a planning application must be made.
Reason: The development hereby permitted is the maximum that can be reasonably allowed without causing detriment to the local environment in this sensitive location, and for this reason would wish to control any future proposals, alterations or extensions.

Informatives:

1. The applicant is reminded that this permission does not convey approval for works affecting third party rights which may exist on the land or any adjoining. The applicant is therefore advised to seek the approval of any parties having an interest in any land affected by this permission.
2. The attention of the developer is drawn to the Section 75 Agreement relating to the permanent provision of 2 no. parking spaces as identified in the plans accompanying the agreement, which in turn form part of this planning permission.

Approved by
Name Designation Signature
Brian Frater

Head of Planning and Building Standards

Author(s)
Name Designation
Mr John Hiscox Planning Officer

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

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

Application for Planning Permission

Reference : 09/00959/FUL

**To : Mr Nesbitt per Jennifer Lampert Associates Ltd Orchard House The Square Paxton
Berwick On Tweed TD15 1TE**

With reference to your application validated on **21st July 2009** for planning permission under the Town and Country Planning (Scotland) Act 1997 for the following development :-


**Proposal : Removal of condition 7 which restricts the habitation of the holiday unit between 9
January and 9 February in each calendar year on planning consent 08/01490/FUL**

at : Pavillion North East Of Dunlaverock House Coldingham 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.

**Dated 1st September 2009
Planning and Economic Development
Council Headquarters
Newtown St Boswells
MELROSE
TD6 0SA**

Signed



Head of Planning & Building Standards

APPLICATION REFERENCE : 09/00959/FUL

Schedule of Plans and Drawings Approved:

Plan Ref	Plan Type	Plan Status
	Location Plan	Approved
	Other	Approved
E2346-300	Location Plan	Approved
E2346-303	Block Plans	Approved

REASON FOR DECISION

Condition 8 of the planning permission ref. 08/01490/FUL is adequate to enable the Planning Authority to retain effective control over the nature and duration of accommodation within this unit of holiday accommodation. The issues raised in representation do not outweigh the general acceptability of this development proposal.

FOR THE INFORMATION OF THE APPLICANT

It should be noted that:

The attention of the developer is drawn to the extant permission ref. 08/01490/FUL and to the remaining conditions other than no. 7, which has been removed as a result of this planning permission. All other conditions remain valid and must be adhered to strictly.

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 (Carlons 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.

SCOTTISH BORDERS COUNCIL

**APPLICATION FOR PLANNING PERMISSION TO BE DETERMINED UNDER POWERS DELEGATED
TO THE HEAD OF PLANNING AND BUILDING STANDARDS**

PART III REPORT

REF : 09/00959/FUL

APPLICANT : Mr Nesbitt

AGENT : Jennifer Lampert Associates Ltd

DEVELOPMENT : Removal of condition 7 which restricts the habitation of the holiday unit between 9 January and 9 February in each calendar year on planning consent 08/01490/FUL

LOCATION: Pavilion North East Of Dunlaverock House
Coldingham
Scottish Borders

TYPE : FUL Application

REASON FOR DELAY:

Recommendation by - John Hiscox (Planning Officer) on 31st August 2009

The following report relates to an application that seeks to remove condition 7 of planning permission ref. 08/01490/FUL. The existing full planning permission is for a holiday pavilion, on the site of an existing derelict structure on the outskirts of the building group at Coldingham Bay, in Berwickshire. Condition 7 reads:

" This purpose-built holiday unit shall not be occupied for the purposes of human habitation between the 9th January and 9th February, in each calendar year. Reason: The establishment of a permanent residential unit on this site would conflict with the established policy for new dwellings in this location."

The intention of this condition, which occurs within the list of standard conditions utilised by the Director of Planning, is to give additional security where planning permission is granted on sites which, for policy reasons, would be suitable for holiday accommodation but not for permanent residences. It is considered to be a reasonable condition, which is understood to be generally compatible with owners' maintenance aspirations in that the month can be used for repairs or refurbishment that might preclude use by holidaymakers. It is the norm to apply this condition in tandem with a second condition (as in this instance Condition 8) to give additional security:

" The occupation of the building shall be restricted to holiday purposes only for individual periods not exceeding 4 weeks in total within any consecutive period of 13 weeks. A register of holidaymakers shall be kept and made available for inspection by an authorised officer of the Council at all reasonable times. Reason: A permanent residential site in this location would conflict with the established planning policy for this rural area."

However, the developer in this instance is keen to make the accommodation available for 52 weeks in every year, and has requested the removal of condition 7 but not the removal of condition 8 to allow this to occur.

The Council has consistently affirmed its position that planning permission for a permanent residence on this site would conflict with rural housing and other environmental policy. Principally, this is because purpose-built holiday accommodation has less of a demand on its locale in terms of space needed for amenity, and the inevitable alterations that are made to increase comfort and easy access to permanent dwellings, which have a visual impact of their own. For example, fencing, storage buildings, washing lines, play areas and equipment. Condition 10, removing permitted development rights on the development, is closely linked to

this concern. The site is unusual in that it is prominent from the beach and forms an integral part of the setting to Coldingham Bay in a location that would not normally be expected, although it must be acknowledged that the site is not within the building group. It is a developmental quirk that a building should be found on the site at all. The design of the development approved under the 2008 reference is considered to be positive and compatible with the setting but if translated into a permanent dwelling it would begin to conflict with its surroundings.

The intention of the developer, however, is not to undermine the Council's position by establishing a permanent dwelling; that is clear - the supporting statement submitted with the application confirms this.

In considering this application, it is essential to assess whether removal of the condition would leave the Council in a position where it could be disarmed and find that conditions enabling control over the terms of accommodation might no longer be enforceable. This issue is at the heart of the single letter of objection and is mentioned in the other two letters of representation/comment. But condition 8 is adequately worded and formulated to enable the Council to prevent long-term occupancies. It must be acknowledged that the British self-catering accommodation market is now a year-round operation and that it would be unreasonable to reject this proposal, in responding formally to the objectives of the application.

The issues raised in the single objection letter do not outweigh the compatibility of the proposal with local plan policy, in particular tourism policy objectives. It is therefore recommended that the application be approved.

Recommendation: Approved with informatives

Informatives

It should be noted that:

- 1 The attention of the developer is drawn to the extant permission ref. 08/01490/FUL and to the remaining conditions other than no. 7, which has been removed as a result of this planning permission. All other conditions remain valid and must be adhered to strictly.

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

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

Application for Planning Permission

Reference : 10/00172/FUL

**To : Mr Robert Cameron per Mr Stuart Palmer Surface Light & Space Ltd 6 Charlotte Square
Newcastle Upon Tyne NE1 4XF**

With reference to your application validated on **24th February 2010** for planning permission under the Town and Country Planning (Scotland) Act 1997 for the following development :-

**Proposal : Replacement of derelict pavilion with holiday pavilion (change of pavilion type
previously approved on 08/01490/FUL)**

at : Pavilion North East Of Dunlaverock House Coldingham 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 7th April 2010
Planning and Economic Development
Council Headquarters
Newtown St Boswells
MELROSE
TD6 0SA**

Signed



.....
Head of Planning & Building Standards

APPLICATION REFERENCE: 10/00172/PUL

Schedule of Plans and Drawings Approved:

Plan Ref	Plan Type	Plan Status
DESIGN STATEMENT	Report	Approved
	Location Plan	Approved
2021_SE_00_001	Sections	Approved
2021_ELE_02_101	Sections	Approved
2021_ELE_03_101	Elevations	Approved
2021_GA_00_101	Floor Plans	Approved
2021_GA_01_101	Floor Plans	Approved
2021_GA_02_101	Other	Approved
2021_ELE_00_101	Elevations	Approved
2021_ELE_01_101	Elevations	Approved

REASON FOR DECISION

Having regard to the proposed use, location, design, relationship with existing development and the setting of Coldingham Bay, the development accords with objectives of development plan policy relating to tourism, design, protection of residential amenity, landscape protection and others covering the physical impact of development on the environment.

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 development hereby permitted shall not be carried out otherwise than in complete accordance with the plans and specifications approved by the Local Planning Authority.
Reason: To ensure that the development is carried out in accordance with the approved details.
- 3 Prior to the commencement of development, a construction method statement shall be submitted to and approved in writing by the planning authority. The development shall be undertaken in strict accordance with the details agreed in writing.
Reason: The site is in a sensitive location and is not reachable by construction traffic. It is essential that the methods of moving machinery, tools and materials onto the site and construction methods are known and approved, to ensure that minimal environmental impact occurs.
- 4 The two parking spaces identified within the location plan forming part of this planning permission (received 24.2.10) shall be kept permanently available for users of the development for the parking of roadworthy vehicles, and shall not be sold or let (i.e. legally subdivided) from the development.
Reason: The provision of permanent parking spaces to serve this development is essential, as in their absence/unavailability the environment in proximity to the development is likely to be compromised by users seeking an alternative location for the parking of vehicles.

- 5 No development shall be commenced until details have been submitted to, and approved in writing by the Planning Authority, relating to the proposed improvements to the right of way to be utilised as an access to the development. Said details will include proposals for lighting of the right of way, including lighting levels and structures proposed to house the lighting.
Reason: In the interests of amenity and safety of users.
- 6 The existing right of way shall not be blocked, obstructed or diverted prior to, during or after development unless specific legal entitlement to do so has been obtained from the Planning Authority.
Reason: In the interests of the amenity of users of said right of way, which is considered to be of significant public importance.
- 7 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 (as appropriate):
- 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.
- Reason: To enable the proper form and layout of the development and the effective assimilation of the development into its wider surroundings.
- 8 The building shall not be occupied until works for the disposal of sewage have been provided on the site to serve the development hereby permitted in accordance with details to be submitted to and approved in writing by the Planning Authority.
Reason: To ensure that satisfactory arrangements are made for the disposal of surface and foul water.
- 9 The occupation of the building shall be restricted to holiday purposes only for individual periods not exceeding 4 weeks in total within any consecutive period of 13 weeks. A register of holidaymakers shall be kept and made available for inspection by an authorised officer of the Council at all reasonable times.
Reason: A permanent residential site in this location would conflict with the established planning policy for this rural area.
- 10 Before any works commence a scheme shall be submitted to and approved in writing by the Planning Authority indicating proposals for the satisfactory storage of refuse in accordance with BS.5906. Such proposals as shall be agreed shall be implemented upon occupation of the development and thereafter retained.
Reason: To ensure the provision of satisfactory facilities for the storage of refuse.
- 11 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(Scotland) Order 1992 (or amendments or re-enactment or re-enactment thereof) no extension, enlargement, or other alteration of the building/dwelling including the erection of detached outbuildings shall be carried out without the prior written consent of the Council, to whom a planning application must be made.
Reason: The development hereby permitted is the maximum that can be reasonably allowed without causing detriment to the local environment in this sensitive location, and for this reason would wish to control any future proposals, alterations or extensions.
- 12 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.

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 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 THE HEAD OF PLANNING
AND BUILDING STANDARDS**

PART III REPORT (INCORPORATING REPORT OF HANDLING)

REF : 10/00172/FUL

APPLICANT : Mr Robert Cameron

AGENT : Mr Stuart Palmer

DEVELOPMENT : Replacement of derelict pavilion with holiday pavilion (change of pavilion type previously approved on 08/01490/FUL)

LOCATION: Pavilion North East Of Dunlaverock House
Coldingham
Scottish Borders

TYPE : FUL Application

REASON FOR DELAY:

DRAWING NUMBERS:

Plan Ref	Plan Type	Plan Status
DESIGN STATEMENT	Report	Approved
	Location Plan	Approved
2021_SE_00_001	Sections	Approved
2021_ELE_02_101	Sections	Approved
2021_ELE_03_101	Elevations	Approved
2021_GA_00_101	Floor Plans	Approved
2021_GA_01_101	Floor Plans	Approved
2021_GA_02_101	Other	Approved
2021_ELE_00_101	Elevations	Approved
2021_ELE_01_101	Elevations	Approved

NUMBER OF REPRESENTATIONS: 1

SUMMARY OF REPRESENTATIONS:

1 letter of concern received during the consideration period (not stated as objection).

PLANNING CONSIDERATIONS AND POLICIES:

Scottish Borders Structure Plan 2001-2018:

Policies N7, N11, N12, N20, E21, C8, I11, I12, I14, I21.

Scottish Borders Local Plan 2008:

Policies G1, NE3, EP2, EP4, H2, Inf2, Inf4, Inf5, Inf6, D1, D4.

Adopted Supplementary Planning Guidance:

- Placemaking and Design (2010).

Recommendation by - John Hiscox (Planning Officer) on 7th April 2010

This brief report relates to a full planning application for development at the settlement by Coldingham Bay, on the coast at Berwickshire. The submitted drawings and detailed design statement show the design and context for what may be described as a contemporary development which would provide a 'replacement pavilion', for use as a holiday unit.

The application was submitted following the granting of planning permission for a replacement building under earlier reference 08/01490/FUL, supplemented by 09/00959/FUL but in relation only to an occupancy condition. This scheme would be a substitute, or provide an alternative if approved.

The current scheme was considered in some detail at pre-application stage because it would change the design and resultant visual impact significantly, and because it would introduce a notable level of additional accommodation. This would be formed within a lower level, enabled by excavation of the ground underneath the building's footprint and providing an extra floor of accommodation. At pre-application stage, 'without prejudice' support for the principles of the scheme was offered by the SBC planning department, having been considered by senior planners during a group meeting with graphical material available.

Having established that the principle of re-development at this location as a holiday unit is acceptable under previous applications, it must now be decided whether the changes to the scheme would be acceptable in terms of the visual aspect of the development, and also in terms of the level of development and compatibility with the locale.

The scheme is generally considered to be of good quality and expressed well architecturally. Although non-traditional and a distinct move away from the safe and modest scheme approved under 08/01490/FUL, it is nonetheless considered to be harmonious with its unusual setting and to potentially add a very interesting development to the setting of the bay. Its ecological/energy efficiency approach appears to be genuine and well thought out. It would not set any sort of precedent within the settlement because no other opportunities to re-develop this kind of 'brownfield' site exist in the same manner.

The level of development is potentially of some concern because although the original approval was rather (self) restrictive in terms of accommodation to be provided, the replacement proposal potentially able to provide a greater level of occupancy at any given time within the development. This would not in itself promote a reason to resist the development and the increase in occupiable internal space is considered to be reasonable. However, it would necessitate the introduction of an additional planning condition in the event of permission being granted, to ensure that the physical impact of the development is adequately considered and controlled. To achieve this, a condition requiring a construction method statement would be imposed. This would be done having particular regard to the excavation works proposed, and to the potential for a larger building frame and foundation to be required.

There is a letter of concern submitted by a nearby property owner, identifying the non-traditional design as an undesirable approach in this instance, and also raising a concern that a footpath should remain open. The former is given coverage in earlier sections of this report; the latter was the subject of conditions of the previous permission and would be again if permission is granted on this occasion.

Responses from consultees remain relatively unchanged from the previous occasion when the re-development was considered. It must be noted that the requirement for a development contribution, identified within the consultation response of the Director of Education, makes an assumption that this would be a permanent residence. This would not be a requirement, as the application seeks permission for a restricted holiday unit, which would definitely control occupancy terms and lengths, if granted.

Overall, this application contains details of a good quality development in design/architectural terms with an added incentive of energy efficiency orientation and apparatus

REASON FOR DECISION :

Having regard to the proposed use, location, design, relationship with existing development and the setting of Coldingham Bay, the development accords with objectives of development plan policy relating to tourism,

design, protection of residential amenity, landscape protection and others covering the physical impact of development on the environment.

Recommendation: Approved subject to 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 development hereby permitted shall not be carried out otherwise than in complete accordance with the plans and specifications approved by the Local Planning Authority.
Reason: To ensure that the development is carried out in accordance with the approved details.
- 3 Prior to the commencement of development, a construction method statement shall be submitted to and approved in writing by the planning authority. The development shall be undertaken in strict accordance with the details agreed in writing.
Reason: The site is in a sensitive location and is not reachable by construction traffic. It is essential that the methods of moving machinery, tools and materials onto the site and construction methods are known and approved, to ensure that minimal environmental impact occurs.
- 4 The two parking spaces identified within the location plan forming part of this planning permission (received 24.2.10) shall be kept permanently available for users of the development for the parking of roadworthy vehicles, and shall not be sold or let (i.e. legally subdivided) from the development.
Reason: The provision of permanent parking spaces to serve this development is essential, as in their absence/unavailability the environment in proximity to the development is likely to be compromised by users seeking an alternative location for the parking of vehicles.
- 5 No development shall be commenced until details have been submitted to, and approved in writing by the Planning Authority, relating to the proposed improvements to the right of way to be utilised as an access to the development. Said details will include proposals for lighting of the right of way, including lighting levels and structures proposed to house the lighting.
Reason: In the interests of amenity and safety of users.
- 6 The existing right of way shall not be blocked, obstructed or diverted prior to, during or after development unless specific legal entitlement to do so has been obtained from the Planning Authority.
Reason: In the interests of the amenity of users of said right of way, which is considered to be of significant public importance.
- 7 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 (as appropriate):
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.
Reason: To enable the proper form and layout of the development and the effective assimilation of the development into its wider surroundings.
- 8 The building shall not be occupied until works for the disposal of sewage have been provided on the site to serve the development hereby permitted in accordance with details to be submitted to and approved in writing by the Planning Authority.
Reason: To ensure that satisfactory arrangements are made for the disposal of surface and foul water.
- 9 The occupation of the building shall be restricted to holiday purposes only for individual periods not exceeding 4 weeks in total within any consecutive period of 13 weeks. A register of holidaymakers

shall be kept and made available for inspection by an authorised officer of the Council at all reasonable times.

Reason: A permanent residential site in this location would conflict with the established planning policy for this rural area.

- 10 Before any works commence a scheme shall be submitted to and approved in writing by the Planning Authority indicating proposals for the satisfactory storage of refuse in accordance with BS.5906. Such proposals as shall be agreed shall be implemented upon occupation of the development and thereafter retained.

Reason: To ensure the provision of satisfactory facilities for the storage of refuse.

- 11 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(Scotland) Order 1992 (or amendments or re-enactment or re-enactment thereof) no extension, enlargement, or other alteration of the building/dwelling including the erection of detached outbuildings shall be carried out without the prior written consent of the Council, to whom a planning application must be made.

Reason: The development hereby permitted is the maximum that can be reasonably allowed without causing detriment to the local environment in this sensitive location, and for this reason would wish to control any future proposals, alterations or extensions.

- 12 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.

Informatives

It should be noted that:

- 1 The applicant is reminded that this permission does not convey approval for works affecting third party rights which may exist on the land or any adjoining. The applicant is therefore advised to seek the approval of any parties having an interest in any land affected by this permission.

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

List of Policies

Local Review Reference: 17/00052/RREF

Planning Application Reference: 17/01007/FUL

Development Proposal: Variation of Condition No 9 of planning consent 10/00172/FUL relating to occupancy of building

Location: The Pavilion, Coldingham

Applicant: Mr David Lee

SCOTTISH BORDERS LOCAL DEVELOPMENT PLAN 2016

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 ED7: BUSINESS, TOURISM AND LEISURE IN THE COUNTRYSIDE

Proposals for business, tourism or leisure development in the countryside will be approved and rural diversification initiatives will be encouraged provided that:

- a) the development is to be used directly for agricultural, horticultural or forestry operations, or for uses which by their nature are appropriate to the rural character of the area; or
- b) the development is to be used directly for leisure, recreation or tourism appropriate to a countryside location and, where relevant, it is in accordance with the Scottish Borders Tourism Strategy and Action Plan;
- c) the development is to be used for other business or employment generating uses, provided that the Council is satisfied that there is an economic and/or operational need for the particular countryside location, and that it cannot be reasonably be accommodated within the Development Boundary of a settlement.

In addition the following criteria will also be considered:

- a) the development must respect the amenity and character of the surrounding area,
- b) the development must have no significant adverse impact on nearby uses, particularly housing,
- c) where a new building is proposed, the developer will be required to provide evidence that no appropriate existing building or brownfield site is available, and where

List of Policies

- conversion of an existing building of architectural merit is proposed, evidence that the building is capable of conversion without substantial demolition and rebuilding,
- d) the impact of the expansion or intensification of uses, where the use and scale of development are appropriate to the rural character of the area,
 - e) the development meets all other siting, and design criteria in accordance with Policy PMD2, and
 - f) the development must take account of accessibility considerations in accordance with Policy IS4.

Where a proposal comes forward for the creation of a new business including that of a tourism proposal, a business case that supports the proposal will be required to be submitted as part of the application process.

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.

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(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 scale, extent, form and architectural character,

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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 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

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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.

OTHER MATERIAL CONSIDERATIONS

- Scottish Planning Policy
- Circular 4/1998 "The Use of Conditions in Planning Permission"

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