

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

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

Application for Planning Permission

Reference : 07/01075/FUL

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

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

Proposal : Erection of dwellinghouse and gable mounted wind turbine

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

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

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

Signed

Head of Planning & Building Standards

Application reference : 07/01075/FUL

REASONS FOR REFUSAL

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

FOR THE INFORMATION OF THE APPLICANT

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

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

SCOTTISH BORDERS COUNCIL

TWEEDDALE AREA COMMITTEE

22 OCTOBER 2007

APPLICATION FOR PLANNING PERMISSION

ITEM: REFERENCE NUMBER: 07/01075/FUL

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

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

SITE AND APPLICATION DESCRIPTION

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

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

CONSIDERATION BY TWEEDDALE AREA COMMITTEE

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

PLANNING HISTORY

None.

DEVELOPMENT PLAN POLICIES

Scottish Borders Structure Plan 2001-2011

Policy N10 – National Scenic Areas

Policy N11 – Areas of Great Landscape Value

Policy N20 – Design

Policy H5 – New Housing in the Countryside - Building Groups

Policy H6 – New Housing in the Countryside - Isolated Housing

Policy I21 – Small Scale Renewable Energy Technologies

Scottish Borders Local Plan Finalised December 2005

Policy G1 – Quality Standards for New Development

Policy G5 – Developer Contributions

Policy EP1 – National Scenic Areas

Policy EP2 – Areas of Great Landscape Value

Policy D2 – Housing in the Countryside

Policy D4 – Renewable Energy Development

Tweeddale Local Plan 1996

Policy 7 – Additions to Building Groups

Policy 8 – Single Houses in the Countryside

Policy 57 – Siting and Design in the Countryside

Policy 62 – Energy Efficiency

Policy 73 – Protection of National Scenic Areas

Policy 75 – Development in Designated Areas

OTHER PLANNING CONSIDERATIONS:

PAN72 – Housing in the Countryside. February 2005.

PAN 45 – Renewable Energy Technologies. 2002.

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

CONSULTATION RESPONSES:

Scottish Borders Council Consultees

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

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

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

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

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

Statutory Consultees

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

Other Consultees

None.

OTHER RESPONSES

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

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

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

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

PLANNING ISSUES

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

ASSESSMENT OF APPLICATION

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

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

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

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

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

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

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

FURTHER CONSIDERATIONS

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

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

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


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

RECOMMENDATION BY HEAD OF PLANNING AND BUILDING STANDARDS

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

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

Approved by

Name	Designation	Signature
Brian Frater	Head of Planning and Building Standards	

Author(s)

Name	Designation
Barry Fotheringham	Senior Development Control Officer

Directorate for Planning and Environmental Appeals

Telephone: 01324 696400 F: 01324 696444
E: dpea@scotland.gsi.gov.uk

07/01075/PLU

08/002101REF



The Scottish
Government

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

CORPORATE RESOURCES

02 JUN 2008

ADMINISTRATIVE

Your ref: PL662/7J/NM/ST

Our ref: P\PPA\140\365

30 May 2008

Dear Madam

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

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

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

Yours faithfully



CAROL-ANNE REDPATH

Enc

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



Directorate for Planning and Environmental Appeals

Appeal Decision Notice

T: 01324 696 400

F: 01324 696 444

E: dpea@scotland.gsi.gov.uk



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

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

Date of appeal decision: 30 May 2008

Decision

I dismiss the appeal and refuse planning permission.

Reasoning

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

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

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



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

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

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

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

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



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

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

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

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



Reporter



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

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

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

Local Review Reference: 13/00032/RREF

Planning Application Reference: 12/01191/PPP

Development Proposal: Erection of dwellinghouse

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

Applicant: Mr Hugh Lovatt

DECISION

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

DEVELOPMENT PROPOSAL

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

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

PRELIMINARY MATTERS

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

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

REASONING

The determining issues in this review were:

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

CONDITIONS

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

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

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

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

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

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

Reason: To ensure the development can be adequately serviced

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

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

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

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

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

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

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

SECTION 75 AGREEMENT

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

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

1. If the applicant is aggrieved by the decision of the planning authority to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.
2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.

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

Date.....

