

SCOTTISH BORDERS COUNCIL

PLANNING AND BUILDING STANDARDS COMMITTEE

6 MARCH 2017

**APPLICATION FOR PLANNING PERMISSION AND APPLICATION FOR
DISCHARGE OF A PLANNING OBLIGATION**

ITEM:	REFERENCE NUMBER:
	1. 16/01452/MOD75 &
	2. 2. 16/01455/FUL
OFFICER:	Mr A Evans
WARD:	Selkirkshire
PROPOSAL:	1. Discharge of planning obligation pursuant to planning permission 03/00344/OUT; 2. Removal of Condition No 3 from planning permission 04/00718/REM (occupancy restriction).
SITE:	Stonelea Stables, Ashkirk, Selkirk, TD7 4NZ
APPLICANT:	Mr & Mrs D Spence
AGENT:	Ericht Planning & Property Consultants

SITE DESCRIPTION:

The site relates to the dwellinghouse and stable building erected to the north of Ashkirk, at Stonelea Stables. The house is subject to application 16/01455/FUL. The house, neighbouring stable and surrounding land (just over 11 acres) to the south, are subject to application 16/01542/MOD75. The stable building, house and garage adjoin the minor public road, and share an access with the public road. Along this boundary with the public road is a traditional stone wall. West of the site, on elevated ground, is mature woodland plantation.

PROPOSED DEVELOPMENT:

This is a pair of applications, seeking to remove occupancy restrictions on a dwelling outside Ashkirk. The supporting statement sets out that the business that originally provided the justification for the house is no longer in operation.

The application is brought to Committee as the modification seeks to remove a primary part of the Section 75 Agreement, which is beyond the scope of delegated authority.

For consistency, the associated planning application for the removal of the occupancy planning condition on a related permission is also presented to Members.

PLANNING HISTORY:

A generally chronological history of the site is as follows:

- The applicants originally owned the house known as “The Rookery” at the Woll.
- 98/01564/FUL: Full planning permission was granted in February 1999 for the erection of loose boxes, to accommodate five horses, within the paddock.

- The house at “The Rookery” was sold, and the applicants lived for a spell in a static caravan at the stables at Stonelea, prior to the current house being built.
- 00/00502/FUL: A planning application for the erection of a dwellinghouse on this site was refused in July 2000 for the following reason: *“The proposal is contrary to Policy 8 of the Ettrick and Lauderdale Local Plan in that the site is outwith any recognised settlement or building group and the need for the house has not been adequately substantiated”*. The Scottish Executive later dismissed a planning appeal lodged by the applicants.
- Permission was granted in November 2002 for the change of use of the loose boxes to livery stables and an application for the erection of an extension to the livery stables.
- 03/00344/OUT: An application for permission for a house was again refused; on the basis no suitable justification had been provided. The applicants appealed this refusal (appeal ref P/PPA/140/196). The then Scottish Executive Reporter concluded there was sufficient justification for a house. The reported noted in the earlier 2000 appeal, there did not appear need given the small scale of the business, but found that there was now sufficient difference in the proposals, and that the applicants were seeking to establish a business, and had started to do so on site. The Reporter made clear that a house was only acceptable here on the basis of a tied dwelling in connection with the business. In considering conditions, the Reporter made clear they considered an occupancy condition to be unnecessary, and that the occupation would be covered solely by a legal agreement. (Paragraph 18 of intentions letter). A legal agreement was subsequently concluded to tie the house, stables and land in the manner the Reporter required.
- 04/00718/REM: Application for reserved matters for erection of a dwelling was approved with conditions and informative on 18.10.2004. A condition was added to the consent limiting occupation. This is not a decision which would have been reached in the current application of policy and legislation.
- 06/01018/FUL: Erection of Double Garage – Approved.

CONSULTATION RESPONSES:

None.

REPRESENTATION SUMMARY

None.

DEVELOPMENT PLAN POLICIES:

Local Development Plan 2016:

Policy PMD2 Quality Standards

Policy ED7 Business, Tourism and Leisure Development in the Countryside

Policy HD2 Housing in the Countryside

OTHER PLANNING CONSIDERATIONS

"New Housing in the Borders Countryside" SPG

KEY PLANNING ISSUES:

The key planning issues with this application are whether the legal severance of the house and stables business would still allow for compliance with Council Policies and Guidance on Housing in the Countryside and residential amenity. If not, consideration needs to be given as to whether this would pose any harm in planning terms.

ASSESSMENT OF APPLICATIONS

This property was originally refused planning permission by the Eildon Area Committee in 2003. Permission was subsequently granted on Appeal by the Scottish Government's reporter, subject to a planning condition and Section 75 Agreement. Following conclusion of the latter, the permission was issued.

There was no occupancy limitation in force on the outline approval. A reserved matters approval was subsequently granted for the house (04/00718/REM) which was subject to a condition limiting occupancy. This was done despite no equivalent condition being present on the outline permission.

The Section 75 Agreement can be viewed on Public Access under reference 16/01452/MOD75. The Section 75 Agreement included clauses as follows:

Clause 2 a – requires that occupation of the dwellinghouse is limited to someone who works on the adjacent livery stables, and to that persons family.

Clause 2 b – requires that the dwellinghouse must be tied with the livery stables and the land and no part of the indivisible unit is to be disposed of separately.

The removal of the clauses in the legal agreement, and removal of planning condition would have the effect of allowing the property subject to this application to then be lived in as an unrestricted stand-alone dwellinghouse.

Mr and Mrs Spence are now both retired, and intend to move to a smaller property. The property, comprising the house, stables, surrounding land and annexe have been marketed as a single unit since April 2014. The agent reports that any interested parties are being put off by the planning restrictions on occupancy contained in the legal agreement. This is despite the price having been reduced.

Planning Policy

The site is in a rural location outside of Ashkirk, so consideration is first required as to how the dwellinghouse was originally consented in this location, and how this would now be considered in terms of policy HD2 (Housing in the Countryside) of the Scottish Borders Council Local Development Plan 2016.

The current policy relating to Housing in the Countryside is Local Development Plan 2016 policy HD2 which allows for new housing where there is an existing building group or if it can be demonstrated that there is an economic / agricultural need.

However, current advice from Scottish Government is that occupancy restrictions on planning permissions are rarely appropriate and should generally be avoided. Scottish Planning Policy (2014) Paragraph 83 allows that where appropriate, the construction of single houses outwith settlements should be allowed provided these are well-sited and designed to fit with local landscape character, taking account of landscape protection and other plan policies. It also advises that occupancy restrictions on housing should generally not be imposed.

The advice of the SPP is a consideration, and one which post-dates both the issue of planning permission and the adoption of the original development plan against which this dwelling would have been originally assessed. Primary consideration must, however, be given to the prevailing LDP.

Scottish Government Chief Planner Letter

In 2011 the Scottish Government Chief Planner wrote to all Planning Authorities clarifying the Government's views on the use of conditions or planning obligations to restrict the occupancy of new rural housing.

The letter sets out that Scottish Planning Policy promotes a positive approach to rural housing. It states that development plans should support more opportunities for small scale housing development in all rural areas, including housing which is linked to rural businesses. It does not promote the use of occupancy restrictions.

The letter is categorical in setting out that the Scottish Government believes that occupancy restrictions are rarely appropriate and so should generally be avoided. It goes on to advise that where the authority is satisfied that an adequate case has been made, it should not be necessary to use formal mechanisms to restrict occupancy.

Assessment and Consideration of Restrictions

The removal of the S75 Clause and planning condition will not conflict with Policy HD3 of the Local Development Plan on protection of residential amenity.

Considering the applications in turn:

Legal Agreement

It is contended that the underlying original reason for a dwelling now no longer exists at this site. The stables were established but are understood not to have operated as a business from this site since 2006. Health issues meant that the business could not grow as was originally proposed. The application is accompanied by the Valuation Assessors deletion notice from 21 April 2006. The dwelling remains in situ, and its future occupation as an open market dwelling is considered acceptable, given the specific history of this site.

The MOD75 Application seeks to discharge the planning obligations set out in 2(a) and 2(b) of the 2004 minute of agreement, described above. The requirements of 2(c), which related implementation of the permission, are no longer relevant, but for sake of completeness, the agent also seeks to have all of the obligations a-c discharged.

It is accepted that the business which was originally present on the site, has failed. It is accepted that there was a genuine attempt to expand and develop this business;

however it did not prove successful. Against this background, having considered the specific merits of this case, it is acceptable that the request of the agent regarding the legal agreement be agreed to.

Occupancy Planning Condition

The imposition of an occupancy condition on an Approval of Matters Specified in Conditions (AMC) or reserved matters (REM) consent is not an approach that would be considered today, where such a condition was not present on the original outline or PPP permission.

The current understanding of such consents and conditions would be that the Planning Permission in Principle is the parent consent of the AMC application, and therefore the principle of the development is not being re-examined in the determination of the matters in condition. As such, any conditions on occupancy need to have been imposed on the parent PPP or "Outline" approval and so there would be a risk in seeking to continue to apply a condition which does not appear in the outline permission.

As such, and having accepted the argument as it relates to the legal agreement, there is no objection to the removal of the occupancy planning condition of the permission.

Financial Implications / Development Contributions Policy and Guidance

Policy IS2 of the Scottish Borders Local Development Plan 2016 states that where a site is acceptable but cannot proceed due to deficiencies in infrastructure or due to environmental impacts the Council will require developers to make contributions towards the cost of addressing such deficiencies.

In this case, the proposed adjustments to occupancy limitations and legal agreement have no bearing upon the development contributions policy.

Consideration of other planning conditions of permissions

None of the remaining conditions of the Reporter's Decision Letter and Reserved Matters approval place any on-going burdens of any significance upon the dwelling, or relate to any issues which are still relevant. The other conditions of the reserved matters approval covered upgrading of the access, which was carried out, and the external materials of the house. A planning condition on a new planning permission (to tie to or retain previous conditions) is not therefore needed.

CONCLUSION

The proposed development is considered acceptable and in compliance with policy HD2 of the Scottish Borders Council Local Development Plan 2016.

RECOMMENDATION BY CHIEF PLANNING OFFICER:

16/01452/MOD75

In respect of planning application 16/01452/MOD75, I recommend the modification to the Section 75 Agreement is approved and that the relevant Clause be removed from the Agreement.

16/01455/FUL

In respect of planning application 16/01455/FUL I recommend the application is approved.

DRAWING NUMBERS

Location Plan (OS Extract)

Approved by

Name	Designation	Signature
Ian Aikman	Chief Planning Officer	

The original version of this report has been signed by the Chief Planning Officer and the signed copy has been retained by the Council.

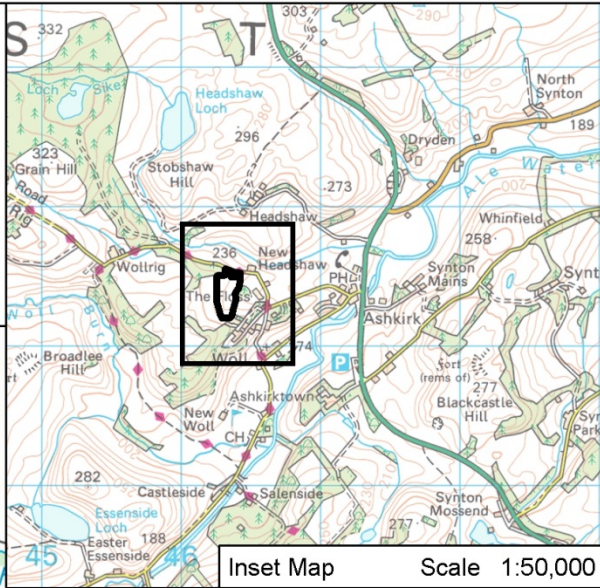
Author(s)

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Andrew Evans	Planning Officer

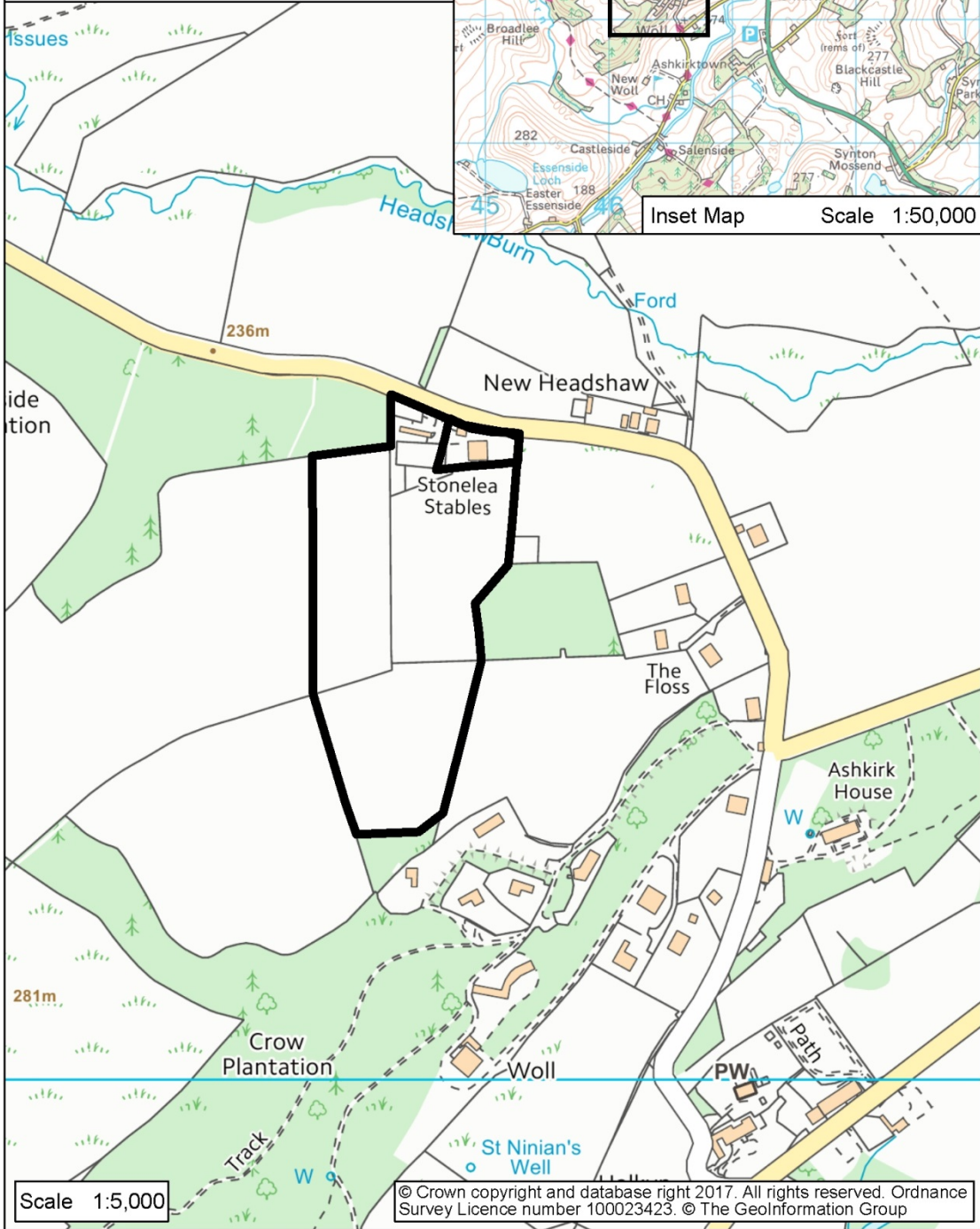


16/01452/MOD75 & 16/01455/FUL

Stonelea Stables
Ashkirk
Selkirk



Inset Map Scale 1:50,000



Scale 1:5,000

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