

SCOTTISH BORDERS COUNCIL

PLANNING AND BUILDING STANDARDS COMMITTEE

7 AUGUST 2017

APPLICATION FOR PLANNING PERMISSION

ITEM:	REFERENCE NUMBER: 17/00681/MOD75
OFFICER:	Mr R Dods
WARD:	Tweeddale West
PROPOSAL:	Modification of planning application pursuant to planning permission 08/01414/FUL and 16/00514/MOD75
SITE:	Hope Cottage, Wester Deans, Lamancha
APPLICANT:	J R & S E Purves
AGENT:	Edwin Thompson & Co (Galashiels)

SITE DESCRIPTION:

Hope Cottage is located approximately 1.2km south east of the A701 and 3.2km north west of the A703. It sits within the boundaries of Wester Deans Farm, which sits near the top of the hill when approaching from the A703. The farm is accessed from the unclassified U17 public road. The property is accessed from the farm road and there are numerous mature and semi-mature deciduous trees in the immediate surroundings. The farm is described as a marginal quality upland livestock unit. Hope Cottage was granted planning permission in 2008 in order to allow the owners to move out of the farmhouse and appoint a farm manager to take over the management of the farm.

PROPOSED DEVELOPMENT:

The application is made to discharge a section 75 agreement relating to Hope Cottage, granted permission on 11 June 2009, reference 08/01414/FUL.

The reasons for this discharge request are:

1. To allow the sale or letting of Wester Deans Farm to a third party;
2. To allow the applicant and his wife, how are both past retirement age, to continue living in Hope Cottage.

PLANNING HISTORY:

08/01414/FUL

The application was made to erect a dwellinghouse and garage for the farm owner, Mr & Mrs Purves, allowing them to move out of the farmhouse and reduce their management input into the farm.

Approval was granted subject to conclusion of a section 75 agreement. That agreement was registered on 5 Jun 2009, signed by John Ronald Purves. The terms of the agreement restricted:

1. The whole farm and house to be held as a single property with no part ever to be sold or otherwise disposed of separately and;
2. no further dwellings to be erected or otherwise without consent of the planning authority in terms of the agreement in addition to the necessary planning permissions.

16/00514/MOD75

The application was made to modify the section 75 placed on the above permission in order to allow the single dwelling to be released from the terms of the agreement and, thereby, be subdivided from the wider farm. The modification was granted to remove the first restriction but the second restriction remained in place.

CONSULTATION RESPONSES:

Legal Services: No response.

REPRESENTATION SUMMARY

No representation received.

DEVELOPMENT PLAN POLICIES:

Local Development Plan 2016:

HD2 New Housing in the Countryside

OTHER PLANNING CONSIDERATIONS

"New Housing in the Borders Countryside" SPG, 2008
SPP 2014.

Circular 3/2012 Planning Obligations and Good Neighbour Agreements
Planning appeal POA-140-2005, Broadmeadows Farm, Hutton, 10 May 2017

KEY PLANNING ISSUES:

Whether discharging the section 75 agreement would satisfy the 5 tests of Circular 3/2012: Necessity; planning purpose; relationship to the development; scale and kind; and reasonableness.

ASSESSMENT OF APPLICATION

Policy context

Planning policy has changed since the grant of the planning permission for the house in 2009. That application was assessed against the policies contained within the Scottish Borders Structure Plan 2001-2011 and the Scottish Borders Local Plan 2008. Since the proposal was not part of an established building group, it was assessed against the Council's housing in the countryside policies for isolated housing which were justified under economic requirement.

A similar policy, HD2 Housing in the countryside, is found within the Scottish Borders Local Development Plan 2016 (LDP). That policy, at section (F) allows for isolated housing in the countryside where there is an economic justification and subject to

certain criteria being met. The policy should be read in conjunction with the supplementary planning guidance (SPG) New Housing in the Borders Countryside, dating from 2008, which gives guidance on isolated housing, at section 2c.

This SPG states that a Section 75 agreement will normally be required for economically justified development proposals. It identifies the need to restrict further residential development and requires that the land unit and the dwelling house are not sold separately. It is explicit that isolated new housing is unacceptable without economic justification. The ultimate aim of Council policy is to direct appropriate development of housing in rural areas, focusing on defined settlements to support services, facilities and sustainable travel patterns.

Necessity

A legal agreement was considered necessary at the time of decision as a planning conditions restricting further development and restrictions on how the applicant could dispose of their property would not have been legally competent. The overriding material consideration was economic requirement for the house, as the proposal would not otherwise have been supported by policies for housing in the countryside. The house has been constructed on what was considered a site which was not associated with a building group. The report into the 2008 application made it clear that the applicant had advanced sufficient economic justification and that the dwelling should by legal agreement, be tied to the farm and that no further houses should be constructed. The legal agreement with those terms was signed and the house duly constructed.

The application is made to discharge the restriction on construction of additional housing since. Any application for further housing would be dealt with through the normal planning process and, therefore, the restriction is unnecessary, as the appropriateness of the proposal would be tested against the prevailing policy of the time.

Planning Purpose

The purpose of the second restriction was to ensure that no further housing could be constructed without the consent of the planning authority. That requirement was in addition to the need to obtain planning permission. Recent appeal decisions, including those in Scottish Borders, have generally concluded that legal agreements restricting further development are not supported by the Scottish Government.

A clear message is being sent by Scottish Government that legal agreements should not be relied upon to deliver housing in the countryside policy. Scottish Government wish planning policy and evidenced based Supplementary Guidance to be relied upon to deliver efficient land use planning and not legal agreements. This Scottish Government stance raises significant issues in regard to how development is managed and restricted in the countryside.

It is unlikely that the discharge of this agreement will set a precedent in this locality. Any future application for new residential development would be assessed against the terms of the prevailing development plan and material considerations. In light of the above, the proposed discharge is appropriate.

Relationship to development; Scale and kind

The existing agreement raises no issues in these regards.

Reasonableness

The purpose of the unmodified section 75 agreement was to ensure that:

1. The whole of the land at Wester Deans Farm should be held as a single property with no part being sold or otherwise disposed;
2. no further dwellings to be erected or otherwise without consent of the planning authority.

As set out above, the first restriction was removed by modification in 2016. The applicant now wishes to discharge the section 75 agreement over Hope Cottage, thereby allowing the sale or letting of the farm to a third party, providing an opportunity for amalgamation with another unit or to another farmer who wishes to expand their farming enterprise. It would also permit the applicants to remain at Hope Cottage during their retirement.

The second restriction imposed on the original section 75 agreement has limited purpose. The means for testing this issue is more properly through a planning application, which would be assessed against the terms of the prevailing development plan and material considerations. The section 75 agreement, as modified, is therefore of limited purpose and, given the inconsistency with recent national guidance, it is difficult to argue for its retention.

CONCLUSION

The proposal to discharge this section 75 agreement is accepted as it no longer satisfies the terms of Circular 3/2012 relating to planning purpose and reasonableness tests. Any future housing development would be subject to the normal requirements of planning and would be assessed against the prevailing development plan and material considerations. No deficiencies in infrastructure and services will be created or exacerbated as a result of this discharge.

RECOMMENDATION BY CHIEF PLANNING OFFICER:

I recommend discharge of the section 75 agreement is approved.

DRAWING NUMBERS

Location Plan

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)

Name	Designation
Ranald Dods	Planning Officer



17/00681/MOD75

Hope Cottage Wester Deans
Lamancha
West Linton

