

**SCOTTISH BORDERS COUNCIL**

**PLANNING AND BUILDING STANDARDS COMMITTEE**

**5 FEBRUARY 2018**

**APPLICATION FOR PLANNING PERMISSION**

<b>ITEM:</b>	<b>REFERENCE NUMBER:</b> 17/01502/MOD75
<b>OFFICER:</b>	Mr E Calvert
<b>WARD:</b>	Jedburgh and District
<b>PROPOSAL:</b>	Discharge of planning obligation pursuant to planning permission R273/94
<b>SITE:</b>	Parklands, Oxnam Road, Jedburgh
<b>APPLICANT:</b>	D & J Palmer
<b>AGENT:</b>	

**SITE DESCRIPTION:**

The dwelling known as Parklands is erected on former agricultural land east of Jedburgh on the north side of Oxnam Road. It is a modern detached bungalow, rectilinear in plan, under a gabled pitched roof. It has a small secondary wing to the rear elevation. The building sits within large private curtilage fronting Oxnam Road, with a garage sited in this front garden. This is a countryside setting with woodland bounding to the east and a 4-bay steel portal framed shed and horse stables to the west. North of this shed is a horse riding arena laid in sand. Sited east of this is a house and cattery (Mansfield Park), both of which are relatively new, having been erected after planning permission was granted in 2013.

A sealed surface road leads north from these dwellings for 400m to arrive at four large poultry units and associated manager's house. The unit is set within a sunken site and enclosed by tree planting therefore is largely indiscernible from any public views.

**PROPOSED DEVELOPMENT:**

This report relates to an application to formally discharge the Section 50 agreement covering Parklands and the surrounding land which extends to some 27Ha. This discharge is sought by the current owners of the property (D & J Palmer) who purchased the house and land in 2012.

The application states that D & J Palmer wish to sell the dwelling to their son. They have no relationship to the ownership or running of the nearby chicken sheds and confirm that the land is actively farmed for the purpose of grazing sheep.

**PLANNING HISTORY:**

Planning permission was granted under application R023/89 to erect a dwelling in 1989 based on exceptional circumstances. A dwelling and agricultural building was granted permission and a S50 agreement (between Messrs Birnie and SBC) was lodged against the property title which;

1. Required precise details (siting, design and layout) of the dwelling approved. (A further application was required)

2. Restricted occupancy of this dwelling to a person employed or last employed in agriculture as defined by s.275 of the Town and Country Planning (Scotland) Act 1972 or any dependent of such a person residing with him or her and including a widow or widower of such a person.
3. Bound the owner that “No further development will take place” on the subjects.

However, the site shown on the approved plan (R023/89) was that of the dwelling now known as Mansfield Park and not that of Parklands.

Parklands (bungalow) was subsequently erected following the approval of planning consent under 94/00995/FUL (Alternative Ref: R273/94) (Erection of dwellinghouse, double garage and stable block) in October 1994 by AF Shiels and a modification of the original S50 Agreement was agreed in March 1998. This modification named Mrs Shiels as the heritable proprietor and included the word “residential” to the clause “No further development on the land”. The second condition of this planning permission restricts occupation to be limited to a person employed or last employed in agriculture as defined in s.275

This development coincided with permission granted in Jan 1998 of the 4 poultry units by Mr and Mrs Shiels, 97/00156/FUL.

There are two further planning matters which also require to be documented now:

1. In August 1999 a manager’s house was erected adjacent to the Poultry Unit, 99/00316/FUL.
2. The Land Certificate identifies Gary Armstrong and another, becoming owners of Parklands in Jan 2000.

It is concluded that Parklands was the dwelling referred to in the earlier S50 Agreement between Messrs Birnie and SBC, permitted in principle in January 1989 under application reference R023/89. The bungalow was however built on a different site, by a different applicant and under full planning permission.

#### **CONSULTATION RESPONSES:**

**Legal Services:** No concerns. The terms of Scottish Planning Policy (para 81) and guidance from the Scottish Government in Circular 3/2012 confirm use and occupancy restrictions should be avoided. Any proposals for further development on the land can be properly assessed through the planning application system. There are no conditions or obligations in respect of developer contributions.

#### **REPRESENTATION SUMMARY**

No representation received.

#### **DEVELOPMENT PLAN POLICIES:**

##### **Local Development Plan 2016:**

Policy HD2 – New Housing in the Countryside

## **OTHER PLANNING CONSIDERATIONS**

SBC SPG – New Housing in the Borders Countryside (2008)

Scottish Planning Policy 2014.

Scottish Government Chief Planner's letter to Planning Authorities, November 2011, "Use of conditions or obligations to restrict the occupancy of new rural housing".

Circular 3/2012 Planning Obligations and Good Neighbour Agreements

### **KEY PLANNING ISSUES:**

Whether the S50 agreement continues to satisfy five tests of Circular 3/2012: Necessity; planning purpose; relationship to the development; scale and kind; and reasonableness and whether the legal agreement can be discharged in full.

## **ASSESSMENT OF APPLICATION**

### **Policy Context**

Planning policy and legislation has changed significantly since the grant of permission. The original Section 50 agreement legally tied the proposed house to the business by restricting occupancy to those employed, or last employed in agriculture.

Local Development Plan 2016, Policy HD2, Housing in the Countryside, no longer prescribes this requirement although members will be aware that this should be read in conjunction with Scottish Borders Council Supplementary Planning Guidance; "New Housing in the Borders Countryside", 2008. This Guidance states that a S75 agreement will normally be required for economically justified development proposals. A S75 agreement will usually restrict occupancy of the dwelling for the sole use of the business, restrict further residential development on the land and require that the land unit and the dwelling house are held as a single indivisible unit. The SPG is explicit in that isolated new housing is considered unacceptable without economic justification.

This is particularly relevant in the case of the property known as Mansfield Park (the adjacent dwelling) where an application was made to modify the S50 (13/00968/MOD75) in 2013. Mansfield Park was granted planning consent under application reference 13/00154/FUL, which itself is governed by a S75 restricting the occupancy of the dwelling to a person or persons involved in the cattery business. The S75 also ties the house to the business so that they remain as a single indivisible unit.

Members will be aware that Policy HD2 of the LDP aims to direct appropriate development of housing in rural areas, focusing on defined settlements to support services, facilities and sustainable travel patterns. A S75 agreement allows for exceptions to this Policy and is essential to guard against spurious applications. Without such legal burdens, new housing could simply be disposed of on the open market as a result of unscrupulous planning applications.

## **Necessity**

The original S50 was necessary in 1989 as a planning condition restricting further residential development on the land would not have been competent legally. However the continued need for the agricultural occupancy restriction on the property is brought into question. The material circumstances have changed following the erection of four chicken sheds and associated Managers house. These properties are now in separate ownership and do not form part of the Parklands landholding

Mr Palmer confirms that the agricultural land extending to 27ha is used for grazing but it is highly improbable that this size of land holding is commensurate to support a viable agricultural business. Given the change in circumstances, the erection of a Managers house and the subdivision of the land, it is contended that the S50 Agreement is no longer necessary and the burden can be lifted.

## **Planning Purpose**

Scottish Planning Policy (SPP) of 2014 provides a framework on the appropriate use of occupancy controls and states explicitly that occupancy restrictions should be avoided. Furthermore recent Scottish Government Planning appeals in the Scottish Borders and East Lothian have generally concluded that legal agreements restricting occupancy or further development conflict with latest planning advice by the Scottish Government's Chief Planning Officer.

It is clear that a message is being sent by Scottish Government that legal agreements should be avoided and prevailing LDP policies should be relied upon to deliver new housing in the countryside policy.

Discharge of this legal agreement will not set a precedent in this locality. Any application for new residential development would be assessed principally against the terms of Policy HD2 of the LDP which promotes appropriate rural housing development in village locations in preference to the open countryside; associated with existing building groups; and in dispersed communities in the Southern Borders housing market area. The New Housing in the Borders Countryside SPG, 2008 holds limited weight in this regard as it pre-dates Scottish Government Policy. Whilst there remains development pressure in the Scottish Borders for economically justified housing these can be assessed on a case by case basis against prevailing LDP policy.

Given the shift in policy and advice from Scottish Government there is no longer a planning purpose for restricting land use or occupancy of dwellings through a S75 agreement. It is argued that the principle of new dwellings in rural locations can be adequately managed through the planning application process when assessed against established LDP policy.

Members should be aware that the advice from the Scottish Government does not rule out the use of occupancy restrictions but does allow for a degree of latitude in considering whether or not they should be used. Due to the change in circumstances in this case it is unlikely that an occupancy restriction would be deemed appropriate if that application was to be considered today.

## **Relationship to development**

Members will note from the planning history detailed earlier in this report that Parklands was once the home of Messrs Shiels who were the owners and operators

of the nearby chicken hatchery. This agricultural relationship no longer exists following the construction of a Manager's House on land immediately adjacent to the hatchery (approved in 1999).

The applicant (Mr Palmer) confirms that the land in question is wholly within his ownership and that the adjoining agricultural land is used for grazing sheep. However, as mentioned above, it is improbable that 27ha is sufficient to allow an agricultural business to be self-sustaining.

It is therefore argued that the legal restriction on occupation no longer adequately demonstrates relationship to the development as approved in 1989. Mr Palmer is the 4<sup>th</sup> owner of Parklands since the agreement was signed and there have been significant changes in circumstances as well as physical changes to the surrounding land. Significantly the hatchery business and associated Managers house have been erected and they no longer form part of the applicants land holding.

### **Scale and kind**

The existing agreement raises no issues.

### **Reasonableness**

The S50 agreement sought to ensure that the proposed agricultural business and house were held together as a single indivisible unit and could not be sold off independently from each other.

Members will note from the planning history that there has been a significant change in circumstances since the original S50 agreement was signed and consent granted for the dwellinghouse. Since the construction of Parklands in 1994, it is clear that the applicant's (Shiels) focus had been the chicken hatchery business and not the surrounding agricultural grazing land. Furthermore the extent of land holding and ownership has changed significantly since the agreement of 1989. As this hatchery and associated Manager's accommodation are now held by a third party, it is reasonable to conclude that the current owners (D & J Palmer) are unreasonably restricted from passing this property to their son.

Again, the clause (which aimed to guard against the proliferation of new dwellinghouses in this countryside location) is now better tested through the planning application process, which could then be assessed against prevailing LDP policy. Discharge of this legal agreement does not materially affect current circumstances as the agricultural tie appears to have long since become extinct in purpose.

The S50 agreement is therefore considered to be inconsistent with recent national guidance and there are no material planning considerations that would warrant its retention.

### **CONCLUSION**

The proposal to discharge this S50 agreement is accepted as it no longer satisfies Circular 3/2012: planning purpose; relationship and reasonableness tests. The house is now separate from the Hatchery business and although it remains a home for the limited agricultural (grazing) business, its requirement as a direct operational requirement of any business has long been lost. Any proposal for future development of housing in this location would be assessed against prevailing Local Development Plan policies and any forthcoming Supplementary Planning Guidance

on New Housing in the Countryside. 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 S50 Agreement is approved subject to the following applicant informative:

The applicant should be aware that a planning condition restricting occupancy of the dwelling would also require removal from Parklands planning permission – Reference: 94/00995/FUL (Alternative Reference: R273/94).

**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
Euan Calvert	Assistant Planning Officer



17/01502/MOD75

Parklands  
 Oxnam Road  
 Jedburgh

