

James and Angela MacLean
Ardross
Hutton Hall Barns
Hutton
Berwick Upon Tweed
TD15 1TT
22nd May 2018

FAO The Clerk to the Local Review Body,
Council Headquarters,
Newtown St Boswells,
Roxburghshire,
TD6 0SA

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| Planning Application | Agricultural Buildings South East of Merlewood, Hutton Castle Barns, Hutton, Scottish Borders |
| Planning Reference | 16/001371/FUL |
| Proposed Development | Change of Use of Agricultural Buildings and Alterations to Form 12 no Dwellinghouses |
| Appeal Reference | 18/00013/RREF |

Thank you for your letter dated 8th May 2018 advising us that a Notice of Review has been received in respect of planning application 16/01371/FUL.

We note our previous representations are still available on the planning portal and that the relevant documents will be made available to the Local Review Body when they undertake the review. We also note that the case will be considered on the 18th June 2018 at 10am in the council's headquarters.

We hope that the members of the Local Review Body will take the time to read our detailed objection letters. We feel we have provided sufficient background information within our original documents to express our concerns around the proposed development and our objection remains on the following grounds:

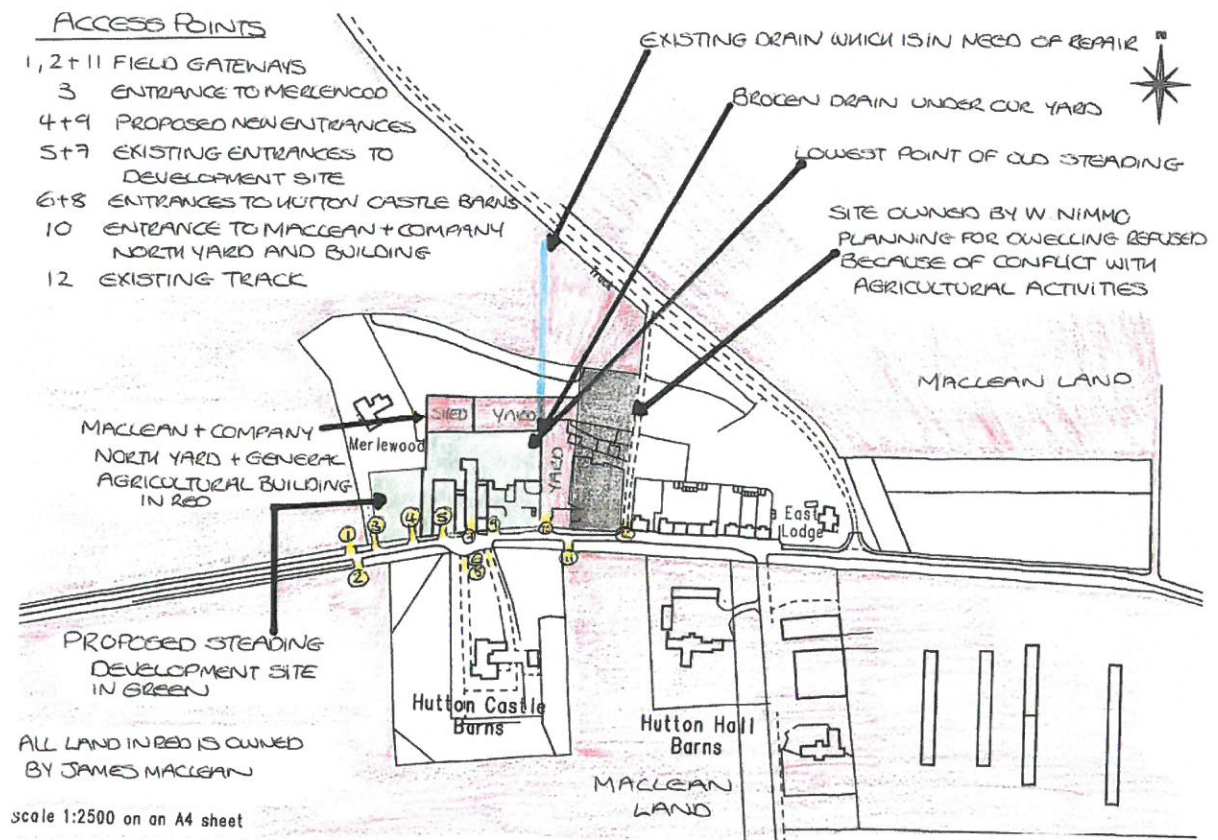
1. the adverse effect on the viability of a farming unit and the conflict with the operations of a working farm;
2. traffic, parking and access issues;
3. drainage and infrastructure issues;
4. impact on the countryside amenity and ecology;
5. impact on archaeological sites; and
6. the appearance of the proposal in terms of design siting and materials

We would however like to take this further opportunity to comment upon the recent submissions made by Mr Bain, the applicant, in the "Notice of Review" document.

Site Inspection

It is suggested by the applicant that in the event that the Local Review Body decides to inspect the review site, in his opinion, the site can be viewed entirely from public land and that the site can be accessed safely, without barriers to entry.

For those not familiar with the ownership and layout of the old farm steading complex and our working farms' proximity to the proposed development please refer to the annotated drawing below. This was discussed in detail in our original objection letters.



The development site at planning review is directly adjacent to the access to our farmyard to the east and adjoins our General Purpose building, to the north.

In the event that the Local Review Body decides to inspect the proposed development site, it is our opinion that in order for the members to understand the conflict between our working farm and the proposed development site, they will need to access our privately owned farmyard to carry out their inspection.

Our working farmyard has grain and skip lorries, tractors and other farm vehicles coming and going on a regular basis. So from a Health and Safety perspective, we would disagree with the applicant's assertion that the proposed site can be accessed safely.

Statement – Conflict with Farming Operations

The applicant states that there is a primary reason for refusal of the proposed development.

There are actually five reasons for refusal; there is no indication on the refusal schedule that there is any one reason which is of a greater standing than the others.

The matters set out in the applicant's review statement are very much focussed around our working farm practices and our use of the farm building in our north yard and not around his refused planning application and request for review?

We wonder why the applicant has failed to comment upon the other reasons for refusal in the review paperwork and why in fact he has failed to respond to these matters during the planning process prior to the Planning Officer making his recommendation for refusal.

The planning application seems to have been thrown in on the cheap, with no regard to respond to what the statutory consultees have asked for. It appears that no attempts have been made to respond to comments and requests from roads and ecology for example and equally, he has not committed to pay the necessary developer contributions, hardly a professional application.

We stand by all our points made in previous correspondence however, we would like to take this opportunity to reiterate that our business is not the "site" going through the planning process for change of use, our yard and building will continue to be used as we choose, now and in the future.

We believe that we have illustrated this fact clearly, our position has been endorsed by the Council's Environmental Health team who have stated in correspondence related to this planning application that our building - the General Purpose Building in our North Yard, ***"can potentially be used for a number of agricultural activities without the need for planning permission"***.

The applicant, can if he wishes, continue to call our building a grain store as many times as he wishes, however our building was erected as a general purpose building. Indeed it should be noted that the daughter of Mr J Houston, the actual owner of the proposed steading development, in her support letter, pointed out that this building was originally built as a horse riding school and that a concrete floor was added at a later date!

Every farm building erected, unless its use is constrained by planning conditions, can be used for a vast array of agricultural activities, including livestock. That means we can indeed house cattle, sheep, goats, grain, straw or pigs within it, if and when we choose, without obtaining change of use.

Please refer to Appendix 1 regarding our pre-application discussions with the Planning Authority in March 2016, regarding the housing of pigs within this building and their position was clarified

"Having discussed with colleagues I would re-confirm my earlier verbal communication that the use of the barn for agricultural purposes is accepted. The Town and Country Planning (Scotland) Act 1997 defines agriculture as; "horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes. Thus no change of use is required."

These communications were all prior to the proposed development planning application being submitted as we were already contemplating diversifying the farm further to ensure its survival.

We therefore assume that this information was considered as part of the planning process for this proposed steading development and that, as our farm building already existed, the Planning Officer in his report to the Planning and Building Standards Committee confirmed ***"stocking the grain building with pigs would not constitute development or a change of use. No planning application would therefore be required. The Planning Authority could not prevent the neighbouring owner from housing pigs or other livestock in the building if they wished to do so."***

Moving on, there is no SEPA guidance or regulations which dictate that *"pigs cannot be located within 300m of a dwelling"* as suggested by the applicant on the review request form. Pigs can be kept in our existing farm buildings or indeed outdoor free-range pigs could be kept in the field next to the steading development or further afield.

We believe the above quote from the review request form is a deliberate misrepresentation of guidance in the "Code of Good Practice on the Prevention of Environmental Pollution from Agricultural Activity".

The Planning Officers report of handling confirms the detail of the guidance with relation to preventing nuisance from agricultural activities for new buildings and its interpretation by Environmental Health in this particular case.

"The Code of Good Practice on the Prevention of Environmental Pollution from Agricultural Activity provides guidance on a range of farming practices including intensive livestock rearing. The guidance recommends that any new buildings used for this purpose should not be within 400m of residential accommodation to prevent nuisance from odour."

We generally refer to this guidance even though the situation is in the reverse (i.e. a residential development is planned next to an existing agricultural building). With this in mind, it is obvious that the planned development is remarkably close to existing agricultural buildings and whilst there are currently no environmental issues of concern at the moment, we are only too well aware of the consequences of farming activities changing without the need for permission in terms of change of use. On that basis, Environmental Health object to this proposed development."

I would also like to confirm that although EH have legislative powers to investigate and regulate matters relating to nuisance such as noise, odours, dust etc, we are only able to use these powers to minimise nuisance not prevent it and so it is inevitable that given the rural nature of the location, new residential developments would have a loss of amenity due to neighbouring activities."

Statement – Merlewood Planning

The applicant, within the review form, asks the question why the property known as Merlewood was approved yet this proposed development was rejected.

We provided a detailed overview of the various developments on this site over the years in our original objection letter; we will however re-iterate what has previously been stated.

Merlewood was granted planning consent, after five previous separate planning applications had failed within the area. Detailed documents relating to this are contained in Appendix 6 of our original objection letter.

Back in 2002 the MacLean family objected to "Merlewood" on grounds of:

- Proximity of proposed house to agricultural buildings.
- They highlighting that within one of the previous (refused) planning applications the applicant's agent, Bain Swan Architects, acknowledged that "The development of the farm steading and the ground to the west is hampered by the existence of a farm shed within 400 metres which has cattle unit potential".
- The potential problems of noise, dust, smell and unsociable working hours of current agricultural workings in the General Purpose store and yard area immediately adjacent to the proposed site

The planners report written in 2002 to the Berwickshire Area Committee explicitly highlighted that *"the applicant is a former farmer"* and *"well aware of the nature of farming activities"* at this point in time.

Therefore we suggest that the committee at that time was minded to approve this dwelling house based on the Davidsons' previous occupation, the perception that they understood farming activities and the presumption that they would be comfortable with future possible uses of the General Purpose shed behind their proposed new house.

Planning was granted and the house now known as Merlewood was built.

The Davidson family were made aware from the outset that there was, and continues to be, the potential for livestock to be housed directly adjoining their property to the rear in our General Purpose farm building and indeed in the field in front of their property. This is a working farm, which they moved onto having been fully advised and informed throughout the planning process of the possible future uses of the aforementioned building directly behind their building plot.

The Planning Officers report dated 5th February 2018 concluded that the owners of Merlewood were in 2002 *"engaged in an agricultural business"* in the locality, and appeared to have understood the local circumstances and potential nuisance impacts that could arise from the site.

He continued to highlight that in relation to the proposed development in 2018 *"This is not the case in this instance, where a much larger development is proposed, resulting in a much larger number of residents potentially being affected by nuisance."*

The report further states that *"Potential homebuyers and tenants who may not be familiar with local circumstances would reasonably expect new a development to benefit from proper standards of residential amenity. It is the Planning Authority's duty to ensure this is the case and to ignore such matters would potentially be open to legal challenge and censure. It is simply not within the Council's gift to forego norms and standards in such cases. Whilst it may be argued that the ultimate responsibility lies with individuals choosing to buy or rent property, this is not the case. The Council could be admonished by the Ombudsman for failing to safeguard amenity for future residents."*

Statement – Missing Text

When we received the notice of this review we were directed to the planning portal to access the documentation online. The applicant unfortunately submitted a document in which he has failed to expand the text box meaning that the remaining content is not visible on the notice of review application form.

On further investigation, this same statement appears to have been repeated in the recent submission made to The Scottish Government Planning and Environmental Appeals Division for the refused parallel planning application reference number 16/001372/LBC.

It is interesting to note that the DPEA instantly dismissed this appeal for "Internal and External alterations to form 12 no. dwellinghouses" as the appeal had not been submitted in time, per The Town and Country Planning (Appeals) (Scotland) Regulations 2013.

We have therefore assumed that the following two paragraphs are the missing content from the Statement of Review submitted to Scottish Borders Council.

"Fundamentally the Scottish Borders Heritage Officer has offered their support of the application and re-use of these important historic buildings. The proposals have also generated a huge amount of local support, citing that the preservation of these buildings is of utmost importance.

Due to their state of disrepair the cost of the making the buildings safe and preserving them is uneconomical without the proposed development. We therefore face the distinct possibility of losing these important links to our past."

Fact over fiction, to state that this development has a "huge amount of local support" is not quite true; there were six objections and twelve support comments received.

It is very easy to use friends, families, old school chums and fellow retired farmers from far and wide to submit messages of support. We could all play that game to create "support".

At face value and at first glance from the roadside – supporting the proposed development of these buildings is an obvious reaction, sadly however the conflict and risks between residential and farming operations makes this unachievable.

Equally of concern is the statement regarding "losing the buildings". The aims of national and local policy to restore listed buildings is cited, it seems that the applicant is suggesting that the restoration will only happen if a future use for the buildings can be found. Custodians of such buildings have a duty to care to maintain the buildings in good condition as far as possible.

If the owner of these buildings wanted to, he could have maintained these buildings over the years and had some use out of them. Using housing as a reason to preserve them is not an excuse for neglecting them.

However, despite there being a desire to restore listed buildings, the applicant has failed to:

- Provide a new site layout was required to address road safety and access issues
- Confirm that development contributions would be paid.
- Conduct Preliminary Ecological Appraisal to assess the scope of further survey would that would be necessary and outlining mitigation requirements.
- Commit carrying out a historic building survey.

- Carry out an assessment re the potential contamination on the site as identified by the Contaminated Land Officer identified, which may in turn require the development of a remediation strategy and verification plan.
- And finally, no landscape scheme or details of means of enclosure were submitted with the application.

Summary

To conclude, it is our opinion that Scottish Borders Council decision to refuse planning consent for this proposed development on 5th February 2018 was correct.

In the section of the Planning Officers report titled "Reason for Decision" it was stated that *"The potential benefits of the proposed development are clear. The opportunity to secure a suitable long-term use for these Listed Building is acknowledged and must be given significant weight. The potential social and economic benefits of rehabilitating this brownfield site and delivering new housing in the area are also key considerations.*

These benefits do not however override the Planning Authority's responsibility to ensure new housing is afforded modern standards of residential amenity. In this case the amenity of eleven future households must be safeguarded. Homebuyers and tenants should be able to expect proper standards of residential amenity from new housing. This is the Planning Authority's duty. Other considerations, whilst of significant merit and weight, do not allow the Authority to forego normal standards and the Council could ultimately be admonished by the Ombudsman for taking such a course of action. It is clear for the reasons outlined above that proper standards of amenity cannot be guaranteed and that a conflict of uses would arise.

Considerations relating to ecological impacts, development contribution requirements and access/ parking arrangements have also not been adequately addressed, despite the applicant being given ample time to address these points."

No new information has been presented in this appeal which would challenge any of the five reasons for refusal and our yard and building, directly adjacent to this proposed development site, will continue to be used as, how and when we choose.

Whilst a few individuals may continue to say grain store, grain store, grain store..... the facts above prove that we are not constrained in our farming operations in this yard, building or elsewhere now or in the future.

Quite simply, nothing has changed since 5th February 2018.

We look forward to following this appeal process and hearing the Local Review Bodies assessment of the appeal.

Yours Sincerely

James and Angela MacLean

Appendix 1 – Email Correspondence with Scottish Borders Council 2016

From: [REDACTED]
To: lhoad@scotborders.gov.uk
Subject: Hutton Hall Barns - Future use of North Yard and General Purpose Agricultural Building
Date: Thu, 17 Mar 2016 10:52:59 +0000
Lucy,

Further to our conversation regarding the use of our north yard at Hutton Hall Barns, TD15 1TT; we are currently considering a number of options to diversify the farming business to help ensure the farm's future viability. I have attached a site plan for reference.

Diversification is key to ensuring the family farms survival in a time of widely fluctuating commodity prices and uncertain financial returns within farming and as such we are exploring how we can use the yard and shed to earn additional income.

The north yard is currently used as general storage. We also use the hard standing areas to store rubble under a Paragraph 19 SEPA licence; this rubble will be used to make poultry shed bases.

The shed in our north yard and was erected initially as a horse riding arena in the 1970's, a concrete floor was laid in the 1980's to allow it to be used as a general purpose agricultural building. We primarily use it as a grain storage facility for part of the year, at other times we use it to store fertiliser, fuel and our combine harvester and other farm implements.

We have started to explore haulage and have recently set up a new company "Maclean Haulage". We are in the early stages of looking at how we could take control of the egg collections and feed deliveries for the egg companies as well as our grain, straw and fertiliser movements on the farm.

Another area we are exploring is to put either cattle or pigs in the general purpose shed. The cattle or pigs would be here on a "bed and breakfast" basis to allow the farm to earn money whilst the shed is empty.

We have had a look at the Town & Country Planning (Scotland) Act 1997 and in particular Section 26 which defines those operations and works that are considered to be "development". Section 26(e) states that "the use of any land for the purposes of agriculture or forestry (including a forestation) and the use for any of those purposes of any building occupied together with land so used" shall not be considered to be development. I understand that this means that because the shed is an existing building which is being used for agricultural purposes along with agricultural land, we should be able to use it for any agricultural purpose.

We also believe that change of use is not required as we are not starting an intensive livestock business and understand that provided that any works that have to be carried out to the building to accommodate livestock relate to the internal parts of the building only and do not materially affect the external appearance of the building then planning permission would not be required.

It would be helpful if you could clarify this for us please?

We are of course mindful of our neighbours and the potential for statutory nuisance from noise and odour. In particular we have looked into planning permission that was granted for the closest residential property "Merlewood"(02/00552/FUL) as I recalled that my late father-

in-law had highlighted that the building may be used for livestock during the planning process.

In the planners report to SBCs Berwickshire Area Committee on 28th May 2002 (attached for your ease of reference) it was noted that our shed "might have potential as a building for cattle". This report notes that the applicant for Merlewood was a former farmer and aware of the nature of farming activities and that in "terms of future intensive livestock activity there are already non-farm dwellings within the prescribed distance of the grain store".

Please feel free to contact me if you have any questions/queries about our plans and I do hope that email is helpful in letting you know early of our next steps at Hutton Hall Barns.

Kind regards

Angela MacLean
Hutton Hall Barns
Hutton
Berwick Upon Tweed
TD15 1TT

From: Angela MacLean
Sent: 11 July 2016 17:21
To: Hoad, Lucy
Subject: FW: Hutton Hall Barns - Future use of North Yard and General Purpose Agricultural Building

Hello Lucy,

We have been revisiting our plans for the farm and our thoughts are that we will use the General Purpose store to hold grain for a couple of months after this years harvest with the aim of housing our first "crop" of pigs before the end of this calendar year.

As discussed earlier this year, we believe that change of use is not required (see email below for my thoughts re that) and it would be helpful if you could clarify this for us please?

Many thanks

Angela MacLean
Border Pigs
Hutton Hall Barns
Hutton
Berwick Upon Tweed
TD15 1TT

RE: Hutton Hall Barns - Future use of North Yard and General Purpose Agricultural Building
Hoad, Lucy

Mon 08/08/2016 10:48
To: 'Angela MacLean'

Good Morning

Having discussed with colleagues I would re-confirm my earlier verbal communication that the use of the barn for agricultural purposes is accepted. The Town and Country Planning (Scotland) Act 1997 defines agriculture as; "horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes. Thus no change of use is required.

Kind regards

Lucy

Appendix 2 Email between Border Pigs and SEPA

From: Angela MacLean
To: Nick Forsyth SEPA; Grimsditch, Kate
Cc: James MacLean
Subject: Re: Query - Use of Agricultural Building for Pigs

Many thanks for phoning me this afternoon Nick and for the advice from a SEPA perspective; it was reassuring to know that our proposal is compliant with the rules.

Just to summarise, our plan will be to store the straw bedding after muck out either in our existing slurry store or in field heaps. If we use field heap we will ensure that they are positioned over 10m from watercourses and field drains and we will make sure that we move the positions of the field heap each year.

The wash tank option is best for us so we are glad to know that this is satisfactory. The washings will be handled, as per poultry muck and spread on land in line with NVZ guidelines. No PPC permit will be required as we will not exceed 2,000 production pigs and their weight will not be over 30kgs when they leave farm.

It's good to know that our proposal is acceptable to both SBC planners and SEPA and as discussed we will be very mindful in making every attempt to avoid an environmental nuisance.

Many thanks once again for your help in understanding the SFI rules, it's very much appreciated.

Kind regards

Angela MacLean
Border Pigs
Hutton Hall Barns
Hutton
Berwick Upon Tweed
TD15 1TT

From: Angela MacLean
To: Nick Forsyth SEPA; Grimsditch, Kate
Cc: James MacLean
Subject: Query - Use of Agricultural Building for Pigs

Nick/Kate,

James and I are continuing to look at how we continue to diversify the farm to ensure its sustainability.

I have attached a copy of correspondence with SBC planners which has confirmed that our proposed use of the building doesn't require change of use so we are now pushing on to identify what else is required to get this project off the ground.

From a SEPA perspective, we are looking at bedding our non-intensive "B and B" pigs on straw and for wash down we are planning to install a tank to capture washings. This would

then be emptied by slurry tanker. Just wondering if this is acceptable or if we need to be thinking of anything else.

Many thanks in anticipation of your continued support and advice.

Kind regards

Angela MacLean
Border Pigs
Hutton Hall Barns
Hutton
Berwick Upon Tweed
TD15 1TT