

PLANNING AND BUILDING STANDARDS COMMITTEE

12 JANUARY 2015

APPLICATION FOR PLANNING PERMISSION

ITEM:	REFERENCE NUMBER: 14/00885/MOD75
OFFICER:	Stuart Herkes
WARD:	Mid Berwickshire
PROPOSAL:	Discharge of planning obligation pursuant to planning permission B255/95
SITE:	Oxmuir, No 3 Hume Hall Holdings, Duns
APPLICANT:	Mr Laurence Douglas Laing
AGENT:	Stormonth Darling WS

SITE DESCRIPTION, PROPOSED DEVELOPMENT AND PLANNING HISTORY

This application seeks the discharge of a Section 50 legal agreement, the subject of which is the entirety of the agricultural holding at Oxmuir, (No 3) Hume Hall Holdings.

The conclusion of this legal agreement (in 1996) was a requirement arising from the grant of outline planning permission (reference B255/95) for a new dwellinghouse at the holding.

The central requirement of this legal agreement is that no further dwellinghouses should at any time, be erected or otherwise provided on any site ("the land") within the holding, unless the consent of the Planning Authority has first been obtained in terms of this same legal agreement (as well as any necessary planning permissions).

Since the conclusion of the legal agreement, the dwellinghouse consented by permission reference B255/95 has now been constructed. It is known as 'Castlevlew'.

Additionally, a variation (Section 75) to the legal agreement was subsequently agreed to allow for the erection of a second new dwellinghouse. This was itself consented by permission reference 06/00478/FUL, and is also now existing. It is known as 'Kye Pairk'.

More recently, current Planning Application 14/00139/FUL for a third new dwellinghouse at the holding (accommodation for retiring farm workers) has been approved. Approval is subject to conditions, informatives and the conclusion of a new legal agreement. This agreement has yet to be concluded. It is required (a) to tie the new dwellinghouse and the existing farmhouse ('Oxmuir') to the agricultural holding at Oxmuir; and (b) to secure a development contribution towards Berwickshire High School. However, there is also a need to resolve the position with regard to the aforementioned existing Section 50 agreement, and its requirement that there should be no new dwellings at Oxmuir. While this could be addressed in the form of a variation to the existing legal agreement (in essentially the same way as this was resolved in the case of 'Kye Pairk'), the Applicant is proposing that this matter should be addressed through the discharge of the original Section 50 legal agreement.

REPRESENTATION SUMMARY

No representations have been received in response to the public consultations.

APPLICANTS' SUPPORTING INFORMATION

None

DEVELOPMENT PLAN POLICIES:

Scottish Borders Consolidated Local Plan 2011

- Policy G1: Quality Standards for New Development
- Policy H2: Protection of Residential Amenity
- Policy D2: Housing in the Countryside

OTHER PLANNING CONSIDERATIONS:

Scottish Borders Council Supplementary Planning Guidance:

- New Housing in the Borders Countryside (2008)
- Place-Making and Design (2010)

Emerging Local Development Plan

- Scottish Borders Council: Proposed Local Development Plan 2013

Scottish Government:

- Scottish Planning Policy (2014)
- Circular 3/2012 - Planning Obligations and Good Neighbour Agreements
- Letter from the Chief Planner Advising Heads of Planning of the Scottish Government's view that restrictions on the occupancy of new housing are rarely appropriate and so should generally be avoided (November 2011).

CONSULTATION RESPONSES:

The Council's Legal Services and Economic Development Sections were consulted.

Legal Services: has not responded to the public consultation.

Development Negotiator: no comments.

KEY PLANNING ISSUES:

- Whether or not the planning obligations meet the tests set out in Planning Circular 3/2012;
- Whether or not there have been any critical changes within planning policy since the time of the imposition of the conditions and obligations concerned,

and/or whether there are any other material considerations, that would now permit for the removal of the legal tie;

- Whether or not the reasons for, and the terms of, the original legal restriction remain valid;
- Whether or not the removal of the legal restriction would be consistent with current adopted planning policy on Housing in the Countryside; and
- Whether or not there would be any other unacceptable impacts upon the environment and/or amenity of the site and surrounding area, were the obligation to be discharged.

ASSESSMENT OF APPLICATION:

The Scottish Government (Circular 3/2012) advises that planning obligations should not be imposed where the issues concerned are capable of being resolved in another way. On the question of prevention of any further dwellinghouses being built within a given area, this matter is capable of being regulated through the planning system. Planning permission would always be required to establish a new dwellinghouse, and regardless of whether or not this was to be realised through construction, conversion or the subdivision of an existing residential property. As such, the planning application required, would need to be assessed against prevailing planning policy.

While a legal agreement to prevent new housing might provide an additional safeguard, it is therefore arguably superfluous, and as such, unnecessarily complicates a matter that is by its nature, appropriately regulated through the normal operation of the planning system. It could be added that such a legal prohibition would not be used in any similar cases today.

The legal agreement is therefore not preventing any impacts upon the environment or amenity of the surrounding area that would not otherwise be appropriately regulated through the normal operation of the planning system.

In short, if maintained, the existing legal agreement is liable only to prohibit *legally* a development that might otherwise be acceptable in planning terms. It is considered that this in itself is unreasonable and unnecessary.

It is considered that the Section 50 legal agreement should now be discharged in full. This would not have any unacceptable impacts upon the environment and/or amenity of the site and the surrounding area.

RECOMMENDATION BY SERVICE DIRECTOR (REGULATORY SERVICES):

I recommend that the application is approved, but also amended to include the discharge of the Section 75 legal agreement that was concluded to allow for the release of Planning Consent 06/00478/FUL.

DRAWING NUMBERS:

Drawing Number	Title
Deed Plan	Humehall Smallholdings, Holding No 3

Approved by

Name	Designation	Signature
Brian Frater	Service Director (Regulatory Services)	

The original version of this report has been signed by the Service Director (Regulatory Services) and the signed copy has been retained by the Council.

Author(s)

Name	Designation
Stuart Herkes	Planning Officer

