

PLANNING AND BUILDING STANDARDS COMMITTEE

12 JANUARY 2015

APPLICATION FOR PLANNING PERMISSION

ITEM:	REFERENCE NUMBER: 14/00408/MOD75
OFFICER:	Stuart Herkes
WARD:	Mid Berwickshire
PROPOSAL:	Discharge of planning obligation pursuant to planning permission 11/00200/PPP
SITE:	Land NW of Wedderlie Cottages, Gordon
APPLICANT:	Helen Marion Tilson and Ellin Wanda Hobbs
AGENT:	Turcan Connell

SITE DESCRIPTION, PROPOSED DEVELOPMENT AND PLANNING HISTORY

The application seeks the discharge of a Section 75 legal agreement, the subject of which is the agricultural holding at Wedderlie Farm, to the east of Westruther.

The conclusion of this legal agreement in May 2013 was a requirement arising from the grant of outline planning permission (reference 11/00200/PPP) for a new dwellinghouse (farmhouse) at the holding.

The central requirements of this legal agreement are to tie the farmhouse to the agricultural holding and to secure development contributions towards the upgrade of local education provision.

Following the conclusion of this legal agreement, approval of details (13/00687/AMC) was secured in October 2013. However, following this approval, a full planning application (14/00073/FUL) was made to enable the relocation the dwellinghouse upslope of the position in which it had been originally granted permission.

The site areas of the two permissions overlap, although much of the footprint of the dwellinghouse consented by permission reference 14/00073/FUL lies outwith the site of 11/00200/PPP. This required a new legal agreement for the 2014 application, essentially replicating the terms of that which had originally been concluded to allow the release of the 2011 application.

It is the later permission that has now been implemented. Since this permission is the subject of a new legal agreement, and the earlier permission is now not going ahead, the land owners now seek the discharge of the "redundant" legal agreement relating to the site of original permission 11/00200/PPP, which would otherwise remain a burden on the land.

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 G5: Developer Contributions
- 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

CONSULTATION RESPONSES:

The Council's Legal Services and Development Negotiator were consulted, but have not responded to the public consultation.

KEY PLANNING ISSUES:

- Whether or not there have been any critical changes within planning policy since the time of the imposition of the planning obligation 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 Applicants propose that a legal agreement that relates to a planning permission that is not being implemented should now be discharged. Given that the development that is being implemented is subject to another, free-standing, legal agreement, there are no concerns in principle that the proposed discharge would have any unacceptable impacts upon the environment or amenity of the site or surrounding area. The legal agreement relating to the site of the later permission 14/00073/FUL, addresses the same matters and concerns as the legal agreement that was originally imposed. Accordingly, the discharge of the latter would not directly raise any planning concerns if the permission to which it relates is not implemented.

The only technical issue is that the legal agreement that would be discharged, relates to a planning permission that is still theoretically capable of implementation, although this is unlikely in practical terms, given the proximity of the two permissions and the advanced state of construction of the implemented permission. To provide some reassurance on this point, the Applicants have undertaken to provide a solicitor's letter to confirm that they will not seek to implement the permission granted by permissions 11/00200/PPP and 13/00687/AMC. This letter has yet to be received but will be presented to Members in time for the Committee meeting.

Subject to the above noted reassurance being secured, it is considered that the Section 75 legal agreement should now be discharged in full.

RECOMMENDATION BY SERVICE DIRECTOR (REGULATORY SERVICES):

I recommend that the application is approved.

DRAWING NUMBERS:

Drawing Number	Title
Plan 1	
Plan 2	

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

