

**SCOTTISH BORDERS COUNCIL**

**APPLICATION TO BE DETERMINED UNDER POWERS DELEGATED TO  
CHIEF PLANNING OFFICER**

**PART III REPORT (INCORPORATING REPORT OF HANDLING)**

**REF :** 15/01552/FUL

**APPLICANT :** Mr and Mrs N Ewart

**AGENT :** Ericht Planning & Property Consultants

**DEVELOPMENT :** Erection of two dwellinghouses

**LOCATION:** Land South Of Primary School  
West End  
Denholm  
Scottish Borders

**TYPE :** FUL Application

**REASON FOR DELAY:** No Reason

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**DRAWING NUMBERS:**

<b>Plan Ref</b>	<b>Plan Type</b>	<b>Plan Status</b>	
OS EXTRACT	Location Plan	Refused	
MM3017/1 SITE PLAN AND SECTION		Site Plan	Refused
MM3017/2 PROPOSED FLOOR PLANS		Floor Plans	Refused
MM3017/3 PROPOSED ELEVATIONS		Elevations	Refused

**NUMBER OF REPRESENTATIONS: 9**

**SUMMARY OF REPRESENTATIONS:**

**EDUCATION & LIFELONG LEARNING (MARK BEDWELL):** Confirms the site is located within the catchment area for Denholm Primary School and Jedburgh Grammar School. A contribution of £3209 per unit will be sought for the Primary School, making a total contribution of £6418. As a result of fire, Denholm Primary School was rebuilt with additional classroom space to accommodate future developments in the area therefore a contribution is sought towards the costs of providing this extension to the school and to recoup the capital investment made by the council.

**ROADS PLANNING SERVICE:** Confirms the principle of two dwellinghouses on this site raised no objection from the RPS when an outline application was submitted in 2007. Has copied below the previous comments which are largely still applicable to the current proposal.

"I have no objections in principle to this proposal. I shall require parking and turning for a minimum of two vehicles, excluding any garages, to be provided within the curtilage of each property. Provision must be made for service vehicles and the access must be constructed to my specification. The exact location of the access onto the public road serving Denholm Mill must be agreed on site with my representative prior to any detailed application being made. The gradient of the parking and turning area must be not greater than 1 in 18, the gradient of the initial 6m on the access must be not greater than 1 in 18 and the intervening section can be up to 1 in 8. Visibility improvements shall be required to the north to ensure driver visibility is adequate. It should be noted that I would not be able to support any further development within this field as it would require the provision of a public road, which would be inappropriate at this location.

With regards to the current design, the access should be located further west to allow a greater distance from the junction with the A698. The precise location of the access will need to be agreed and a scheme of details will need to be submitted and agreed in writing. The access should be formed as per the following specification prior to occupation of the first dwelling:

- o Access to be a minimum of 5.5 metres wide and formed with 6 metre radii.
- o The first 5 metres of the access to be constructed to the following specification "75mm of 40mm size single course bituminous layer blinded with bituminous grit all to BS 4987 laid on 375mm of 100mm broken stone bottoming blinded with sub-base, type 1."
- o Measures to prevent the flow of surface water onto the public road to be included in the design.

Providing the above points are satisfactorily addressed I will not object to this application. Given the lack of public footway provision between the site and the village centre via the main road, the obvious route for pedestrians from this site to the village centre avoiding traffic is via the footpath to the west and north of the site. This route is a right of way and may benefit from some improvement works as a result of this application. I would advise that you discuss the matter with the relevant Access Officer with a view to confirming what level of contribution, if any, would be appropriate. Restrictions should be put in place to ensure any planting along the northerly boundary is located so as not to encroach onto the right of way. "

The RPS engineer notes that there is an objection to this proposal which disputes the extent of the public road verge along the frontage of the site. However, it is the opinion of the RPS that the public road boundary is the fence line along the boundary of this field.

COMMUNITY COUNCIL: Observations as follows:

1. Access to the site over the verge on Denholm Mill Road would require the acquiescence of the owners of the verge, the residents of Denholm Mill, who have not yet been consulted by the applicants.
2. CCs felt there would be a negative impact on visual amenity of the area, and did not agree the visual impact would be in keeping with the village and local farm house, as claimed. Also noted the white painted exterior proposed would not be in keeping with nearby buildings.
3. CCs observed the proposed dwellings would not fall in to the category of "affordable housing".
4. Noted the application did not make provision for sustainable drainage or surface water. Concerned that this could mean the applicants "could be in breach of environmental legislation".
5. Observed that application was for planning permission, although there appeared no prior "outline planning permission", The CC would like to be informed whether this was indeed the case, and if so whether this is in keeping with appropriate planning procedures.

ARCHAEOLOGY OFFICER: There are no known archaeological implications for this proposal. However, as the development is near an area of moderate archaeological sensitivity, being located near the medieval village of Denholm, there is nevertheless some potential for encountering previously unknown archaeological deposits. While a condition seeking mitigation is not recommended, recommends an informative.

ACCESS OFFICER: (In summary): "The route from the public road to the bottom of the steps is part of Core Path 123. This is not confined to one particular part of the road or verge and currently walkers use both sides of the road and verge. Core path 123 beyond this road is rural mainly grass surface in nature and is not generally hard surfaced and includes a long set of steps. There is not currently a pavement linking the development with the village. Trees planted along the boundary of the property, while welcome to provide landscape benefit should be chosen and sited to avoid future blockage of the paths due to tree growth into the path area. Thorny plants may eventually grow to create more of a barrier to path users. So selection of species and siting in communication with the planning authority as per the application is welcomed. This is relevant to all boundaries and particularly so at the upper section of the property where the path is narrow and close to the post and wire fence. The development, if it was to be approved, has implications for the ability of the public to exercise rights of access along existing paths. It is essential that these rights are not obstructed by the proposed development and that the public shall continue to enjoy access to the path during and after the

development, without risk from machinery, ground disturbance or any other aspect of development works.

The path indicated Core Path 123 and including the path along the top edge of the property between the property and the Primary School grounds and adjacent path link promoted path DENH/78P/1 must be maintained open and free from obstruction in the course of, and after the development. It will not be part of the curtilage of the property."

Wordings are suggested for planning conditions in the access officer reply available online.

## PUBLICITY AND REPRESENTATIONS

This application was publicised by means of a site notice, a notice on the national planning notification website, and an advert in the Southern Reporter. Direct notification was carried out of the 17 neighbouring addresses within the notification buffer of the site.

At the time of the finalisation of this report, a total of 9 letters of objection and two representations had been received to the application.

The submissions made can be viewed in full on the public access website. The principal grounds of objection can be summarised as follows:

- Adverse impact on Conservation Area, its appearance, setting and character.
- Precedence/previous planning history has shown that the development of this site is unacceptable and there has been no material change in circumstance that would alter this view.
- Access to the site both for long term vehicular traffic and short term construction traffic is unsuitable.
- Objection was also made that there is no pavement into the village for safe pedestrian access.
- The proposal will visually intrude into open countryside and have an adverse impact on the landscape
- The proposal is not consistent and does not complement the character of the present settlement
- The proposal will have an adverse effect on the approach to (and exit from) the village from the west which being at the entrance to the village has high amenity value to the residents of Denholm and all those who visit the village.
- Trees - Highlighted that the owner of the Manse Field recently authorised the felling of trees which otherwise served to help screen the gable end of the house known as the Riggs.
- Adverse impact on rural views to, and through the site.
- Criticism of the design approach taken.
- Criticism that the proposed housing would not be affordable.

Submission was also received setting out that the site would have to take access over land not in the applicant's control. It is contended that consent for such access would not be forthcoming from the Denholm Mill Residents.

On behalf of the applicant, the agent submitted Responses in terms of

- The reply from the Countryside and Heritage Officer.
- The rights of access to the site.

## PLANNING CONSIDERATIONS AND POLICIES:

Consolidated Scottish Borders Local Plan 2011  
G1, G5, G7, BE2, BE4, BE6, H2, Inf2, Inf4, Inf5, Inf6

Other

- SPG Placemaking and Design
- SPG Householder Development
- SPG Development Contributions
- SPG Affordable Housing

**Recommendation by** - Andrew Evans (Planning Officer) on 16th February 2016

SITE

The site is located on the edge of Denholm. The site is a field, known locally as "The Manse Field". To the North of the site is located the new Denholm primary school. To the south is located the A698 road between Hawick and Kelso. West of the site is located the road leading to Denholm Mill, off of which comes a pedestrian route leading to the school site on the higher ground beyond, accessed via a stepped footpath. East of the site are located existing dwellings, accessed off of Denholm Green. The site is located at the edge of the village. The site is sloping, with the lower lying land along the boundary fronting the A class road. The Dean Burn lies across the Denholm Mill access road and the field is generally surrounded by post and wire fencing, mature hedging and small trees.

PROPOSED DEVELOPMENT

Full planning permission is sought for the erection of two dwellings. The application sets out detailed proposals for two two-storey linked dwellings. These would be located at the southern corner of the site, which is the lowest part of the field in which they would sit. They would be served by a new access off of the Denholm Mill road. The proposals indicate the existing boundary fence, trees hedge and shrubs along the boundary with the A road to be retained and enhanced.

The proposed houses would feature Natural slate roofing. The left hand dwelling would be finished in random sandstone (Copp-Cragg or similar yellow-brown fine grained) as specified on the plans. The right hand dwelling would be finished in wet dash render painted off-white. All Rainwater goods would be black plastic. Windows would be painted timber sash and case units. Along the southern boundary, the new access would be located centrally within a new 1.5m high sandstone boundary wall.

PLANNING HISTORY

There has been a history of resisted applications for residential development on this site. The following is a brief summary of the planning history:

- o Planning application for two semi-detached houses refused in 1992 on grounds of road safety and site being outwith the Local Plan boundary for Denholm at the time. The application was also refused as being inappropriate for housing development in that it lay outwith the village form.
- o A single house planning application was refused in January 1992 for similar reasons, an additional reason stating that the proposal would be detrimental to the visual amenity and character of the Conservation Area.
- o Planning application for a single dwellinghouse was refused in September 1992 for the same reasons, except for that relating to road safety. This decision was then taken to appeal and the appeal was dismissed in August 1993. The Reporter agreed with the Council's concerns over the principle of developing the site.
- o The formal allocation of the site for housing was sought during the process of the Finalised Local Plan. This was opposed by the Council and the findings of the Reporter were in line with the Council's opinions. The Reporter stated "I endorse the Council's concern that its development, in whole or part, for housing would be detrimental to the amenity of Denholm, particularly as the site is highly visible when approaching from the west along the main A698 road. In my view, the offer of restricting the proposals to

single or 1½ storey and avoiding the highest parts of the steeply sloping site would not be sufficient to ameliorate the impact of the development satisfactorily, given its prominent setting". Following consideration of those findings, the site was not allocated for housing within the Scottish Borders Local Plan 2008.

o An outline planning application for the erection of two affordable dwellinghouses on part of the site was refused in November 2007. It was concluded that the proposals for affordable housing did not comply with the relevant Development Plan Policies covering the granting of exceptions in such cases, nor did they outweigh the planning history of resistance to residential development and the various protection Policies covering the site in relation to protection of the Conservation Area, informal open space and its role within, and on the approach to, the village.

Colleagues in the Planning Policy and Access team confirm that this site was not submitted for consideration through the recently concluded Local Development Plan process.

## POLICY PRINCIPLE

The current application is made in full for the erection of two dwellings. It is clear from the planning history for the site that there has been continued development pressure here and also that this has been resisted over several years. This application does however require to be assessed against the current provisions of the development plan, and to be determined in line with prevailing planning policy.

The site is within the development boundary. There are however additional considerations that arise. The mere location of the site within the development boundary line does not render any development proposal acceptable. The infill development policy is criteria based. The site is located within the development boundary of Denholm. The proposed development requires to be assessed principally against local plan policy G7 (Infill Development). Policy G7 of the Local Plan sets out the position in relation to Infill Development proposals.

The only criteria of the relevant qualifying criteria to this site, it being neither an employment site nor a garden ground or backland site, sets out that infill development proposals would be supported where, in the case of a gap site, it can be justified under policies BE6 (protection of open space), policy NE3 (local biodiversity), and policy Inf11 (developments that generate travel demand). In all cases, the development must not conflict with the established land use of the area, detract from the character and amenity of the area, and be capable of being sustained by the surrounding social and economic character. Development must respect the scale, form, design, materials and density of the surroundings. Adequate access and servicing must be achievable and there should be no significant loss of daylight, sunlight, or privacy to surrounding properties as a result of overshadowing or overlooking.

The Council has adopted planning policies and supplementary planning guidance which seek to raise design standards, and promote thorough consideration of context. The proposals require to be assessed in terms of the adopted Supplementary Planning Guidance and the adopted planning policy relating to Placemaking and Design. Policy PMD5 of the emerging Local Development Plan is also relevant to this application.

## ARCHAEOLOGY

Archaeology is a material consideration in the planning process. Policy BE2 of the CSBLP sets out the council position in relation to Archaeology. In this case, the Council Archaeology Officer confirms that there is a low likelihood of encountering buried archaeology. Were the application to be approved, an applicant's informative could adequately cover archaeological issues, and ensure compliance with policy BE2 of the CSBLP.

## ACCESS

Impact on outdoor access and rights of way are material considerations in the process. Policy Inf2 of the CSBLP seeks to protect outdoor access.

The Council Access Officer makes a detailed reply. Whilst the outdoor access officer correctly identified the core path adjacent to the site, I cannot justify the use of a planning condition on this consent to protect this access. The route is outside the application site and outwith the applicant's control. Conditioning this access in the manner suggested by the access officer would not pass the tests for use of planning conditions. Were the application in a position for approval, I would be satisfied that existing rights of way

legislation, and an applicant informative on any planning consent could adequately deal with any access issues arising. Subject to such an informative, the proposals would comply with policy Inf2 of the CSBLP.

## PLACEMAKING AND DESIGN and HERITAGE AND CONSERVATION CONSIDERATIONS

The site is located within the Denholm Conservation Area. Policy BE4 of the CSBLP and policy EP9 of the Local Development Plan set out the position applicable to developments in the CA. Fundamentally the requirements of these two policies are the same. Development within or adjacent to a Conservation Area that would have an unacceptable adverse impact on its character and appearance will be refused. All new development must be located and designed to preserve and enhance the special architectural or historical character of the Conservation Area. This should accord with the scale, proportions, alignment, density, materials, and boundary treatment of nearby buildings, open spaces, vistas, gardens and landscapes. The policies of the adopted and emerging plans identify a need of design statements to accompany planning applications for development in conservation areas.

Policy G1 of the CSBLP and policy PMD2 of the proposed Local Development Plan sets out the policy requirements on quality standards which are applicable to all new development. The Council has also adopted supplementary planning guidance on Placemaking and Design which is relevant to the determination of this application. Policy G7 (on infill development) sets out that all proposed infill developments must be considered against the Council SPG on Placemaking and Design.

The SPG guidance (Section 4.2, Settlement Pattern) sets out that in urban areas, within the context of Borders Settlements, new development must seek to form a logical addition to the existing settlement pattern, relating to the landscape and land use patterns of the area. The SPG also (Section 4.3 -Views) sets out that as well as views within the wider landscape, the visual integration of development into its surroundings at the local level must be considered. All buildings have a civic role to play as part of the built environment and overall visual quality of an area. Consideration should be given to views approaching the settlement / site, views towards the roofline/skyline, and also approaching the site from within the settlement. It is in this regard that I do have concerns regarding the acceptability of this site for development.

In considering these impacts on views, it is also important to be mindful of the historical underpinning of refusals on this site. In 1993, a reporter set out in refusing residential development application on the site that "the site makes a pleasing contribution to the character of the Conservation Area by sharpening the visual distinction between the village proper and its rural approach from the west". He felt that with the single house development proposed, no matter where it was located or how it was designed, "...The entrance to Denholm would no longer offer the same experience of sudden change from countryside to village square".

This argument was persuasive then, and the underlying logic in such a view remains relevant now. The western entrance into Denholm is characterised by the very quick transition from being in a rural location to being in the village centre around the green. The agent, in the supporting statement identifies that the upper portion of this green space is most prominent. I do not agree with this conclusion. This green open space is much more important than just the upper portion. The whole site contributes to this feeling of openness. In the soon to be adopted Local Development Plan, this land is white land within the settlement boundary. It carries no additional designations. Its contribution to the appearance and character of the Conservation Area should not however be underestimated. I accept that the field is not specifically mentioned in the accompanying conservation text in the "PLACE MAKING CONSIDERATIONS" section of the plan, however the whole of the application site, and the access road and dwellings at Denholm Mill are within the Conservation Area. I do not consider that the proposed development would have a positive impact on the Conservation Area, because of the visual intrusion that would result from developing this prominent area of open space.

Policy BE6 of the CSBLP seeks to ensure the protection of open space. This policy covers all open space within development boundaries. Its key criteria in relation to this application is criteria 3, which sets out that open space will be protected from development where it can be justified by reference to the role that the open space plays in defining the landscape and townscape structure and identity of the settlement. Taking in to account the reasoning's behind previous reporter's decisions, the planning history of the site, and having considered the specific role that this site plays at the entrance to Denholm, I do not consider that the proposed development set out in this application would comply with Policy BE6. I do not consider that there is any possible revision to the proposals which would be likely to make it comply with policy BE6,

In summary, the development of the field as proposed would in its current form be contrary to policy BE4 (Conservation Areas) and BE6 (Protection of Open Space)

In terms of the surrounding density and built form, whilst the proposed development would be for a pair of higher density linked dwellings, the immediate context is set by detached dwellings. The density then increases around both Denholm Mill and the Village Green. The density of development proposed is then higher than the immediately adjacent dwellings. The immediately surrounding housing is detached. The site is not appropriate for the density of development proposed in this prominent edge of village location. The development will change the character and appearance of the conservation area, in a manner that cannot be supported. The proposals are considered to be contrary to policy G1 of the CSBLP and contrary to the guidance set out in the adopted Scottish Borders Council SPG on Placemaking and Design.

#### AMENITY

Policy H2 of the CSBLP and policy HD3 of the LDP seek to ensure that development does not adversely affect neighbouring residential amenity. The Council has also adopted supplementary planning guidance on Householder Development, which sets out the Council policy position in terms of amenity and privacy. The nearest dwellings are sufficiently distant from the site that I am satisfied the proposal would not affect the residential amenities of occupants of these properties. There are no other properties in the surrounding area that would be affected by the proposal. The adopted SPG on Householder Development also sets out minimum standards for garden space in planning applications for new housing.

#### ACCESS AND ROAD SAFETY

Road safety is a material planning consideration. Policies G1 and Inf4 of the CSBLP and policies IS7 of the LDP set out the relevant infrastructure standards for parking to serve development. The Roads Planning Service was consulted on the application. The field is bound to the east by an existing footpath and staircase, leading from Denholm Mill to the Primary School. The proposed access to the site is to be taken off of the Denholm Mill road, very close to its existing junction with the existing Hawick to Denholm road. The proximity to this access was an issue of concern to me on first viewing the site. The RPS engineer confirms in his consultation response that the proposed development of this site is considered acceptable in road safety terms.

Whilst I am mindful of the road safety history of the site and surrounding roads, I also appreciate that engineering thinking in terms of road safety has advanced in recent years, and application of "Designing Streets" principles to the proposals can mean that previous reasons for refusal in road safety terms are no longer as justifiable. Indeed, in the consultation response to the 2007 application, the RPS indicated that development of 2 dwellings could be accepted here on this site.

In the absence of a Road Safety objection from the RPS, I am not content to include road safety as a reason for refusal of the application.

#### ACCESS / OWNERSHIP, NOTIFICATION AND "RANSOM" STRIP ISSUES

It is noted that one of the objectors to the application, on behalf of the Denholm Mill Residents Association sets forth their position that the site cannot be developed without crossing land in their ownership. They contend that the land between the field boundary and the highway service strip is within the ownership of the nine householders at Denholm mill, and further contend that not all of the land within the red line application site is not wholly within the control of the applicants. The objector's position is that the correct neighbour notification and owner notification has not been carried out. The agent has however certified on the submitted application form that the correct notification has been undertaken. The planning system does not exist to intervene in such disputes. The agent has certified that the correct notification was undertaken. In planning terms it is only necessary that the access is achieved if the development of the site proceeds. I am not minded to support the application for the reasons identified within the report. In the event of a local review, and of members being persuaded to the contrary of the merits of the application, I would simply highlight that for reasons of road safety, any condition on access must be robust enough in its wording to ensure that the necessary access is provided up front, in advance of the development of any dwellings on the site.

#### WATER SUPPLY AND DRAINAGE

Policy Inf5 of the CSBLP and policy IS9 of the LDP seek to ensure that developments are adequately serviced in terms of waste water treatment and drainage provisions. The site is within the village boundary; however the application details set out that the site would be served by a private foul drainage system.

Policy Inf5 of the CSBLP and policy IS9 of the LDP sets out quite clearly the SEPA position that it is opposed to proposals which involve private discharges of treated sewage effluent in a sewered area. The policies set out that in settlements served by the public foul sewer, permission for an individual private sewage system will normally be refused unless exceptional circumstances prevail (and the conditions within the policies, criteria d of policy IS9 can be satisfied). A planning condition to cover the proposed water and drainage arrangements would be possible, and as such, drainage and water supply matters do not form part of the reasons for refusal of this application. Were the application to be approved, a condition would have to ensure that private drainage was not approved, and details of the proposals for a public drainage connection would have to be provided.

Policy INF6 of the CSBLP seeks to ensure SUDS are implemented into development. Were the application in a position to be approved, this requirement could be met by the use of an appropriate planning condition.

#### DEVELOPMENT CONTRIBUTIONS

The RPS officer suggested a possible contribution to create a pedestrian route between the site and the village centre. I find this difficult to justify however, as there are existing dwellings at Denholm Mill in the same situation, and there is alternative pedestrian access to the centre via the staircase and footway to the Primary School, a much safer alternative route. I am not completely convinced that the RPS request is desirable. Adding further pedestrians to the side of the A class road as it navigates through the tight turns and level change at the western end of the village green is not desirable.

Policy G5 of the CSBLP and policy IS2 of the LDP seek to ensure that development contributions are identified and collected in line with prevailing policy. The SPG on Development contributions sets out the prevailing contribution levels. In terms of this application site, contributions have been identified in terms of Education and Lifelong Learning and affordable housing. The Development Negotiator wrote to the agent outlining the contribution requirements applicable to this application. The identified contributions shall be secured via legal agreement, to be concluded prior to the issue of any planning consent. The applicant has since provided their confirmation that they would be prepared to enter in to the necessary legal agreement for this application.

#### PLANNING PROCESSING AGREEMENT

This application was subject to a planning processing agreement, to cover the legal agreement process in event of approval. This identified a conclusion/determination date for the application.

#### EMERGING LOCAL DEVELOPMENT PLAN

I am also satisfied that the proposed development would not comply with the policies of the emerging Local Development Plan. There is no significant difference in the policy position between the adopted CSBLP, and emerging LDP.

#### **REASON FOR DECISION :**

The proposed development is contrary to policies G7, BE4 and BE6 of the Consolidated Scottish Borders Local Plan (2011) in that it would result in the loss of open space to the detriment of the amenity and character of the village, its western approach and to the detriment of the character and appearance of the Denholm Conservation Area. Furthermore, the proposed development set forth in this application is considered contrary to policy G1 of the Consolidated Scottish Borders Local Plan (2011), and contrary to adopted supplementary planning guidance on Placemaking and Design in that the density of the development would not relate sympathetically to the surrounding built form.

**Recommendation:** Refused

- 1 The proposed development is contrary to policies G7, BE4 and BE6 of the Consolidated Scottish Borders Local Plan (2011) in that it would result in the loss of open space to the detriment of the amenity and character of the village, its western approach and to the detriment of the character and appearance of the Denholm Conservation Area.
- 2 The proposed development set forth in this application is considered contrary to policy G1 of the Consolidated Scottish Borders Local Plan (2011), and contrary to adopted supplementary planning guidance on Placemaking and Design in that the proposed dwellings would not reflect the neighbouring built form and density.

**“Photographs taken in connection with the determination of the application and any other associated documentation form part of the Report of Handling”.**