

GROUNDNS FOR REVIEW

REFUSAL OF PLANNING PERMISSION REFERENCE

18/01777/FUL

Erection of Two Dwellinghouses
Garden Ground of/ Land adjacent to 7 Heriot House
Heriot
Scottish Borders

Hill Norton Homes

Suzanne McIntosh Planning Limited

1. 11. 19

1. INTRODUCTION AND BACKGROUND

- 1.1 I have been instructed by Hill Norton Homes to seek review of the refusal of planning permission for 2 dwellinghouses on land adjacent to 7 Heriot House, Heriot. Planning permission was refused under delegated powers on 6.8.19. The reasons for refusal were as follows:

- 1 *The proposed development does not comply with Policies PMD2, HD2 and EP13 of the Local Development Plan 2016, or Supplementary Planning Guidance on New Housing in the Borders Countryside 2008, Trees and Development 2008 or Placemaking and Design 2010 in that the siting and design of the proposed development would have an adverse and unsympathetic impact on the landscape character of the site; sense of place of the existing group and its built form; and existing tree planting. Other material considerations do not outweigh these policy conflicts*
- 2 *The proposed development does not comply with Policy PMD2 of the Local Development Plan 2016 or New Housing in the Borders Countryside Supplementary Planning Guidance 2008 in that it has not been demonstrated that the development can be provided with a safe means of vehicular access and would not adversely impact on the integrity of the public road and verge, therefore potentially leading to an adverse impact on road safety. Other material considerations do not outweigh these policy conflicts*

- 1.2 The application for the 2 dwellinghouses was a resubmission of an amended application following extensive negotiations with the council's Planning Department. The previous proposal had been for 3 dwellinghouses; this was withdrawn and a new application prepared, in line with the advice received from the council, which is now the subject of this refusal. On the advice of Planning an application was made to modify a previous S75 obligation that applied to the land and an amended application for 2 dwellinghouses was lodged in preference to the previous application for 3 dwellings. A length negotiation on design, layout, access, levels and landscaping was undertaken. Consultation with the local community and modifying the proposals to

make sure they were in line with council policies, advice and guidance. However, there seems to be a backtracking from Roads on what is acceptable in terms of the access – the advice has changed from that which was given earlier in the negotiations and the Planning Department do not appear to like the design of the proposals. The applicant would therefore request that an independent review of the proposal be undertaken by the Local Review Body.

- 1.3 The Local Review Body is asked to note the lengthy negotiations, where the proposal started and where it has got to – a significant improvement on the original ideas, the neutral comments from the community, the efforts made by the applicant to address every point put to us by Roads, Planning and any others in the interests of providing a development the council can support.
- 1.4 The Local Review Body is also invited to support the applicant and Planning Department view that the principle of the development is acceptable in terms of an expansion of the building group by 2 units being in line with the development plan policies. If the Local Review Body has issues of design they require changes to they have the option of using condition/s to require a change to the proposal in respect of layout, elevations, materials, landscaping, levels etc. The Local Review Body are invited to approve the application. The two new dwellings will provide a modern, sustainable extension to the building group and provide people with a choice of accommodation in the local area.

2 THE APPLICATION SITE, ITS SETTING AND THE PROPOSALS

The Site and its Context

- 2.1 Heriot comprises a scattered settlement which takes in moorland, building groups adjacent to the road linking through to Innerleithen off the A7; and other distinct building groups around Heriot Station and Heriot House. On the whole the village and its wider environs comprise some 150 dwellings, spread over a geographical area of

around 50 square miles (130 km²), most of which is moorland. Heriot is located west of A7 and west of the Waverley line. The station formerly at Heriot served Heriot House and the village of Heriot until 1969 when the station was closed. On the re-opening of the Waverley Line a station was not reinstated at Heriot.

- 2.2 The application site is adjacent to Heriot House which sits within a distinct building group of properties known as numbers 1 – 7 Heriot House. These properties vary in floorspace but are of a similar character being set back from Shoestanes Road, each building being a maximum 1.5 stories in height with the upper floor contained within the roof and served by dormer windows, stone facades, slate roofs and chimneys. All are cottages with accommodation for family living. The character of the buildings conveys a traditional farm steading type of architecture. Buildings are spaced apart and convey a grouping through shared public areas, access, parking and open front garden areas. The building group at Heriot House sits to the west of the A7 and the railway line and at a higher level than the A7 with rear gardens enclosed by open field boundary fencing and rough grazing land.
- 2.3 The application site extends to 0.25Ha in area and is currently rough grazing land adjacent to the existing cottages in the Heriot House building group. On examining the locality it is clear that there are a number of building groups in the wider area known as Heriot. Heriot station building group, Heriot House building group and Heriot village building group – all individually distinct and different in size, location, character and density, location etc. Heriot House building group comprises a number of linked houses – some older conversions and others newer dating from planning permissions granted around 2006. The permissions sought and granted at that time have all been implemented in this building group within previous development plan lifespans.

The Proposal

- 2.4 The application proposes the creation of an extension of the building group or cluster at Heriot House. The objective is to create a meaningful extension to the group that

relates in scale, massing, design, height, composition, materials and detailing. The brief from the applicant has been to achieve an extension to the building group that fits comfortably with the group, in its setting and enhances the building group by rounding it off and achieving a high quality of design in the layout and architecture. As a result the buildings will be sited a similar distance back from the Shoestanes Road and the existing buildings in the group.

- 2.5 Two cottages are proposed in this application. They are sited forming an L shaped courtyard in order to create a presence, a relationship to each other and to round off the settlement edge.
- 2.6 The houses are designed as simple cottage forms, 1.5 storeys in height. The main walls of the proposed dwellings are faced with natural stone to fit comfortably with the adjacent, stone facades of the existing Heriot House development. The roofs will be covered in a natural slate roof finish.
- 2.7 With regard to the sustainability credentials of the proposal, the development will achieve at least the Bronze level of sustainability in relation to the Technical Standards, Section 7.0. As far as possible, the development will be constructed from materials that are sourced from as close to the area as practical in a bid to reduce excessive transportation as well as utilising local businesses.
- 2.8 The courtyard between the two dwellings will be a gravel finish. The access into the site will comply with Scottish Borders Council roads department specification and be a hard surface. The roof design of the proposed dwellings is more in keeping with the South facing elevation of Heriot House and the adjacent dwellings forming the L-shaped courtyard to the North. Simplistic rooflines interspersed with conservation style Velux rooflights and sympathetic/ appropriate dormers allows the development to achieve a traditional barn effect attached to the cottages with the timber and glass porch breaking up the front elevations.
- 2.9 The wood burning stoves are fitted with stainless steel flues as opposed to traditional chimneys to keep with the simplistic design of the development. The flues are sited to the rear of the properties, similar to the existing flue on Heriot House.

- 2.10 The proposed cottages will be set lower than Shoestanes Road. The application encompasses a full drawings package including sections and long elevation of the proposal in its streetscene. A landscape plan detailing the levels, changes and containment of the site is also provided.

3. A PLAN LED SYSTEM

- 3.1 The Planning Authority is required by the Town and Country Planning (Scotland) Act 1997 (as amended) to take its decisions on planning applications in line with the policies of the development plan, *unless material considerations indicate otherwise*. An application for planning permission is required when development occurs. The Act defines development in Section 26 as:

.....“development” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

This premise of the plan led approach to the planning system is set out in sections 25 and 37 of the Act as:

“25 Status of development plans.

Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise.....

37 Determination of applications: general considerations.

(1)Where an application is made to a planning authority for planning permission—

(a)subject to sections 58 and 59, they may grant planning permission, either unconditionally or subject to such conditions as they think fit, or

(b)they may refuse planning permission.

(2)In dealing with such an application the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations.”

3.2 The interpretation of these provisions was clarified in the House of Lords decision in the 1998 case of *City of Edinburgh Council v Secretary of State for Scotland* (1998 SLT 120). That judgement set out the following approach to determining a planning application:

- identify any provisions of the development plan which are relevant to the decision;
- interpret them carefully, looking at aims and objectives of the plan as well as detailed wording of policies;
- consider whether or not the proposal accords with the development plan;
- identify and consider relevant material considerations, for and against the proposal; and
- assess whether these considerations warrant a departure from the development plan.

The weight to be attached to any relevant material consideration is for the judgement of the decision maker.

3.3 There is an expectation that development proposals that are in accordance with the development plan will be granted planning permission. However, other considerations such as more recent expressions of policy and planning guidance may, at times, outweigh the policies of the development plan, either in favour of or against the proposed development. Likewise situations may arise where plans are out of date and less relevant to changed circumstances. There may have been an intervening clarification of policy in a particular court or appeal decision or a clarification set out by the Chief Planner of the Scottish Government; there may also have been economic, social or cultural implications or issues that outweigh the planning status/ policy. There may also have been key decisions in planning applications of appeals that will inform future decision making and thus be a material consideration in the determination of an application; albeit that every application is determined on its own merits. In addition, material considerations such as the representation made, specific personal or economic needs expressed by the applicant, personal circumstances in respect of the Equalities (Scotland) Act 2010 or a wider community benefit in allowing

a proposal may also be relevant material considerations that could tip the balance either in favour or against a proposal. There are therefore many variations on the theme as to why a decision is taken that does not appear to be at first hand prescribed or directly aligned with the policies set out in the development plan. Planning is not an exact science and many different factors have an impact on a decision taken.

- 3.4 In addition the role of the decision maker is to weigh up the proposal before them by considering it in terms of the relevant development plan policies as required by the Act but also to assess and weigh it up in terms of the material considerations. In particular in the case of a Local Review Body it is the role of the body to examine the case 'de novo' as though it were considering it for the first time and not merely assessing the refusal. The Local Review Body is provided with all that it needs in this package of submissions to be able to do so.

4 ASSESSMENT

The Development Plan

- 4.1 In this case, the Scottish Borders Local Development Plan 2016 is the relevant development plan that the proposal requires to be considered against. The general direction of policy sets out a need to protect the countryside from inappropriate development while at the same time permitting appropriate small scale additions to existing settlements by way of either allocations in the plan or by additions to building groups. In this case establishing the principle of the development has been our first task. In early informal discussions with the Planning Department we had been advised that 2 units would be in keeping with the Policy HD 2 Housing in the Countryside. Policy HD2 sets out the relevant criteria in the consideration of the principle of development on the application site.
- 4.2 Policy HD2 states that *the council wishes to promote appropriate rural housing development:*

- a) in village locations in preference to the open countryside where permission will only be granted in special circumstances on appropriate sites.*
- b) associates with existing building groups where this does not adversely affect their character or that of the surrounding area; and*
- c) in dispersed communities in the Southern Borders housing market area.*

These general principles in addition to the requirement for suitable road access will be the starting point for the consideration of applications for housing in the countryside which will be supplemented by SPG on New housing in the Borders Countryside and on Placemaking and design.

(A) BUILDING GROUPS

Housing of up to a total of 2 additional dwellings or a 30% increase of the building group whichever is the greater, associated with existing building groups may be approved provided that:

- a) the Council is satisfied that the site is well related to an existing group of at least three houses or buildings currently in residential use or capable of conversion to residential use. Where conversion is required to establish a cohesive group of at least three houses, no additional housing may be approved until such a conversion has been implemented.*
- b) the cumulative impact of new development on the character of the building group, and on the landscape and amenity of the surrounding area will be taken into account when determining new applications. Additional developments within a building group will be refused if, in conjunction with other developments in the area, it will cause unacceptable adverse impacts.*
- c) any consents for new build granted under this part of the policy should not exceed two housing dwellings or 30% increase in addition to the group during the Plan period. No further development above this threshold will be permitted.*

In addition, where a proposal for new development is to be supported, the proposal should be appropriate in scale siting design access and materials and should be sympathetic to the character of the group.

The calculations on building group size are based on the existing number of housing units with the group at the start of the LDP period. This will include those under construction or nearing completion at that point.

- 4.3 The principle of the addition of a development such as the proposal onto the building group of Heriot House is clearly within the terms of the policy requirements for an addition to the building group given that it is a distinct building group or cluster and only being extended by 2 units. The residential properties within the building group consist of numbers 1- 7 Heriot House at present. There is therefore potential to extend the building group in an acceptable fashion, as confirmed by Planning. There is also the potential to consider this building group as part of the wider Heriot Station building group.
- 4.4 The location and size of the two plots identified as the application site relate well in terms of layout and balance to the existing buildings within the group. The additional development on the application site will infill a gap within the group and provide a rounding off to the building group and opportunities for further landscaping. The land is presently used as a paddock and garden ground adjacent to no 7 Heriot House. Changes to the local road layout and the introduction of the railwayline have resulted in considerable changes to the surrounding landscape. The proposals will allow for sympathetic land form and landscaping to be introduced where at present it feels like an open, weak and uncontained edge to the settlement group.
- 4.5 With regard to the number of units proposed. The application has indicated a layout of two cottages in order to achieve an acceptable footprint and building form that relates well to the setting, courtyard type formations of the existing building group and would maintain this strong character element. The provision of two additional cottages will also meet a need in terms of accommodation in the village and enhance the range and choice of accommodation available.
- 4.6 When assessed as part of the wider Heriot Station building group, which it is entirely reasonable to do given their close proximity and relationship in all other means – landscape, townscape, shared access road etc the proposal is clearly much less than 20% of that building group. Heriot Station and Heriot House taken together amount to around 35 dwellings. Two additional appropriate dwellings in this context represents only 5.7% expansion of that building group. If measured against the Heriot

House building group alone 2 additional cottages onto a group of 7 units would represent a 28% increase in the group. There are obviously overriding design and layout reasons why you would create a courtyard setting as the applicant wishes to do to round off the settlement group. Clearly all of these ambitions are in line with the Scottish Governments Placemaking guidance and principles.

4.7 Noting the policy provision also set out in policies:

PMD 4 Development Outwith development boundaries and PMD 5 Infill Development criteria – windfall sites. It is considered that this proposal will provide a development that will meet a need in Heriot Station/ Heriot where no allocations exist for residential development, while preserving the character and amenity of the settlement.

4.8 Also in support of this small scale addition to the building group is the provision with the consolidated Scottish Planning Policy for the generous provision of housing land. The lack of provision in this locale is an issue that the application seeks to address.

4.9 The reasons for refusal relate to design and layout which is detailed above but also access into the site. The comments of the council's Roads Dept have been taken on board throughout the process and appear to have changed as we have gone through it. The reason for refusal 2 also appears to exaggerate the Road's comments and say something quite different from what is actually conveyed in their responses. There is scope to condition any further changes the council wishes to see. The Local Review Body is encouraged to do this.

4.10 With regard to the Representations made it is noted that 3 neutral representations have been made. The comments from the community council have been considered. Additional information to address these was provided to Planning – landscape plan in particular looking at levels, sections and planting with a view to addressing the impact visually from beyond the boundaries of the site. It should be noted that the applicant lives at no 7 and looks onto the site and does not obviously object. With regard to comments on access and winter conditions – the applicant has expressed their desire

to have a condition limiting the gradient of the access. In addition SBC Roads had not objected previously to the same scheme which was withdrawn – they appear to be requesting further details. The applicant is on record as stating that they have no objection to entering into a planning agreement in respect of developer contributions. No objections have been made by Scottish Water, Access Officer or other consultees

5 CONCLUSIONS

- 5.1 The application represents an acceptable small scale extension to the building group at Heriot House/ Heriot Station. The layout, design and materials proposed for the houses will enhance the building group and round off this part of the group providing a more cohesive edge to the group. The proposals will also meet a need not met through the allocation of land within the wider Heriot settlement for housing. The applicant has worked hard to amend the proposals in line with every comment forthcoming from Planning, Roads and the community yet still we have a refusal on the grounds of design and not principle. It is therefore respectfully requested that the Local Review Body review the case and support the proposal.

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