

**SCOTTISH BORDERS COUNCIL**

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

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

**REF :** 18/00749/FUL

**APPLICANT :** Bentley Developments

**AGENT :** Ferguson Planning

**DEVELOPMENT :** Variation of Condition 1 of planning permission 13/01082/FUL to allow the lifespan of the application to be extended by a further three years

**LOCATION:** Plot 2 Land South East Of Mounthooly House  
Jedburgh  
Scottish Borders

**TYPE :** FUL Application

**REASON FOR DELAY:**

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**DRAWING NUMBERS:**

<b>Plan Ref</b>	<b>Plan Type</b>	<b>Plan Status</b>
Location Plan KB/98/11/BW4	Location Plan	Refused

**NUMBER OF REPRESENTATIONS: 0**  
**SUMMARY OF REPRESENTATIONS:**

Eight neighbours were notified and adverts were placed in the Southern Reporter and on [tellmeScotland.gov.uk](http://tellmeScotland.gov.uk).

There were no responses.

Consultations:

Education: No objection. No contributions required.

Roads Planning: No objection.

Flood Risk Officer: First response: Object. Require a Flood Risk Assessment (FRA). Object to the proposal on the grounds that there are no suitable safe access and egress routes from the site. Site at risk of flooding during a fluvial 1 in 200 year flood event.

Comment:

1. There have been advancements in methodologies in assessing flood risk,
2. The FRA was undertaken around 10 years ago and this was not a site specific FRA - it is no longer sufficient to suitably assess flood risk,
3. Since 2013 flood events have affected Mounthooly and adjacent properties so may well have affected this site without being reported.

Second response: Object

A Flood Risk Assessment (Kaya Consulting, 19th February 2019,) confirms flooding to depths of up to 0.92m at a 1 in 200 year flood event and 0.94m at a 1 in 200 year + climate change flood event.

This is more accurate than SEPA's indicative flood mapping. Scottish Planning Policy states that no residential property should be built within the 1 in 200 year flood plain. The A698 is shown to be flooded at a 1 in 200 year flood event and there is currently no safe access/egress routes at the site.

SEPA: First response: Object - lack of information on flood risk. The site is shown to be at medium to high risk of flooding in the SEPA Flood Map.

Comment:

A FRA should demonstrate the site is outwith the functional floodplain, that flood free access and egress can be provided and finished floor levels provide a minimum of 600mm freeboard above the flood level.

Second response:

Object: The site is shown to be fully within the functional floodplain. No safe access and egress for the properties.

Comment:

The FRA indicates the site is fully within the 1 in 200-year flood extent (functional floodplain).

1. Primary flooding mechanism coming from the Jed Water, which overtops the right bank upstream of the A698 bridge and flows through the site before joining with the floodplain of the River Teviot.
2. The flood depths predicted at the site are approximately 0.92m (0.94m with a 20% allowance for climate change).
3. The modelling is based on LiDAR information that the flood levels may be conservative but given the significant depths, any remodelling using surveyed information is unlikely to show the site to be outwith the functional floodplain.
4. There will be no safe, flood-free access and egress during a flood event.

Community Council: No response.

## **PLANNING CONSIDERATIONS AND POLICIES:**

Local Development Plan 2016

Policy PMD2: Quality Standards for New Development

Policy HD2: Housing in the Countryside (A: Building Groups)

Policy HD3: Protection of Residential Amenity

Policy IS2: Developer Contributions

Policy IS7: Parking Provisions and Standards

Policy IS8: Flooding

Policy IS13: Contaminated Land

Policy IS9: Waste Water Treatment Standards and Sustainable Urban Drainage

Supplementary Planning Guidance:

New Housing in the Borders Countryside, 2008

Guidance on Householder Developments, 2006

Developer Contributions, 2019

Placemaking and Design 2010

**Recommendation by** - Euan Calvert (Assistant Planning Officer) on 13th January 2020

This report of handling considers two applications (18/00748/FUL and 18/00749/FUL) under S42 of the Town and Country Planning (Scotland) Act 1997 to vary Condition 1 of planning permissions 13/01081/FUL and 13/01082/FUL. A further 3 year lifespan is sought.

Site and Proposal

The application site is a small field enclosure situated to the north of the A698, located east of Crailing Village. Mounthooly House is situated to the west, agricultural farm buildings and a working farm to the north, residential properties to the north east and Mounthooly Cottages and Caddy Man restaurant to the east.

Three new dwellinghouses have recently been completed (12/00958/FUL) to the east of the Caddy Man restaurant.

This site separates the farm buildings from the A698. It sits in a slight depression, the road having been built up on made ground. The field slopes gently up from the road to the north. It is an in-by field but the rank grass suggests that it has not been grazed in significant recent time. One road junction serves the farm, restaurant and houses and forms the eastern boundary of this site.

#### Planning history

Full planning consent was granted for two detached dwellinghouses, Plot 1 (13/01082/FUL) (west) and Plot 2 (13/01081/FUL) (east) in 2015. The field was to be divided equally. A new access for Plot No.1 (western site) would be created from the north east corner of the field and run along the north boundary of Plot No.2.

Both dwellings were to be situated to the north of each plot with parking and turning located on the east elevation of each house. Private garden area was to be predominantly to the south and would include surface and foul drainage systems in curtilage.

The dwellings were to be one-and-a-half storey, L-Plan houses, measuring 14m in width x 7m in gable depth. They would feature northern projections which would have gable width of 9m. The pair were to share a consistent building line and would be orientated to align with the adjacent agricultural range.

House design, materials and finish was to be similar to the style of the recently completed houses adjacent. The front elevations were to face south east and would feature three dormer windows.

Due to flood risk, floor levels were to be raised to 55.3mAOD and 55.7mAOD.

The designs featured traditional features, including stone basecourse and quoins, render finish and timber/upvc windows, with a sash and case appearance.

#### Assessment

The consents expired in November 2018. Should this variation of Condition 1 be granted (by re-imposing it with a new date), then it will be necessary to re-attach all conditions as per the lapsed planning consent for a further three years from date of decision.

The application should only be assessed against two main matters:

1. The justification for the time extension, and
2. Changes of Policy or other material significance since consent was granted.

#### Supporting Statement

The Statement makes a case that there has been a low level of interest in the plots due to the slow housing market at that particular time. The market has picked up more recently however it is unlikely that any purchasers will be in a position to purchase and then discharge the related conditions prior to November 2018.

#### Policy or other material significance

The Planning Authority is entitled to consider the overall effect of granting a new planning permission. In this instance, I have considered the potential adverse or changing environmental issues/impacts which have been highlighted by both SEPA and my colleagues in Flood Risk.

#### Flooding

Both SEPA and the Flood Risk Officer object. A site specific Flood Risk Assessment has now been undertaken by the applicant in February 2019. However, even with this, objection is sustained from both consultees on the basis that the FRA demonstrates that there is no safe access/egress route. The FRA shows flood depths are estimated to be 0.94m at a 1 in 200 year + climate change flood event.

This site has no flood free emergency access and is at medium to high risk of flooding up to 0.94m in depth. Scottish Planning Policy is very clear that the first principle for Planning Authorities should be avoiding new development on functional floodplains. Policy IS8, Flooding reaffirms that avoidance should be the first approach. A flood free access must now be demonstrated in accordance with Scottish Planning Policy. The Council now require safe access and egress (below 300mm flooding depth) for emergency vehicle entry and the FRA has demonstrated this is unachievable in this instance.

SEPA and the Flood Risk Officer both acknowledge that they offered support to the previous approvals. However, it was based on a previous FRA model for the neighbouring residential site. It is not appropriate to rely on old and outdated studies in assessing flood risk. Flooding presents a risk to life and development on functional floodplains may displace the capacity to convey and store flood water. Development on this site would materially increase the risk of flooding elsewhere and most probably would affect neighbouring houses first and foremost in this instance.

The Flood Risk Officer is now aware of flooding events at adjacent properties in 2015. There is now greater knowledge and greater understanding to the potential flooding issues at this site and it is impossible to ignore this material risk of flooding. Even with finished floor levels being set at a minimum of 55.7mAOD objections are sustained by the Flood Risk Officer and SEPA.

Advances in methodologies have now allowed for a site specific model based on LiDAR terrain modelling and so assessment techniques have changed since the applications were approved in 2013. This FRA identifies the primary flooding mechanism coming from the Jed Water, which overtops the right bank upstream of the A698 bridge. Water then flows through the site before joining with the floodplain of the River Teviot. No topographical study has been undertaken but this model demonstrates without doubt that there is medium to high fluvial flood risk at this site.

#### Revisiting the Principle of a dwellinghouse

Policy HD2 of the Local development Plan is largely consistent to the previous plan. Again, the site continues to be well related to an existing building group of at least three houses. There has been no other permissions in the intervening time therefore this proposal is within the threshold set. The site would continue to be well related to the existing houses within the building group.

#### Siting, design and materials

Notwithstanding the overarching flooding issues above, Policy PMD2 and Supplementary Planning Guidance Placemaking and Design, 2010 would largely be satisfied by similar designs and layouts.

#### Amenity

I identify no adverse impacts in respect of over shadowing, loss of light or privacy. Policy HD3 and Supplementary Planning Guidance Guidance on Householder Development are satisfied.

#### Contaminated Land

An informative would advise the applicant of any potential contamination with the site, in accordance with Policy IS13.

#### Developer Contributions

No contributions are sought towards education. A contribution would be required towards affordable housing in the sum of £4250, in accordance with Policy IS2. A previous s.75 agreement had secured and deferred contributions in the sum of £3875. A new agreement would be required should any appeal be upheld.

#### Access and Parking

Parking and turning and the choice of access location are once again acceptable. Policy IS7 would be satisfied.

#### Water Supply, Foul Drainage and Surface Water Drainage

The site would utilise the public water supply, foul drainage would be to a septic tank and soakaway and surface water drainage are in accordance with Policy IS9 at this location.

#### Legal position

The Applicant's solicitor has engaged with the Council's solicitor about the right of the Planning Authority to consider the applications afresh. I maintain that this decision is in accordance with Circular 4/1998 and Circular 3/2013 and the Council's legal advice supports this position. The Applicant's solicitor emphasises that (at the time of application) the permission had not lapsed and could have been implemented, and this should be a material consideration. I would maintain that the Council would be negligent to ignore recent flood events and the submitted FRA.

The FRA (KAYA, February 2019) is a material consideration and it unequivocally confirms that this site is not suitable for residential dwellinghouses, previously approved. This is an unusual position but I am more than satisfied that this is the correct decision. Development would be against Scottish Planning Policy and Policy IS8, Flooding, of the Local Development Plan 2016. Policy IS8 specifically requires "avoidance" to be the first principle and this replaced Policy G4, Flooding, of the Consolidated Local Plan 2011 under which the previous permissions were issued.

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

The site is not suitable for residential development and this would be contrary to Policy IS8 of the Local Development Plan 2016 in that the Flood Risk Assessment (KAYA, February 2019) demonstrates that development will displace capacity of this functional floodplain to convey and store flood water. Policy IS8 and Scottish Planning Policy specifically requires "avoidance" to be the first principle of managing flood risk. Development of a dwellinghouse on this site would materially increase the risk of flooding elsewhere and would affect neighbouring properties. The FRA demonstrates there is no safe access and egress (below 300mm flooding depth) to the site for emergency vehicles during a flood event.

#### **Recommendation: Refused**

- 1 The development would be contrary to Policy IS8 of the Local Development Plan 2016 in that the site is at risk of flooding to the extent that there is no safe access/egress route resulting in risk to life and, in addition, development on the functional floodplain may displace the capacity to convey and store flood water, materially increasing the risk of flooding elsewhere and putting people and property at risk.

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