

**SCOTTISH BORDERS COUNCIL**

**APPLICATION TO BE DETERMINED UNDER POWERS DELEGATED TO THE HEAD OF PLANNING  
AND REGULATORY SERVICES**

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

**REF :** 11/00430/FUL

**APPLICANT :** W G And Mrs M Walker

**AGENT :** Guy Bailey Land Agent \_ Rural Surveyor

**DEVELOPMENT :** Erection of dwellinghouse and storage building and formation of access

**LOCATION:** Land South East Of 37 Mainsfield Avenue  
Morebattle  
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>
0920-01 HOUSE FLOOR PLAN & SECTI	Floor Plans	Refused
0920-02 HOUSE ELEVATIONS	Elevations	Refused
51009 STORAGE BUILDING FLOOR P	Floor Plans	Refused
HP/2094-102 SITE PLAN AS PROPOSED	Site Plan	Refused
HP/2094-103 SITE SECTIONS AS PROPOSE	Sections	Refused
HP/2094-100 LOCATION PLAN AS EXISTIN	Location Plan	Refused
HP/2094-101 SITE PLAN AS PROPOSED	Site Plan	Refused

**NUMBER OF REPRESENTATIONS: 1**

**SUMMARY OF REPRESENTATIONS:**

**CONSULTATION RESPONSES**

**ROADS PLANNING SERVICE:** Following on from numerous discussions I have had with the agent regarding this site, I can confirm that I will have no objections to the proposal provided the following conditions are adhered to.

1. Parking and turning for a minimum of two vehicles must be provided and retained in perpetuity within the curtilage of the property.
2. The service lay-by must be constructed as per my standard detail DC3.
3. The initial 6m of the access must be constructed to my specification of 40mm of 14mm size close graded bituminous surface course to BS 4987 laid on 60mm of 20mm size dense binder course (basecourse) to the same BS laid on 350mm of 100mm broken stone bottoming blinded with sub-base, type 1.
4. The 1m verge indicated on the submitted plan number HP/2094-101 must be kept free of all obstructions.
5. If gates are proposed, they must be hung so as to open into the site and not out towards the adjacent public road.
6. Steps must be taken to ensure that no surface water flows from the site on to the adjacent public road.
7. All work within the public road and verge must be carried out by a contractor on the Council's approved list. (DC-8)

I note that the access is formed on land which is out with the area shown to be in the applicant's ownership. Confirmation should be obtained that any land out with the ownership boundary is within the control of the Council or that the applicant has the relevant authority to utilise it. There appear to be no passing places indicated on the submitted drawing and the applicant would be advised to consider the provision of some given the traffic that could be generated by this property.

**ECONOMIC DEVELOPMENT:** We had an enquiry from Mr Walker of Walker Groundworks in March 05 to expand his business which resulted in approval to sell a site at Pinnaclehill IE, Kelso in July 07 as a base and depot for his business which we supported. This was slow in progressing and when we received an alternative interest for the land in June 2009 his interest withdrew. We are still supportive of the continuation of this business but would not consider that a residential property adjacent to the business is necessary and this is out with the settlement boundary, and on non-allocated land. There is employment land allocated at Croft Park in Morebattle and this may be a more appropriate location for this type of operation, which accommodates existing local businesses. A feasibility study for development of land at Croft Park can be made available to Mr Walker should he wish to pursue this with the land owner.

**ACCESS OFFICER:** Core Paths- According to records held in the Planning & Economic Development there is a Core Path adjacent to the planning application site. This is Core Path 190. This is also the Promoted path St Cuthberts Way. Under section 17 of the Land Reform (Scotland) Act 2003 local authorities have a duty to produce a core path plan. The core path plan was adopted on the 8th December 2009 by the Scottish Government; the core paths shall be protected in a similar way to rights of way. Rights of Way are protected by law under the Countryside (Scotland) Act 1967 sec. 46 'It shall be the duty of a .planning authority to assert, protect, and keep open and free from obstruction or encroachment any public right of way which is wholly or partly within their area.' Please note that Scottish Borders Council does not have a definitive record of every claimed right of way within its area. The Scottish Rights of Way and Access Society, the community council and local residents may have evidence of existence of claimed rights of way that have not yet been recorded by SBC

#### Planning Condition

The development has implications for the ability of the public to exercise rights of access along Core path 190. It is essential that these rights are not obstructed by the development and that the public shall continue to enjoy access to the Right of Way without risk from machinery, ground disturbance or any other aspect of development works. I would be grateful, therefore, if the following planning condition could be attached to any planning consent that may be granted:

#### AR10 Rights of Way

The path indicated Core Path 190 must be maintained open and free from obstruction in the course of development and in perpetuity and shall not form part of the curtilage of the property.

Reason: To protect general rights of responsible access.

Note : there may be opportunity to create an off road pedestrian route alongside the road along the route of Core path 190 at the edge of the development land . This if created would allow users of St Cuthberts Way, and other non vehicular path users to be off the public road.

**KALE WATER COMMUNITY COUNCIL :** Would like to see more suitable landscaping around the storage unit, otherwise no objections.

#### APPLICANT SUPPORTING STATEMENT

A statement in support of the application was submitted by Guy Bailey, the agent. It makes the following points:

Walker Groundworks Limited is a local business based at The Old Smiddy, Graden, Kelso and which has been built up by the Partners over a period of years to a stage where it provides a valuable range of services to landowners, developers, the Local Authority, farmers and individuals throughout the Scottish Borders. The business has 16 employees and is a significant contributor to the local economy.

The current business plan includes further expansion which is not possible within the Graden site, and negotiations to purchase additional neighbouring land have been unsuccessful.

The applicants seek to expand the site at Templehall Farm, Morebattle which is within the control of the business. A single storey house is proposed for occupation by a member of the family who will become a full-time employee involved in the administration. A house is required also for security reasons in relation to the storage building for which planning consent is sought. The building will house machinery and equipment when not in use on site, in addition to drainage materials.

The house will be used in association with, but not solely with the farm which Mr and Mrs Walker use for livestock production. The application comprises the construction of a new access road to the development site, with a standard service lay-by entrance from the unscheduled Morebattle/Hownam road (reference SBC drawing No. DC-3 October 2003). The single storey farmhouse is designed with a floor area of 143.96 sq.m. and the general purpose building extends to 250.61 sq.m. within an overall development site of 0.34 ha. The application is submitted on the basis of a mixed application with the house and building being effectively red lined separately.

Extensive pre-application discussion has taken place with the Planning Department and Roads and Transportation, this application being based on the outcome of those discussions. At least four more operators will be employed as a result of this business expansion which will also reduce pressure on the overcrowded site at Graden. There is clear need for the development and continued increased benefit to the local economy. The industrial land allocated at Morebattle is insufficient in area to satisfy the needs of the business, and the proposed location is far enough away from the village such that it will not constitute a nuisance, nor will it create significant negative visual impact to the village.

A further statement (Running to 6 and 1/2 pages) was submitted on 31.05.11. It can be viewed in full on the public access website, and summarised as follows:

- Planning Consultations

Confirms that the application has not been subject to any objections from the public or consultees.

- Planning Policy

Contended in some detail that the application complies with the relevant local and structure plans policies on housing and business development in the countryside and with Scottish Planning Policy.

**PLANNING CONSIDERATIONS AND POLICIES:**

Consolidated Scottish Borders Structure Plan 2001-2018

- Policy N20 – Design
- Policy E16 – Rural Economic Development
- Policy H7 – Building Groups
- Policy H8 – New Housing in the Countryside – Isolated Housing
- Policy I11 – Parking Provision in New Development

Consolidated Scottish Borders Local Plan 2011 (Adopted)

- Policy G1 – Quality Standards for New Development
- Policy G5 – Developer Contributions
- Policy H2 – Protection of Residential Amenity
- Policy Inf4 – Parking Provision and Standards
- Policy Inf6 – Sustainable Urban Drainage
- Policy D1 – Business Tourism and Leisure Development in the Countryside
- Policy D2 – Housing in the Countryside

**OTHER PLANNING CONSIDERATIONS:**

Scottish Borders Council - Supplementary Planning Guidance:

- Guidance on Householder Developments – July 2006.

- New Housing in the Borders Countryside (Consolidated version, December 2008).
- Developer Contributions (2011 update).
- ? Placemaking and Design (January 2010)

Scottish Planning Policy

**Recommendation by** - Andrew Evans (Planning Officer) on 26th May 2011

This application seeks full planning permission for the erection of a dwellinghouse, together with the erection of a storage building and hard standing for a re-locating groundwork's business and the formation of a new access. The site is on agricultural land at Templehall Farm, to the south of Morebattle.

#### KEY PLANNING ISSUES

The main determining issues with this application are whether the proposals comply with the Housing in the Countryside Policies and Guidance Note and adopted policy on Business development in the Countryside. Specific regard should be given to:

- The business case in support of the proposed relocated business;
- The economic justification for a new dwellinghouse;
- Impact upon the area, whether appropriate access can be achieved, and;
- Whether the impacts on neighbouring amenity are considered acceptable.

#### ASSESSMENT OF APPLICATION

##### Location

The site is located in open countryside to the south of Morebattle. The application site is however located out with the settlement boundary of Morebattle. The application therefore has to be assessed on the Council's policy on single houses in the countryside (the economic justification section of the Housing in the Countryside Policy). The site is agricultural land, out with the settlement boundary of Morebattle, and not associated with any building group.

##### Planning Policy

The application required to be assessed against the adopted policies on Housing in the Countryside Policy and Business development in the countryside, as set out in the Consolidated Local Plan of 2011.

Policy D1 (Business, Tourism and Leisure Development in the Countryside) of the Adopted Local Plan is generally supportive of the development and relocation of rural businesses in the countryside, provided that the criteria of the policy are met. In this instance however, there are considered to be insurmountable policy obstacles that would prevent the approval of a suitable scheme for the new relocating business element. The proposed relocating groundwork's operation is not a business which "by its nature is appropriate to the rural character of the area", as required by criteria 1 of policy D1. The development would also fail to comply with criteria 3 of policy D1. This criteria permits other business uses to be established in the countryside provided there is a economic or operational need for the particular countryside location, and the development cannot be located within the development boundary of a settlement.

In this case, I am not persuaded that the proposals comply with policy D1. Whilst the applicant has a desire to locate at this site, and owns the land, that provides no justification. The business would be perfectly capable of being located on employment or industrial land, and within the local area, and there are significant levels of serviced employment land available at Kelso (The Pinnaclehill extension being the prime example).

In terms of Policy H8 of the Structure Plan, there continues to be a presumption against single or isolated houses in the countryside which are not within or adjacent to existing building groups. Development of isolated houses will only be permitted where the house can be shown by the developer to be essential at that location for the needs of agriculture or other uses currently occupying or requiring an appropriate rural location; in other words, if an economic need can be clearly substantiated.

Policy D2 (Housing in the Countryside) of the Adopted Local Plan is the Council's adopted planning policy when assessing any proposed housing in the Countryside. The site is out with any building group, and therefore requires assessment under the Economic Requirement section of the policy, which requires compliance with the following criteria:

#### POLICY D2 (E) ECONOMIC REQUIREMENT

Housing with a location essential for business needs may be acceptable if the Council is satisfied that:

1. the housing development is a direct operational requirement of an agricultural, horticultural, forestry or other enterprise which is itself appropriate to the countryside, and it is for a worker predominantly employed in the enterprise and the presence of that worker on-site is essential to the efficient operation of the enterprise. Such development could include businesses that would cause disturbance or loss of amenity if located within an existing settlement, or
2. it is for use of a person last employed in an agricultural, horticultural, forestry or other enterprise which is itself appropriate to the countryside, and also employed on the unit that is the subject of the application, and the development will release another house for continued use by an agricultural, horticultural, forestry or other enterprise which is itself appropriate to the countryside, and
3. the housing development would help support a business that results in a clear social or environmental benefit to the area, including the retention or provision of employment or the provision of affordable or local needs housing, and
4. no appropriate site exists within a building group, and
5. there is no suitable existing house or other building capable of conversion for the required residential use.

The applicant and, where different, the landowner, may be required to enter into a Section 75 agreement with the planning authority to tie the proposed house or any existing house to the business for which it is justified and to restrict the occupancy of the house to a person solely or mainly employed, or last employed, in that specific business, and their dependants. A Business Plan, supported by referees or independent business adjudication, may be required in some cases.

In ALL instances in considering proposals relative to each of the policy sections above, there shall be compliance with the Council's Supplementary Planning Policy Guidance where it meets the terms of this policy and development must not negatively impact on landscape and existing communities. The cumulative effect of applications under this policy will be taken into account when determining impact.

In this instance it is considered that the proposal fails to comply with the Council's policy on housing in the countryside in that the site does not form part of a building group and it is felt that the need for the house has not been adequately substantiated.

The applicant in this case is the owner of an existing groundwork's business located at Graden Farm. Whilst this historic business has developed around the farm in a countryside location, the requirement for a Groundwork's Business to be specifically located in a countryside location is not a strong argument. Such a business is perfectly capable of being located within an industrial estate, and should additional security be required, it can be provided at such a site.

Although Structure Plan Policy H8 and Local Plan Policy D2 allow for the provision of housing in such isolated locations associated with accommodating workers on-site for operational requirements, such a requirement must be considered to be essential to the efficient operation of the enterprise. Generally, the need for an employee to reside on-site will be based upon the need for that person to live at the site for round-the-clock security or operational needs, and it is not considered that such a case for an additional dwelling could be made on the basis of a business that does not specifically require a countryside location.

The site put forward by the applicant is not the only position in which the groundwork's business buildings could be relocated to, and the Planning Authority is of the opinion that adequate security can be provided at an industrial estate or allocated employment site.

The Economic Requirement Section (E) of Policy D2 of the adopted local plan (Housing in the Countryside), is outlined above under the section of this report on planning policy. The criteria of that policy require that proposals should only be supported in the circumstances set out above, and that in this case, the criteria are not met.

#### Access and parking

The Supplementary Planning Guidance on New Housing in the Borders Countryside requires residential developments to be capable of achieving satisfactory access. In this instance this is considered the case, though the Roads Planning Service does have some concerns regarding the access track layout. Should Members be minded to approve this planning application then consideration should be given as to the imposition of planning conditions and applicant informatives as per the consultation reply of the Roads Planning Service.

#### Developer Contributions

The relevant contributions for this site are in respect of contribution towards Education Provision. If members are minded to approve this application at local review then a legal agreement may be required to address this issue.

#### Design

In addition to the policy concerns regarding the location of the house, there are also significant concerns regarding the design of the proposed house. The proposed plans show a roughly L shaped bungalow with a shallow pitched roof, and an irregular front porch. The house would have roughcast dry dash walls, concrete tiled roof, and redwood UPVC windows. None of these details are appropriate in terms of current design guidance.

The rear elevation is the only one to which there is any consistency in window dimension, the front and side elevations featuring a mismatched array of window dimensions.

Overall, the submitted house design fails to comply with policy G1 of the Adopted Local Plan and the adopted supplementary design guidance of the Council, however given the serious policy issues outlined earlier in this report, I see no benefit in negotiating any improvement in the design, given that the proposed development is unacceptable in principle.

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

The proposed dwelling would be contrary to Policy H8 of the Structure Plan 2001-2018, Policy D2 of the Adopted Scottish Borders Local Plan (2011) and the adopted Supplementary Planning Guidance on New Housing in the Borders Countryside (2008). The site is divorced from the settlement at Morebattle, and not associated with a building group.

The proposed re-locating/expanding business element of the proposal does not directly require a countryside location, being suitable development to take place on an industrial estate or zoned employment land, and no suitable justification has been advanced with the application.

Consideration has been given as to whether any planning condition can render the proposals acceptable. It is not considered appropriate to remove any unacceptable elements of the application via planning condition; as such a condition would not meet the tests for use of planning conditions prescribed in Planning Circular 4 of 1998, and in any event, both the housing and business elements of the application are unacceptable in planning policy terms.

**Recommendation:** Refused

- 1 The proposed development is contrary to Policy H8 of the Consolidated Scottish Borders Structure Plan (20011), Policy D2 of the Consolidated Scottish Borders Local Plan (2011) and the adopted Supplementary Planning Guidance on New Housing in the Borders Countryside (2008), in that the site is out with any recognised settlement or building group and the need for the house has not been adequately substantiated, and that, accordingly, the proposed development would represent a sporadic form of development in the open countryside.
- 2 The proposed development would furthermore be contrary to policy G1 of the Consolidated Scottish Borders Local Plan (2011) and the adopted Supplementary Planning Guidance on Placemaking and Design January 2010, in that the proposed design of dwellinghouse is not of an acceptably high standard to warrant approval and would be detrimental to the visual amenities of the area.
- 3 The proposed development is contrary to Policy D1 of the Consolidated Scottish Borders Local Plan (2011) , in that:
  - Suitable justification for the development of the business at this site, outwith any recognised settlement has not been adequately substantiated, and that, accordingly, the proposed development would represent a sporadic form of development in the open countryside.
  - The development has not been suitably demonstrated to be incapable of location within the development boundary of a settlement.

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