

FERGUSON  
PLANNING



Ms Louise McGeoch  
Clerk to the Local Review Body  
Scottish Borders Council

16th February 2021

**BY EMAIL ONLY**

Dear Ms McGeoch,

Thank you for your recent correspondence and passing on the third party comments of 8th February. We are grateful for the opportunity to respond to those comments.

It is noted that the majority of third party comments relate to matters that have been extensively addressed in the Local Review Statement – which commenters have the statutory right to do. However, it is considered that very little of the comments challenge or require change to the Local Review Statement. To minimise duplication we have attempted to keep this representation concise and to signpost members to relevant paragraphs of the Statement, where possible.

We have reviewed the comments of the Community Council and are primarily concerned by the repeated assertion that the Scottish Borders Local Development Plan (2016) does not pertain to Ulston.

This assertion can only be understood as factually incorrect.

The adopted Local Development Plan (LDP) was prepared to address development across the Borders and statute requires that planning applications are determined in accordance with it. The submitted Local Review Statement profiles the appeal proposal and justifies its accordance with the adopted policy of the LDP.

Further, although less seriously than the above, it is concerning that the Community Council has implied that the Local Review Statement attempts to mislead the Local Review Body to the conclusion that the site is allocated for housing development. The Local Review Statement does not state or imply that the site is allocated. The case for approval of the proposed development relates entirely to the expansion of an existing Building Group established by section (A) of Policy HD2.

It is acknowledged that the site does not fall within a development boundary. The Appeal does not require to rely on this as it is purely focused on accordance with Policy

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HD2 Building Group principles and related Supplementary Guidance. This Policy allows up to 2 new homes where it relates well to 3 dwellings or more. We have outlined our case as to how we consider this to be the case here.

Similarly no weight can be attached to the assertions that the appeal proposal comprises two dwellings or that approval would enable the development of another five dwellings. The appeal proposal is for 1 no. new dwelling which would be controlled by a standard (and easily enforceable) condition.

The Local Review Statement addresses the accordance of the appeal proposal with section (A) of Policy HD2 in paragraphs 3.6-3.14. Particularly, the proposed development is not considered to represent ribbon development as the application site does not extend as far into the countryside as the existing dwelling Fairfields, on the opposite side of the road. Therefore, it is considered that the application site lies within Easter Ulston's sense of place and respects the setting of the existing Building Group. For the sake of completeness, it is worth noting that only the Notice of Review at hand is being considered herein. The Proposed Local Development Plan will be considered in separate proceedings.

It is noted that commenters have identified concerns about infrastructure provision. It must be understood that the Roads Planning team have not objected to the appeal proposal. Similarly, Scottish Water would be consulted by the Planning Authority and directly engaged with by the Applicant to secure consent at the subsequent stage of the planning process and a Building Warrant.

The comments state that a new vehicle access to the adjacent field is proposed. That observation is incorrect, it is for the landowner (who is not the Applicant, as per the Application Form) to manage the nearby agricultural land and provide for adequate access. It may be that a separate application is submitted for a new field access.

An error is contained in paragraph 1.5 of the Local Review Statement. The proposed dwelling would be served by private drainage arrangements, as per the Application Form. It must be understood that the Application Form is the authoritative document detailing the nature of the proposed development. All statements are supporting documents which do not have scope to revise or preclude a declaration made on the Application Form.

The proposed development includes new hedgerow planting on both the north and east boundaries of the site. Proposed planting will create distinct landscape feature enclosing the Building Group, as stipulated in 2.b.1 of the New Housing in the Borders Countryside Supplementary Guidance. This element of the proposal is explained in

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greater detail in the Local Review Statement.

It is noted with concern that commenters have stated that the application to Modify the Planning Obligation is invalid.

This assertion is without any factual basis. A single Planning Obligation was agreed in 2006 to manage the use of land at Ulston – both Easter Ulston and Wester Ulston. This is a matter of administrative fact and should be confirmed by the Council's solicitor at the meeting, should elected members be in any doubt.

Since 2006, the lawful role of Planning Obligations has been clarified by Government policy. This established lawful role is to manage the impact of proposed development enabling financial and other contributions to be obtained from applicants without creating unacceptable adverse impacts on infrastructure, amenity, or the environment. Planning Obligations are not to be used as Development Management tools, a position emphasised in the policy document – Circular 3/2012 Planning Obligations and Good Neighbour Agreements.

This context is underpinned by the statutory requirement for Planning Authorities to determine each application for planning permission on its own merits and in accordance with the adopted Development Plan, established by sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 (as amended). As identified above, and in the Local Review Statement, Policy HD2 of the LDP addresses development proposals in the countryside in extensive detail and has no need for reliance on Planning Obligations.

Lastly, the commentary on "strategic development" is noted. It is considered that this criticism is ill founded as none of the proposed development, the site, or its surroundings represent or are allocated for "strategic development". The appeal proposal is considered to have no relevance to strategic development. The questions of pavements and street lighting (which are not strategic development) have been considered by the Local Review Body before. It is considered that the most relevant previous case is that of Planning Permission 19/01432/PPP which granted consent for two new dwellings north-west of Quarry Bank in Hume.

The Appellant is grateful for this opportunity to address the public comments of 8th February and thank the Local Review Officer, the Clerk to the Local Review Body, and her staff accordingly.

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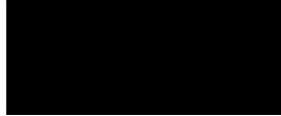


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It is our hope that members of the LRB find these comments to be clear and helpful in completing their determination of the matter at hand.

Yours Sincerely



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