

SCOTTISH BORDERS COUNCIL

PLANNING AND BUILDING STANDARDS COMMITTEE

2 NOVEMBER 2015

APPLICATION FOR PLANNING PERMISSION

ITEM: **REFERENCE NUMBER:** 15/01071/FUL
OFFICER: Carlos Clarke
WARD: Lauderdale and Melrose
PROPOSAL: Erection of dwellinghouse without compliance with condition No 4 of planning permission in principle reference 14/00984/PPP
SITE: Garden Ground Of Viewbank Douglas Road Melrose
APPLICANT: Mr David Parkinson
AGENT: MH Planning Associates

SITE DESCRIPTION

The site comprises raised garden ground associated with the applicant's property (Viewbank) which fronts Douglas Road (to the south) in a position elevated above the application site's frontage onto Dundas Terrace (to the north). Dundas Terrace serves a total of 12 new and modern properties. The modern section of the road (i.e. the single lane section and turning head) was constructed in the late 1980s to serve seven new houses).

PROPOSED DEVELOPMENT

In April this year, Planning Permission in Principle was granted for the erection of one house on the site (14/00984/PPP). The consent was a renewal of a consent originally granted in 2008 (see history below) and renewed previously in 2011. The consent was subject to several conditions, one of which (Condition 4) requires two public parking (i.e. visitor parking) spaces and widening of Dundas Terrace (by 40cm over a 28 metre section of road verge). The full condition reads as follows:

No development shall commence until detailed proposals for the provision of two public parking spaces, including signage identifying them as 'public visitor parking', and the widening of Dundas Terrace (as identified on the indicative plan submitted in support of the application) and including details of any retaining walls required to support the same, have been submitted to and approved by the Planning Authority and the works have been carried out in accordance with the approved details. The public parking spaces shall at all times be signposted as 'public visitor parking' in accordance with the approved details

Reason: To ensure the road is capable of accommodating the additional traffic associated with the development and the site is adequately served by visitor parking spaces in the interests of road safety and neighbouring amenity

This application seeks consent for a house on this site without imposition of the condition.

PLANNING HISTORY

In 2008, application 06/02392/OUT was granted permission subject to a condition requiring two public parking spaces and the widening of Dundas Terrace. This same requirement for public parking spaces and widening of the road was also imposed on renewals of the consent granted in 2011 and 2015.

Permission was also granted for a house on the adjacent garden (of Blythe) in 2011 (08/00514/OUT) subject also to a requirement that the road be widened and an additional two public parking spaces be formed. That permission lapsed in January 2014. A previous application to develop the plot was refused by the Council in 1990 because of its visual impact. An appeal was submitted but was dismissed on grounds the proposal would be served by an unsatisfactory access road (i.e. Dundas Terrace).

REPRESENTATION SUMMARY

In response to this application, six letters of support (from five households) and five objections have been received. Of those in support, the key issues raised are, in summary:

- It would remove the need to intrude on the neighbouring property to widen Dundas Terrace and reduce the works required and so minimise disruption
- The condition does not comply with Circular 4/1998 and is, therefore, *ultra vires* because it is not reasonably and fairly related to the development. It requires off-site works that are not required or related to the development. The condition conflicts with Government advice. It does not meet the six tests.
- It is unreasonable to ask for public parking to be provided. Existing parking will not be compromised, and the existing turning head is unaffected. The development is not a commercial development or tourist attraction so there is no need for public parking. On-site parking would be provided in accordance with the Council's adopted policies and Dundas Terrace is satisfactory in terms of gradient, alignment and width to be able to serve a single additional dwelling without road and parking improvements
- To suggest it should be accessed from Douglas Road would be poor planning as it would represent back land development. Douglas Road is also of similar width, has a greater number of properties, is of steep gradient and poor visibility
- Objections to the development are based on planning issues already addressed as the principle of development has been accepted in the outline approval

Of those against, the key issues are, in summary:

- Previous objections to outline approval 14/00984/PPP (including land ownership information) should be referred to
- Dundas Terrace is already inadequate for the amount of traffic and is too narrow to support additional housing traffic. It is a very narrow road with no room for roadside parking or passing. A lack of space and traffic congestion will provide a safety risk to residents. This would increase traffic in an already congested street, where parking is already an issue.
- The 60 metre section of Dundas Terrace leading to the turning area is exactly 3m wide, and the turning area has enough space for one car. The rest of the road verge there is required for turning vehicles or adjacent a fire hydrant.

There is no room to pass at the cul-de-sac end and pavements are privately owned from The Croft to Dingleton Road which would not leave enough room to park on the street and still pass. There is no extra space for additional vehicles and, therefore, rules or guidelines applicable to average sized roads cannot be applied in this case.

- Lack of space and congestion is not just an inconvenience but there are safety considerations for service and emergency vehicles. Failure to provide extra parking will compromise existing residents' safety. Any increased building would need to provide parking for its own and any provision for guest vehicles.
- Construction traffic would need to be able to park on site to avoid total gridlock. The road would be totally unmanageable during construction with heavy vehicles and machinery and would severely jeopardise a Copper Beech tree subject to preservation order. Construction traffic would cause congestion and damage further the entrance to the road which is in bad repair at present.
- The drainage and water supply would require the road to be dug up stopping all residents reaching their homes as it is a single track road
- All previous conditions should apply and no building work start until the access road and parking bays are constructed as standard
- It would be perfectly reasonable to make the public parking plan (06/02392/OUT) a condition of development

APPLICANT'S SUPPORTING INFORMATION

A supporting letter submitted on behalf of the applicant outlines the principal objections to the imposition of Condition 4. A full copy can be viewed on *Public Access*. The applicant's principal reasoning is that the requirement is unrelated to the development, unnecessary and unreasonable and, therefore, it is beyond the lawful right of the Planning Authority to impose the condition. Local Plan Policy Inf4 requires only 2.25 spaces and, therefore, the spaces would meet a perceived need for general public parking which is unrelated to the development. Conditions must meet the six 'tests' of Circular 4/1998. This condition fails three of the tests i.e. of necessity; of relevance to the development being permitted; and of reasonableness in all other respects. An unreasonable condition does not become reasonable because an applicant suggests it or consents to its terms.

DEVELOPMENT PLAN POLICIES:

Consolidated Scottish Borders Local Plan 2011

G7 Infill Development
Inf4 Parking Provisions and Standards

OTHER PLANNING CONSIDERATIONS:

Circular 4/1998 The Use of Conditions in Planning Permissions
Circular 3/2013 (revised September 2015) Development Management Procedures

CONSULTATION RESPONSES:

Scottish Borders Council Consultees

Roads Planning Service: Note they have been consistently concerned with the parking and turning issues that would arise if a new house was built at this location. Since the initial application (Ref 06/02392/OUT) and subsequent renewal applications (11/00024/PPP and 14/00984/PPP) these concerns have been well documented. In all previously approved applications, the roads concerns have been suitably addressed by justifiably requiring the applicant to provide two public car parking spaces in the road verge immediately adjacent to the site. It is their view that Condition 4 which was included in 14/00984/PPP is necessary, and will be effective in reducing the parking and turning issues that will arise at this location. The RPS recommends this application be refused in the interests of road safety.

Statutory Consultees

Melrose Community Council: No comments

KEY PLANNING ISSUES:

The key issue is whether planning permission for one house on the site of consent 14/00984/PPP should be granted without Condition 4 which requires the widening of Dundas Terrace and provision of two dedicated public parking spaces.

ASSESSMENT OF APPLICATION:

Principle

This application is not an opportunity to revisit the principle of development. Outline permission has previously been granted, and renewed twice, and the latest permission remains extant. While concerns regarding construction traffic associated with the development and services are understandable, the principle of development has been accepted previously with the granting and renewal of the original consent. There is no new risk to the Copper Beech tree to consider here either. The access into the plot and arrangement of public parking spaces shown indicatively on the approved plan is not ideal, but it is necessary for this elevated site, and endorsed by the Roads Planning Service (RPS). A detailed application for the layout (which would be a reserved requirement of the PPP) would provide some opportunity for refinements.

The matter to be considered here is whether permission should be granted for a house on this site without the need to widen Dundas Terrace and provide two public visitor parking spaces, in addition to the private access and two parking spaces needed within the curtilage to serve the house itself. Determining this matter is guided by the six "tests" governing the competency of planning conditions (explained in Circular 4/1998 and outlined below). Compliance with the development plan is the principal consideration, with other material considerations to be accounted for where these justify a departure from the plan.

Enforceable, precise and relevant to planning

The condition is suspensive, requiring approval and provision of the parking before commencement of the approved development of the house. Whether all the land alongside the public road is owned by the applicant or not, the Roads Planning Service consider the affected roadside strip to be within adopted road verge and, therefore, capable of being improved to provide the parking without barrier by ownership. The condition is, therefore, enforceable. The condition is also considered to be precise in its requirements. It is relevant to planning since its purpose is to maintain road and pedestrian safety and these are material planning considerations.

Necessary, relevant to the development and reasonable in all other respects

These three tests effectively amount to the same issue i.e. whether it is reasonable and necessary for the applicant to be required to provide road widening and two public spaces to mitigate the impact of this development on road and pedestrian safety.

Policy Inf4 of the Consolidated Local Plan 2011 requires parking to serve the development and Appendix D applies parking standards that would require 2.25 spaces per house. Here, this would justify two parking spaces within the plot, and no requirement for public visitor parking. The condition is not necessary to secure compliance with Policy Inf4 when applying the Council's parking standards to a single house. It would, therefore, appear logical to argue that two public parking spaces would not be related to the development of a single house and, therefore, would not be a necessary or reasonable requirement.

However, Consolidated Local Plan Policy G7 that governs infill housing developments also requires that developments be served by adequate access. Thus, the access serving the site should be acceptable in terms of road and pedestrian safety.

In this case, the Appeal Reporter for development of the adjacent plot considered as long ago as 1991 that *"I find the objections relating to access to be on much stronger ground. For a recent development, I noted that some of the new houses on Dundas Terrace have remarkably awkward access arrangements, with no turning areas within sites, sharply angled driveways, and very limited parking within plots. It is evident that overspill parking at times restricts the width of the roadway or occupies the turning head of the cul-de-sac, and that vehicles have to reverse from driveways to the turning head or vice versa, because of the lack of turning space within the plots and the narrowness of the roadway which forbids three-point turns. In the light of the later comments from the Director of Roads, and on the necessary assumption that the indicative layout is the best that it has been possible to devise because of the constraints of the slope, I consider that the further complication of an already unsatisfactory access road by addition of a sub-standard access at the appeal site is a compelling objection to the project."*

It is not possible to speculate whether the current indicative access proposal (submitted under 14/00984/PPP) would have been more acceptable to the reporter. However, it is clear that the road itself appears to remain of low standard (even allowing for current relaxed approaches to street design). It is narrow for much of its length, with no scope for on-street parking on that section and a relatively informal arrangement of parking at the turning head (with potential obstruction to turning vehicles). The RPS, therefore, maintains their view that improvements to its width and parking provision are necessary to enable them to endorse a further house here.

Of note too, of course, is that another plot may also be developed given the principle of development on similar terms was also accepted on the adjacent garden of Blythe (though the permission requires to be renewed).

The road currently serves the existing houses adequately and no more. It would, ideally, be wider with more scope for clearly accessible on-street parking but it serves its purpose adequately at present. However, the RPS considers that, if more houses are to be built off it, the road must be brought up to a better standard in order to do that. The erection of an additional house (and quite possibly a second in due course) should not be endorsed off an access road that is not designed for additional traffic, particularly at the turning head end. Thus, widening of the road will ease vehicular and pedestrian movement a little, and additional visitor parking provision at this end of the road will bring the road up to a better standard in this regard. Only then would it be sensible (in the interests of road and pedestrian safety) to allow an additional dwellinghouse to be served off it.

In order, therefore, to comply with the Consolidated Local Plan Policy G7, the development requires adequate access and, in order to achieve that, it is necessary to improve this particularly constrained road in the manner required. This requirement is only necessary because of the additional house, as the road serves current housing adequately now. The condition is not, therefore, designed to remedy an existing problem but is designed to ensure the road is capable of safely accommodating any further traffic. It is therefore directly related to the consequences of the proposed development in this particular case.

However, in terms of the number of spaces required, there appears to be some scope for variation from the terms of the condition. If the first group of houses alongside the initial, wider section of the road (starting from the junction with Dingleton Road) avail of street parking there, this leaves seven houses reliant on the turning head for visitor parking, and this additional house would become the eighth. Applying the Local Plan's policy standard (0.25 spaces per house), this would firmly justify 2 spaces for the eight houses. Only one unmarked space currently exists, and this is not ideally located. This additional house would, therefore, justify a second space.

Even if the first one or two houses alongside the narrow section use the wider section of road for visitor parking, this would still leave the remaining 5 or 6 relying on the existing space at the turning head. Any overspill will impact on the turning head itself. This proposal would then increase that to 7 houses, and a house in the adjacent (currently lapsed plot) would bring the total to 8. This additional house would, by interpretation, still justify a further space in these circumstances, though it would not reasonably justify two additional spaces.

Any further house (in addition to the current application proposal) may justify the second additional space, however, to achieve a spread of parking better able to accommodate the cumulative number of houses in the street. A decision on that will, however, be for any prospective application for renewal of the consent on the adjacent plot.

Accounting for these considerations, it is considered that there is robust justification for improving the road under Condition 4 to serve an additional house, but that it would also be reasonable to lower the visitor parking requirement to one space. Also, depending on the final layout, there may not be a need to signpost the parking space, but rather identify it as publicly available by means of its surfacing finish and/or lining.

The wording of the condition can be adjusted to allow for this. The road widening should, however, remain a requirement.

Conclusion

Ultimately, it is considered that the condition meets the six tests of Circular 4/1998, but also that it is reasonable to reduce the required parking from two spaces to one. To grant consent without the imposition of the condition completely, however, would fail Consolidated Local Plan Policy G7. Without improvements, it would be unwise to endorse any further housing off this particular road. Any additional housing would be detrimental to road and pedestrian safety if the road is not improved to cater for it. There are no other material considerations that would justify a departure from this policy.

In granting this permission, all other conditions imposed on the planning consent need to be reimposed. This would also extend the time limit from the original permission but, as the extension would amount to only a matter of months, there is no significant planning implication from allowing a new three year period. This permission, if granted, would also need to be bound by a current Section 75 legal agreement covering developer contributions.

RECOMMENDATION BY CHIEF PLANNING OFFICER:

I recommend the application be approved subject to Section 75 legal agreement (i.e. binding this consent to the current agreement) and the following conditions:

1. Approval of the details of the layout, siting, design and external appearance of the building(s), the means of access thereto, parking provision for two vehicles within the site and the landscaping of the site shall be obtained from the Planning Authority.

Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

2. Application for approval of matters specified in the conditions set out in this decision shall be made to the Planning Authority before whichever is the latest of the following:
 - (a) the expiration of three years from the date of this permission, or
 - (b) the expiration of six months from the date on which an earlier application for approval of matters specified in the conditions set out in this decision notice was refused or dismissed following an appeal.

Only one application may be submitted under paragraph (b) of this condition, where such an application is made later than three years after the date of this consent.

Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

3. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the matters specified in the conditions set out in this decision.

Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

4. No development shall commence until detailed proposals for the provision of one public parking space, including measures identifying it as public visitor parking, and the widening of Dundas Terrace (as identified on the indicative plan submitted in support of the application 14/00984/PPP) and including details of any retaining walls required to support the same, have been submitted to and approved by the Planning Authority and until the works have been carried out in accordance with the approved details. The public parking space shall at all times be available as public visitor parking in accordance with the approved details

Reason: To ensure the road is capable of accommodating the additional traffic associated with the development and the site is adequately served by visitor parking provision in the interests of road and pedestrian safety and in a manner which safeguards neighbouring amenity

5. The vehicular access to the dwellinghouse and two parking spaces within the site shall be provided in accordance with the details approved under Condition 1 before any development commences on the erection of the dwellinghouse and retained free from obstruction thereafter

Reason: To ensure the site is adequately served by private parking spaces in the interests of road and pedestrian safety and neighbouring amenity during and after construction of the dwellinghouse

6. The means of water supply and of both surface water and foul drainage to be submitted to and approved by the Planning Authority before the development is commenced.

Reason: To ensure that the site is adequately serviced.

DRAWING NUMBERS

Location Plan

Approved by

Name	Designation	Signature
Ian Aikman	Chief Planning Officer	

The original version of this report has been signed by the Chief Planning Officer and the signed copy has been retained by the Council.

Author(s)

Name	Designation
Carlos Clarke	Lead Planning Officer



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 Douglas Road
 Douglas Road
 Melrose
 Scottish Borders

