



STATEMENT OF CASE

Application Ref: 20/01327/FUL

Erection of dwellinghouse

**Land adjacent Carnlea, Main Street,
Heiton, Scottish Borders**



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1. INTRODUCTION

Background

- 1.1. This Statement of Case is prepared by Joe Nugent MRTPI of Brownshore Management ("the Agent") against the refusal by Scottish Borders Council ("the LPA") of an application for the erection of a dwelling house ("the development") on land adjacent Carnlea, Main Street, Heiton, Scottish Borders ("the Appeal site").

Personal Statement

- 1.2. This Statement of Case has been written by Joe Nugent MRTPI. Town Planning experience has been gained over 20 years in both the public (Development Control, Policy, and Planning Enforcement) and private sectors.
- 1.3. For reference purposes the planning application details on the Council's Public Access state:

APPLICATION NO.: 20/01327/FUL

PROPOSED DEVELOPMENT: Erection of dwellinghouse

LOCATION: Land Adjacent Carnlea Main Street Heiton Scottish Borders

Planning History

- 1.4. R127/94
The Officer Report states: In June 1994, full planning consent for a house on the site was granted and subsequently lapsed in 1999. The Planning Committee approved this application contrary to the advice of the Director of Roads and Transportation. The Planning Committee stated, "*the bungalow is (would be) located on an in-fill site which has already demonstrated its ability to accommodate a house when used for the chalet.*"
- 1.5. 04/01984/OUT
Proposal: Erection of dwellinghouse and garage
Location: Land Adjacent Carnlea Main Street Heiton Kelso Scottish Borders
Decision: Approved
- 1.6. 05/00012/REM
Proposal: Erection of dwellinghouse and garage
Location: Land Adjacent Carnlea Main Street Heiton Kelso Scottish Borders
Decision: Approved

Development Plan

- 1.7 In preparing this appeal statement, full regard has been had to the relevant policies in the Development Plan.

Scottish Borders Council Local Development Plan 2016

PMD2: Quality Standards

PMD5: Infill Development

HD3: Protection of Residential Amenity

EP13: Trees, Woodlands, and Hedgerows

IS2: Developer Contributions

IS7: Parking Provision and Standards

IS9: Waste Water Treatment Standards and Sustainable Urban Drainage

Supplementary Planning Guidance

Developer Contributions, April 2015

Guidance on Householder Developments, July 2006

Placemaking and Design, 2010

Landscape and Development, 2008

2. PLANNING APPLICATION

Application Documents

- 2.1. The planning application was received by the LPA on 3 November 2020 and accompanied by the necessary level of documents including:
 - a) Application Form
 - b) Location Plan
 - c) Certificate of Ownership
 - d) Supporting Documentation
 - Site Layout Plan
 - Site Plan Sections
 - Elevations
 - Floor Plans
 - Elevations and Roof Plan
 - Privacy and Overlooking Plan
 - Roof Plan
 - Site photographs (illustrating the residential use and character of the site)
- 2.2. Following submission to the LPA, Brownshore Management was instructed as Planning Agent with the aim to discuss, mediate and mitigate matters with the Case Officer and the LPA.
- 2.3. Additional supporting statements were submitted by the Planning Agent during discussions with the Case Officer and prior to the determination of the planning application.

3. GROUNDS OF APPEAL

Main Issues

- 3.1. The Decision Notice letter was issued on 2 June 2021 (the decision is dated 28 May 2021).
- 3.2. The Decision Notice issued by the LPA states one refusal reason.
 1. *The proposed development would not comply with Policies PMD2: Quality Standards and PMD5: Infill Development of the Local Development Plan 2016 in that the development would result in additional vehicular traffic on a substandard access to the detriment of road safety, both vehicular and pedestrian, and it has not been demonstrated that the improvements required to upgrade the access, as specified, can be carried out.*

Refusal Reason - Policy PMD2 (Quality Standards)

- 3.3 Policy PMD2 (Quality Standards) focuses upon four criteria; sustainability, placemaking & design, accessibility, and greenspace, open space & biodiversity.
- 3.4 The refusal reason by the Case Officer is wholly focused upon vehicular traffic and access, therefore criteria o) to s) of Policy PMD2 are relevant (accessibility).
- 3.5 In terms of the criteria these include:
 - o) – The development would directly connect to the existing vehicular access that provided for the previous residential dwelling at the site. This right of vehicular access is within the Land Registry Deeds¹ for the land and remains a civil right of access.

DESCRIPTION

Subjects ground at MAIN STREET, HEITON, KELSO edged red on the Title Plan; together with (One) the servitude right of pedestrian and vehicular access to the subjects in this Title by the common access roadway leading from the A698 public road to the subjects in this Title and (Two) a servitude right of wayleave over and under the said common access roadway in connection with the provision of all services to the subjects in this Title.

p) – The access retains the ability for access for those with mobility issues in terms of width and gradient of the access.

q) – This matter is debated by the LPA who consider the development would “*result in additional vehicular traffic on a substandard access to the detriment of road safety, both vehicular and pedestrian*”.

¹ Appendix 1

Scottish Water

The material consideration is that the site for a significant period (and prior to the neighbouring dwellings) accommodated a residential dwelling (Named: Khinsper) and correspondence from Scottish Water² during the Reserved Matters application (05/00012/REM) states that the;

"plan confirmed that the above proposed development and the rebuild of Khinsper property is in the same location.

Furthermore;

"...the property has an existing sewer connection therefore we will permit the use of the existing connection for domestic purposes only"

The correspondence from Scottish Water confirms that the development was to rebuild the former residential dwelling (Name: Khinsper) and this would connect to the existing water and sewer infrastructure that serviced Khinsper.

It is reasonable to establish that existing residential water and sewer connection would be in situ if they served a residential property.

The previous residential property (Khinsper), and the site is served by the Scottish Water and demonstrates the established residential use of the site.

Planning Application 04/01984/OUT

Following discussions and a request to the Case Officer, the following information was provided. This included the Planning Committee text for 04/01984/OUT, and this states;

Planning approval for neighbouring houses was obtained in the mid 1970's and four houses subsequently built, with the application site being land containing a chalet which was removed, although the cleared site has remained undeveloped.

"...the Director of Planning's advice to the Committee in 1994 was that "the bungalow is (would be) located on an in-fill site which has already demonstrated its ability to accommodate a house when used for the chalet. The determining issue with this application is that of the access road. While I share some of the concern of the Director of Roads and Transportation, I believe that this application is not creating a worse situation to that which existed when the original chalet was in use. I therefore do not believe that there are sufficient grounds upon which to justify refusal of the application"

The discussions, advice from the Director of Planning, and the decision of the Planning Committee recognised that the site is in-fill site and had already demonstrated its ability to accommodate a house when used for the chalet, also that the application is not creating a worse situation to that which existed when the original chalet was in use.

² Appendix 2

Conclusion

Therefore, the Council and the LPA, Scottish Water, and the Director of Planning during the Planning Committee all acknowledge that the site is the rebuild of an existing residential dwelling. The development is that of a brownfield site with an established residential use.

Therefore, the vehicular access to the site has been confirmed as accepted for residential use, accepted for utility companies to access for installation and repairs, and is a legal right of the landowner within their Land Registry Deeds.

r) – Is not considered relevant in this instance.

s) – Requires adequate space for the turning of vehicles, including those for waste collection purposes. Firstly, the site is an established residential site and has maintained suitable access and turning areas for vehicles, furthermore the plans for the development were updated by the Architect and demonstrate the vehicles at the site can turn access, turn, and egress.

Refusal Reason - Policy PMD5 (Infill)

3.6 The LPA use PMD5 as a refusal reason. This policy relates to infill development and includes criteria a) to f).

3.7 In this instance, the development:

a) Accords with the established land use of the area (residential);

b) The dwelling is of a scale, mass, and design compatible with the local character of the residential area;

c) The redevelopment of the site will re-establish a residential dwelling and achieve infill development.

d) The dwelling is of a scale, mass, and design compatible with the local character of the residential area;

e) The factor in this criterion is whether adequate access can be achieved. It has been established in this document that the Council and the LPA, Scottish Water, and the Director of Planning during the Planning Committee all acknowledge that the site is the rebuild of a previous residential dwelling.

The development is that of a brownfield site with an established residential land use, with an established vehicular access and egress.

Therefore, the vehicular access at the site has been confirmed as accepted for residential use, accepted for utility companies to access for installation and repairs, and is also a legal right of the landowner within their Land Registry Deeds.

f) Updated plans have been confirmed with the Case Officer and the LPA to affirm there would be no loss of sunlight or privacy.

Officer Report

3.8 The Case Officer report states:

1) The proposal does not conflict with the established land use;

2) The site has previously been an acceptable infill development opportunity. In terms of design, the building presented would be a suitable addition to the neighbouring built form, both appearing modern but retaining similar form as the neighbouring bungalows. I am satisfied that development would appear contiguous in size and plot ratio as the neighbours, specifically noting that Craimar opposite features 1.5 storey form.

3) A further residential dwelling would contribute to sustaining the social and economic infrastructure of Heiton.

4) I am satisfied that the building to plot ratio are within the margins of acceptability in terms of scale, form, design, materials and density and are not dissimilar to the previous approval.

6) I do not identify any significant loss of daylight, sunlight or privacy to neighbouring properties as a result of overshadowing or overlooking (owing to the appropriate choice of floor level, cut into the slope).

3.9 Within the Case Officer report 5 out of 6 sections demonstrate support for the development. Section 5 refers to the discussions with the Agent that the previous permission was implemented, information was discussed with the Case Officer that planning permission 04/01984/OUT/ and the promptly submitted 05/00012/REM have been implemented and development commenced.

Commencement of Development

3.10 The Application (and landowner) confirmed that plant equipment (including a 360 excavator) had been brought to the site for drainage, demolition, and clearance operations to be carried out at site, therefore constituting development.

3.11 The Case Officer refers to the Building Warrant, this matter has been discussed with the Council's Building Standards Officer and they confirm that a Building Warrant is not required for drainage, demolition, and clearance operations. A building Warrant is focused upon the development of a habitable building.

3.12 A development is phased, and the initial operations require drainage, demolition, and clearance operations. Operations then progress onto the dwelling. In this instance the planning permission was granted (2004) and the reserved matters granted (2005) and the development commenced with material operations including drainage, demolition, and clearance operations.

3.13 The material operations including drainage, demolition, and clearance operations do not require a Building Warrant and this has been confirmed by the Council's Building Standards Officer. The Council's Building Standards Officer confirms that development can commence at a site without requiring a Building Warrant, and this took place at the site in this instance.

3.14 The material operations including drainage, demolition, and clearance operations constitute commencement of development. It was confirmed to the Case Officer that the Applicant (landowner) would submit an Affidavit to legally demonstrate their case on this matter, this was not invited by the Case Officer.

Residential Property

- 3.15 In terms of the site being accommodated by a residential dwelling, copies of the Burns Chronicles (1948)³ on Page 199 of the PDF state:

644-HEITON BURNS CLUB: federated 1947; 43 members; President, W. F. Scott-Ker; Secretary and Treasurer, Major Dawson Bowman, Khanspur, Heiton, Kelso.

The property referred to in the Burns Chronicles is the property at this site and the property referred to by Scottish Water and the Planning Committee in 2004.

- 3.16 This information is further substantiated as the Burns Chronicles (1951)⁴, Page 86 of the PDF state:

644-HEITON BURNS &LUB: instituted 1910; federated 1947; 65 members; Secretary, Major Dawson Bowman, Khanspur, Heiton, Kelso.

- 3.17 The site included a residential property, and the occupier/resident was Major Dawson Bowman.
- 3.18 The planning history confirms that LPA states the development is "*located on an in-fill site which has already demonstrated its ability to accommodate a house*".
- 3.19 The Case Officer states there is no evidence that the site was previously occupied as a dwellinghouse (described as a chalet in 1994). However, this is contested as
- OS Plans for the site illustrate a residential property;
 - The Burns Chronicles (1948 and 1952) confirm the Secretary and Treasurer (Major Dawson Bowman) resided at the residential property;
 - Scottish Water confirm the established infrastructure at the site serving the residential property;
 - The planning history confirms the LPA in their assessments and Planning Committees accept the site had a residential property;
 - The site retains a residential garage on the site requiring vehicular access;
 - The Land Registry Deeds confirm the right of vehicular access to the site. This is based upon the residential use of the land.
- 3.20 The evidence available demonstrates the site accommodated a residential property and the development of the site is for a replacement residential dwelling utilising the established access and infrastructure in situ.

³ Appendix 3

⁴ Appendix 4

4. CONCLUSION

- 4.1 To provide a conclusion and having considered the appropriate national and local planning policies and guidance the proposed development accords with each of the policies assessed and with planning guidance.
- 4.2 On balance, the Case Officer in their officer report identify one reason for refusal and this relates to highways.
- 4.3 There are several material considerations set out within the planning application and this Statement of Case that demonstrate material consideration weighing in support of the development.
- 4.4 It has been demonstrated in the planning application, and within this Statement of Case, that the site has accommodated a residential dwelling and the redevelopment of the site is to replace the former dwelling with a replacement dwelling.
- 4.5 The replacement dwelling will utilise the existing site and curtilage. It will use the established vehicular access and egress used by the previous residential dwelling, and this access is granted in perpetuity in the Land Registry Deeds.
- 4.6 The residential highways use at the site would directly accord with the lawful use set out in the Land Registry Deeds.
- 4.7 It has also been demonstrated that the 2004 planning permission, and the 2005 reserved matters, was commenced by the drainage, demolition, and clearance operations carried out at site, therefore constituting development.
- 4.8 In terms of a conclusion, the development of a replacement dwelling has previously been positively supported by the Council and the LPA. The evidence demonstrating the residential dwelling at the site, planning history, commencement of development, and the lawful use of the access in the Land Registry Deeds, is considered to weigh the planning balance in favour of the development.
- 4.9 It is therefore kindly requested that the application / appeal be approved.