

GROUNDS OF APPEAL

AGAINST THE REFUSAL OF PLANNING PERMISSION
(21/00502/FUL)

MODIFICATION OF CONDITION 2
OF PLANNING PERMISSION 12/01191/PPP
IN RESPECT OF THE EXTENSION
TO THE PERIOD OF THE PERMISSION

MR AND MRS HUGH LOVATT

LAND NORTH EAST OF BUXTON HOUSE
BUXTON ROAD
SELKIRK
SCOTTISH BORDERS

SUZANE MCINTOSH PLANNING LIMITED
1 NOVEMBER 2021

1. Introduction

- 1.1 This appeal is lodged to the Local Review Body of Scottish Borders Council in respect of the refusal of planning permission to amend a condition on a live planning permission reference 12/01191/PPP under delegated powers.
- 1.2 The Local Review Body (LRB) is respectfully asked to consider the appeal against the refusal *de novo*, examine the material considerations in this case and support the amendment of the condition which would have the effect of extending the implementation of the permission for a further maximum period of 3 years from the date of its expiry on 31.3.22 or some other such time period as the LRB deems appropriate.

2. Grounds of Appeal

- 2.1 Planning permission in principle reference 12/001191/PPP was granted by the Local Review Body of Scottish Borders Council for a single storey, wheelchair accessible house on the land at Buxton, subject to a series of conditions and a legal agreement/ planning obligation. The planning permission is dated 17.9.18 and was due to expire on 17.9.21.
- 2.2 The Covid (Scotland) Act 2020 and subsequent provisions had the effect of assisting all applicants whose implementation of planning permissions was stalled due to the period of lockdowns, restricted working etc. It put in place emergency (short term) extensions to planning permissions which has the effect of implementation of this permission being extended 31.3.22. An AMSC application is therefore required to be lodged, approved and an effective site start made by that date. That is one issue that is currently being worked on and an AMSC application prepared.
- 2.3 However, given the implications of the global pandemic on everyone's life, work, finances, the accessibility to a construction team, materials, delays and the impact it has had on the applicant's health etc additional time is sought by the applicants to extend the permission further so that it is practical and realistic as to when work can start on site. The Covid (Scotland) Act hasn't introduced further emergency provisions to assist in this matter so it was for the applicant to explore this with the council. They did so by looking at their options and marketing the plot to fund significant alterations to their existing home.
- 2.4 Before doing this they discussed the matter with SBC Solicitor Mr Kirk. Mr Kirk confirmed that the process they were about to embark upon in terms of marketing the plot was not prohibited by the planning permission they had and they were free to explore this and undertake marketing the site. The council had no objection to this being done.
- 2.5 The permission granted by the Local Review Body was not a personal permission to Mr and Mrs Lovatt but for a wheelchair accessible home. If Mr and Mrs Lovatt were for any number of reasons not capable of implementing the planning permission in principle then another family with the same needs for a single storey, fully accessible home could purchase the plot and build the house. The conditions on the consent require the house to be single storey, traditional and fully accessible – those provisions are safeguarded in that permission.

- 2.6 Mr and Mrs Lovatt began to look at their options and marketing the plot as a means of raising capital to undertake the extensive wheelchair accessibility adaptations required to their existing home, close by if that were the only way they could deal with matters. Given Mr Lovatt's health this was thought to be potentially a fall back position and a suitable way of them achieving the accommodation that they need to continue to stay in the locality they have lived in for over 20 years.
- 2.7 The Local Review Body will note that it is not normally possible now to vary a condition on a planning permission in relation to implementation. Most permissions issued after 2006/2009 do not contain a condition relating to implementation dates however, this one does. Therefore technically it is still possible under S42 of the Town and Country Planning (Scotland) Act 1997 to apply to amend or vary that condition without re-opening the reasoning why the permission was granted in the first place. This procedure, the LRB will recall was commonplace prior to 2006/2009 and the provisions thereafter.
- 2.8 The Planning Officer in this case has however refused the request to extend the implementation of the consent for the following reason:
'The proposed development is contrary to Policy HD2 of the Scottish Borders Local Development Plan 2016 and New Housing in the Borders Countryside Guidance 2008 in that the application site does not constitute an appropriate addition to the building group at Buxton. Furthermore given the site is currently for sale, any other material considerations, including the applicant's personal circumstances, do not override this policy conflict'.
- 2.9 The LRB are therefore asked to consider if the Planning Officer in refusing the S42 request to vary condition 2 attached to planning permission 12/01191/PPP went outwith the scope of the material considerations in this type of application. The applicant contends that they did so for a number of reasons.
- 2.10 An extension of the time period for implementation should not have ordinarily opened up the question of the principle of the development if the request to extend was being made within the time frame of the permission still being live. If it had expired then that would be a different matter.
- 2.11 In addition, the principle of the house having been granted PPP by the LRB is a significant material consideration in the determination of any application or appeal, yet it wasn't considered – it was erased in relevance by the Planning Officer – this is clearly not the way things should be dealt with.
- 2.12 The Planning Officer has considered other issues that are not relevant to the determination of this application. They have leaned heavily on the issue that the Lovatt's have marketed the site. However, this is irrelevant to the determination of this application and now this appeal and oversteps the boundaries of the material considerations taking the decision itself into the territory of *ultra vires*. The fact that the permission is not a personal permission and runs with the land means that any person coming forward could comply with the conditions on the PPP and implement the consent. The time for controlling this was at the issue of the PPP, not now.
- 2.13 In respect of the plot being on the market – this is correct, however it has not sold. The Lovatts have had the site on the market for 18 months. This act in itself should not blight the application under S42 to extend the original permission while that permission is live.
- 2.14 The Planning Officer judges it to be outwith the scope of what was allowed in terms of the permission having been justified on the basis of Mr Lovatt's medical requirements. However, the

Planning Officer fails to consider that another family with a wheelchair user seeking a fully accessible, single storey home may purchase the plot or a family wanting a sustainable home they can stay in that adapts readily to their requirements throughout their lifetime. The fact that Mr and Mrs Lovatt cannot for various reasons implement this PPP at this time is not a material consideration in the determination of the extension because the PPP was not a personal permission. If it had been then it may have been relevant.

2.15 Turning to why Mr and Mrs Lovatt could not implement the PPP before now.....getting a detailed design worked up, a construction team on board, sourcing building materials and finance to do the build has been impacted upon severely by the pandemic coupled with the deterioration in Mr Lovatt's health means that they have to review their options and potentially stay where they are and try to improve that property.

2.16 Anyone who has come forward with interest in the plot has been fully aware of the need for the terms of the original permission to be met. Two different sets of people have backed out due to the inability to raise finance with the effects of the pandemic.

2.17 The LRB is reminded that they determined to approve the PPP because they viewed the site as having substantial and overriding factors that outweighed the presumption against development. Those factors still exist for Mr Lovatt and for other families. If the pandemic had not impacted so greatly on the Lovatt's then they could well have lodged the AMSC and be building on site now, however circumstances have not been so kind as to allow that so they must seek to extend the permission to give them much more time to comply or to find a suitable purchaser to has accessibility needs. If that cant happen then the permission will be lost.

2.18 In addition, SBC Roads has no objection in their comments to the 'extension' of the permission. We also note that Selkirk Community Council has commented on the application 'recommending refusal'. While their position is respected as one of many consultees in the process they do not have the final say in the matter or indeed the right to recommend refusal of an application. We also note that they reference another application for the site, which was withdrawn and which has no locus in this determination at all. Given the nature of their comments they are of little weight in the overall consideration and lack the detailed knowledge of the applicant and the case that the LRB have.

3. Conclusion

3.1 The Local Review Body is therefore respectfully requested to extend the permission by varying the condition and allowing sufficient time to get over the effects of the pandemic and to build this house.

Suzanne C McIntosh MRTPI Hon FRIAS