

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 : 12/01191/PPP
APPLICANT : Mr Hugh Lovatt
AGENT : Suzanne McIntosh Planning
DEVELOPMENT : Erection of dwellinghouse
LOCATION: Land North East Of Buxton House
Eastfield
Selkirk
Scottish Borders

TYPE : PPP Application

REASON FOR DELAY:

DRAWING NUMBERS:

Plan Ref	Plan Type	Plan Status
PROMAP OS EXTRACT		Location Plan Refused
SITE ANALYSIS PLAN	Other	Refused

NUMBER OF REPRESENTATIONS: 12

SUMMARY OF REPRESENTATIONS:

Consultation responses can be viewed in full on the Public Access website, and can be summarised as follows:

SCOTTISH BORDERS COUNCIL CONSULTEES

- **ROADS PLANNING SERVICE:** I must repeat my observation to the previous application 10/00162/PPP for this site in that: I am somewhat surprised that yet another application for a house in this vicinity has been submitted. I have expressed many road and road safety concerns over several years regarding further residential development in this area due to the narrow twisting road with poor visibility which currently accesses the existing properties. My safety issues are further compounded as this road, and private track is well used by pedestrians due to the right of way which exists over its length. I also consider this road to have already reached its safe traffic capacity limit, and no extra traffic should be supported along this route. I recommend this application be refused in the interests of road safety.

- **EDUCATION DEPARTMENT:** The site is located within the catchment area for Knowepark Primary School and Selkirk High School. Education has no observations to make on this proposed development at this time and will not be seeking a developer contribution towards the provision of infrastructure for the schools in the catchment area.

- **ARCHAEOLOGY OFFICER:** There are no archaeological implications for this proposal.

OTHER CONSULTEES

- COMMUNITY COUNCIL: The Community Council had previously recognised and sympathised with the changed circumstances of the applicants, but has again unanimously agreed that it would not support an application which would result in development well outside the existing building group and contrary to the Council's Planning Design Guidelines. Very concerned that the access to the proposed site (a former drove road) is part of Selkirk Hill land - which is owned by the Selkirk Common Good. This historic track is not in a condition whereby it could withstand further erosion by either construction traffic or a measure of increased regular traffic without considerable engineering/ upgrading work which is considered wholly inappropriate for this location. When the building known as Buxton House was granted planning consent, a S75 was included in the attached conditions to limit any further development or resulting additional usage of this drove road. Selkirk Community Council agreed unanimously that this application should be rejected.

REPRESENTATIONS AND OBJECTIONS

The application was publicised by means of a notice in the Southern Reporter, and via the direct postal notification of 2 neighbours (Buxton House and the Council Estates Department).

- OBJECTION

Objections to the application have been received from: Mr Robert Hoppe, Michelle Hoppe and Miss Olivia Hoppe (All of the same address, Buxton House), John Moyes, John and Jean Rathie, and the Selkirk Hill Group. The issues raised in this objection correspondence can be summarised as follows:

- The site is not an appropriate addition to the building group
- Nothing has changed since the previous applications were refused
- The development would be contrary to the Local Plan
- Inadequate access
- Increased traffic
- The applicant's medical condition necessitates that good access is available
- A section 75 agreement is in place preventing any further development
- Selkirk Hill Group commented that the proposal to introduce a dwelling into this location is an unwarranted intrusion into a rural setting which the Group cannot support.

- SUPPORT

Support comments to this application have been received from: Mrs Josephine Jameson, Derek Jamieson, William Rutter, Kirsty Lovatt, Mrs V Barber, Linda & Alan Stewart, and Jim & Katrina Smith. The issues raised in this support correspondence can be summarised as follows:

- The site is an appropriate addition, and would not detract from the general appearance of the area.
- The applicants personal circumstances outweigh all other matters
- A house in this location would have a suitable access
- The development of "Buxton House" set a precedent that additional housing should be allowed in this area.
- The development would be discrete and unobtrusive, unlike the neighbouring Buxton House.

APPLICANTS SUPPORTING INFORMATION

The application is supported by several letters and representations, and by a supporting Statement prepared by the Applicant's Planning Consultant. The statement should be viewed in full on the public access site, and can be summarised as follows:

- The planning authority should take the applicant's circumstances into consideration;
- The Statement highlights that Members of the Local Review Body considered that Buxton House in its position upon a plateau, with the ground to the north and east of the property sloping down dramatically, formed an appropriate end stop to the built form of the group and that the application site and surrounding land should remain open and free from development, as this open appearance was in itself part of the scenic qualities and character of the building group. It therefore appeared that the

members at the time gave more weight to the views from Buxton House than to the real needs of a constituent and their duty as the council to provide for the needs of the disabled. This application gives the new council the opportunity to reconsider this issue in particular as well as over-riding the incorrect interpretation of the officers on the issues of relevance in relation to personal circumstances;

- The planning authority should re-examine the acceptability of the stables site, especially in the light of the levels to which Buxton House has been constructed at (Para 5.1). It could be construed that the Lovatt's are being penalised as a result of the inadequate build / re-grading of the land at Buxton house;

- Highlights that Local Review Body Members gave weight to the terms and reasoning for the Section 75 Agreement that had been concluded on the application site. The agreement sought to restrict further development on the grounds that the dwellinghouse, now known as Buxton House, would be the final residential development that this group could accommodate, as the building group had reached saturation point. It is respectfully suggested that at the time the Agreement was signed that controlling this issue in this way would have been ultra vires;

- Rebuttals have also been submitted to several of the points raised by objectors.

RESUBMITTED INFORMATION

The applicants' case was also supported by letters received to the earlier applications on the site, and resubmitted for consideration on this current application. These submissions were as follows:

- Reverend Jim Campbell, the Local GP, the applicants Occupational Therapist, Clinical Psychologist, and Consultant at the NHS National Spinal Injury Unit all wrote letters in support. Representations were received outlining that the existing home is not suitable in the long terms. A new purpose built home, near work, church and friends would greatly assist Mr Lovatt in adjusting to his disability. These letters are all reproduced in full on the Public Access website.

Letters were also forwarded from Border Care and Repair, Border College (Mr Lovatt's employer), and McKay and Partners Consulting Engineers. The letter from McKay and Partners details the significant works required to the existing dwelling to improve on the current limited access for Mr Lovatt.

PLANNING CONSIDERATIONS AND POLICIES:

Consolidated Scottish Borders Structure Plan 2009
H7 (Housing in the Countryside: Building Groups)
H8 (Housing in the Countryside: Isolated Housing)
I11 (Parking Provision in New Development)

Consolidated Scottish Borders Local Plan 2011
D2 (Housing in the Countryside)
G5 (Developer Contributions)
G6 (Developer Contributions related to Railway Reinstatement)
Inf4 (Parking Provisions and Standards)

SBC Supplementary Planning Guidance
New Housing in the Borders Countryside Guidance Note 2008
Local Landscape Designations 2012

Recommendation by - Andrew Evans (Planning Officer) on 6th December 2012

SITE AND APPLICATION DESCRIPTION

This application for planning permission in principle seeks consent for the erection of a dwellinghouse on the North East of Buxton House, Selkirk, on land comprising of Eastfield Stables and riding arena. Buxton house is a modern detached 2 storey dwelling. The application site is generally rectangular shape (though its western boundary is irregular). The site extends to 0.52 hectares and is bound to the north by the

applicants paddock area, to the north east by the Dean Burn and adjoining tree belt, to the west by the grounds of Buxton House and to the south side by an un-adopted track which links with the adopted Goslawdales Road further west. The site forms part of the applicants existing small holding and stables. The applicants existing dwelling "Eastfield "is located on the far side of Buxton House. A drystone wall, hedging and fencing delineate the boundary of the site with the unadopted track. The existing stables building is a timber structure located at the northern part of the site.

The site is located within the Tweed, Ettrick and Yarrow Confluences Special Landscape Area. The site is located outwith the Selkirk Development Boundary set out in the Adopted Scottish Borders Local Plan.

Planning permission is now sought for a purpose built dwellinghouse to cater for the needs of the Lovatt family. The supporting statement sets out that the proposal is essential in order to give Mr Lovatt, who is wheelchair bound as a result of a spinal injury following an accident, a quality of life and the necessary privacy that cannot be provided for from the existing home. At present Mr Lovatts circulation is contained to such an extent that he can only access two rooms of his home. The supporting statement can be accessed on the Council Public Access Website, and should be read in full.

PLANNING HISTORY

Three previous in principle and outline planning applications were made for the erection of a dwellinghouse by the applicants.

Applications 05/01040/OUT, and 05/01826/OUT were both refused at the Eildon Area Committee on the grounds that the development site lay out with a defined settlement and did not relate appropriately to a building group with no substantiated economic need for the dwelling being demonstrated. Furthermore, in the interests of road safety the access road to the site was deemed inadequate to serve another dwelling. The second application (05/01826/OUT) was contested at appeal with the Scottish Ministers with the recommendation for refusal upheld.

A third application, 10/00162/PPP was refused under delegated powers. This refusal was subsequently subject to a Local Review. The Local Review Body (LRB) of the Council varied the reason for refusal. The LRB decision is discussed in more detail below, and can be viewed in full on the Public Access website.

These 3 previous application sites were all located on a smaller area of land than the current application, being located at the southern end of the current site, where it bounds the track.

ASSESSMENT OF APPLICATION

In support of this planning application, the applicant has submitted robust statements and supporting information in order to warrant the justification for a dwellinghouse. As with the most recent of the previous planning applications for a dwellinghouse at this site, the circumstances on seeking a new residence are somewhat different from the earlier two submissions and are wholly centred on medical grounds to provide the applicants with a purpose built dwelling which can suitably cater for their living requirements and continue to allow them to reside within their grounds. Information of an appraisal carried out by a structural engineer has been resubmitted and illustrates that the applicants have investigated the possibility of converting their existing property of Eastfield to cater for their now specific living needs, however from the conclusions drawn from this documentation the work involved appears both complex and costly with external access around the dwelling being problematic. Supporting information has also been resubmitted from medial practitioners confirming a consensus that a purpose built dwelling at this location is logical and will greatly assist the day to day lives of the applicants.

PLANNING POLICY

This is a planning application for the erection of a dwellinghouse which the Planning Department is required to assess against relevant development plan land use policies. The development site is not located within a defined settlement boundary and must be assessed against Policies H7 and H8 of the Consolidated Structure Plan 2011, Policy D2 of the Council's Adopted Local Plan 2011 and the Council's New Housing in the Borders Countryside Guidance Note 2008. Structure Plan Policy H9, relates to affordable and special needs housing, however this policy is applied where a shortfall has been identified through the Local Housing Strategy and can not be used in this assessment. Structure Plan Policy H7 and Local Plan Policy

D2 (Building Groups), requires new dwellings in the countryside to sufficiently relate to a building group comprising of at least three dwellinghouses.

Previous recommendations and Scottish Government Reporter decisions viewed this site being neither within or adjacent to an existing building group. The neighbouring Buxton House is positioned upon a plateau, with the ground to the north and east of the property decreasing dramatically, the approval of Buxton House was granted under the view that this dwelling would be the final residential development that this group at Buxton could accommodate as the building group had reached saturation point.

LOCAL REVIEW BODY DECISION

The Local Review Body of the Council, in considering the previous 2010 application on the site, took the view that there is a Building Group at Buxton, as defined by Structure Plan Policy H7, Local Plan Policy D2 and in the Approved SPG. The LRB Accepted that the site subject to the 2010 application was part of the building group at Buxton and fell within the area contained by its boundaries and sense of place. In particular, members noted the Council's SPG on New Housing in the Borders Countryside which states that "...Natural boundaries should take precedence over man made boundaries when defining a group" and felt that the north western boundary of the site was defined more readily by the Dean Burn and the adjoining mature tree belt than the topography of the garden to Buxton House or man made boundaries to the south west of the application site.

BUILDING GROUP

The LRB previously decided that the man made embankment of Buxton House formed the end stop to the built form of the building group. They concluded that the siting of a dwellinghouse in the area of the stables was not supportable as it could not be considered an appropriate addition to the building group. Nothing in this current submission would fundamentally alter that point. The building group at Buxton, in the most recent decision on the site by the LRB, was taken to extend to the mature planting belt by the Dean Burn, on the far side of the application site. The submitted analysis plan identifies this area. However, the opinion of the LRB in terms of the end stop of the building group is also highly relevant to the consideration of this application. The comments of the LRB in this regard, confirm that the groundwork embankment at the end of Buxton House formed the outer limit of the built up area of the building group. I am of the view that the current planning application site is not therefore in an area that can be supported. The limits of the built up part of the building group identified by the LRB do not extend to include the site.

I must therefore conclude that the proposed development is contrary to adopted Local Plan Policy D2, and contrary to Policies H7 and H8 of the Scottish Borders Consolidated Structure Plan 2009

APPLICANT SUBMISSION

Both the 2010 LRB application, and this current application has been accompanied by an assessment and justification as aforementioned that due to medical grounds a new purpose build dwelling is required for the applicants living needs, with this location providing access to their small holding and equestrian operations appearing logical. The agent for this application has submitted a detailed supporting statement which can be viewed in full on the Public Access Website.

APPLICANT CIRCUMSTANCE AS A MATERIAL CONSIDERATION

The Council must assess this application against the relevant land use policies. The personal circumstances of applicants can rarely be taken in to account when determining planning applications. The Council remains wholly sympathetic to the circumstances on which this application has been required to be made, Structure Plan Policy H8 and Local Plan Policy D2, dictates that residential proposals in a isolated rural location must be justified on strong economic grounds to be essential to the efficient operation of an accepted rural business, leaving proposals without this required justification to merit refusal.

In this case there is no compelling economic justification to merit the siting of a dwelling and unfortunately there is no provision for medical grounds to override accepted land use policies and for which reasons the proposal is deemed to fail to comply with New Housing in the Countryside Policies. Section 25 of the planning act requires that the Planning Authority in making any determination under the planning acts, regard is to be had to the development plan, and the determination is to be made in accordance with that

plan unless material considerations indicate otherwise. The Royal Town Planning Institute (RTPI) website contains some advice on material considerations, which states that the circumstances of an applicant should not be treated as a material consideration unless clearly and demonstrably relevant such as in terms of the adaptations required for mobility access to a dwelling for a physically disabled person.

The planning department would do all it can to find a suitable solution to allow for accommodation of a persons additional needs from a dwellinghouse. The circumstances in this case however differ. The adaptations required for a suitable dwellinghouse for the applicant are not what this application seeks to establish. The application seeks to establish the principle of a dwellinghouse on this specific site.

Two main tests are used when deciding whether a consideration is material and relevant:

- It should serve or be related to the purpose of planning. This means it should relate to the development and use of land.
- It should fairly and reasonably relate to the particular application.

The Council continues to recognize the clear medical case presented but must base its decision on the land use merits being the primary planning consideration of this assessment. It is not considered that these should be overridden by the applicant's case. The personal circumstances of the applicants, whilst being the driving factor behind the submission, are not a material consideration as set out in the Planning Act.

EXISTING SECTION 75 AGREEMENT

A legal agreement was entered into in 2000, relating to land at Eastfield, Buxton. The agreement prevents further development on the subjects. The agreement was entered into by Mr & Mrs McCudden, then of Eastfield. The agent contends that such an agreement could have been ultra vires. This point is not accepted by the planning authority. The agreement was entered into in good faith by both parties. In theory however, the Council and the current landowner would be able to enter into a minute of further agreement, varying the terms of the original agreement, should a planning application for a dwellinghouse on any of the affected land be deemed acceptable in planning terms.

OCCUPANCY RESTRICTIONS

I have given consideration to whether a new or varied legal agreement or planning condition on occupation could render this application acceptable, and conclude that it could not. The underlying policy conflict cannot be overcome in relation to this site.

ACCESS AND ROAD SAFETY

In terms of access, the Roads Planning Service has again objected to this planning application on the grounds of safety due to the unsuitability of the existing narrow road to cater for any additional traffic, with the route being well used by pedestrians. Previously this issue formed a reason for refusal, being upheld by a reporter, and this current proposal has not addressed the issue of adverse road safety implications, and therefore merits refusal on road safety grounds. Irrespective of the intended current occupation of the house, consideration must be given to potential road safety impacts.

OTHER MATTERS FOR CONSIDERATION

In the event that planning consent were granted, detailed matters of layout, siting, design, landscaping, and materials, as well as services, would have to be addressed via planning conditions. Furthermore, in terms of development contributions, the council has adopted policies with regards to education and affordable housing contributions, and the reinstatement of the Waverley rail route. In this case, the application is submitted on the basis of an untied open market dwelling. Contributions in terms of education and affordable housing would not be required for a single house development in this catchment. A Waverley Contribution would be applicable. In the event of a successful local review into this decision, members should note that a legal agreement would be required to ensure the payment of a Waverley Rail Line contribution.

REASON FOR DECISION :

The proposed development is contrary to Policy H7 and H8 of the Scottish Borders Consolidated Structure Plan 2009 and Policy D2 of the Scottish Borders Consolidated Local Plan 2011 in that the application site does not constitute an appropriate addition to the building group at Buxton and the requirement for a dwellinghouse on medical grounds does not justify a departure from development plan policy. Furthermore, in the interests of road safety in that the existing vehicular access to the site is inadequate.

Recommendation: Refused

- 1 The proposed development is contrary to Policy H7 and H8 of the Scottish Borders Consolidated Structure Plan 2009 and Policy D2 of the Scottish Borders Consolidated Local Plan 2011 in that the application site does not constitute an appropriate addition to the building group at Buxton and the requirement for a dwellinghouse on medical grounds does not justify a departure from development plan policy. Furthermore, in the interests of road safety in that the existing vehicular access to the site is inadequate.

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