

SCOTTISH BORDERS COUNCIL

**APPLICATION TO BE DETERMINED UNDER POWERS DELEGATED TO
CHIEF PLANNING OFFICER**

PART III REPORT (INCORPORATING REPORT OF HANDLING)

REF : 21/01344/FUL

APPLICANT : Mr Christopher Brass

DEVELOPMENT : Siting of 2 no. shepherds huts for short term holiday accommodation

LOCATION: Land East Of The Old Stables Lennel House
Lennel
Scottish Borders

TYPE : FUL Application

DRAWING NUMBERS:

Plan Ref	Plan Type	Plan Status
	Location Plan	Refused
	Proposed Elevations	Refused

NUMBER OF REPRESENTATIONS: 18

SUMMARY OF REPRESENTATIONS:

A total of 18 letters of representation, 17 objections and 1 support comment, have been received by the Planning Authority. This does not include multiple representations from the same household which equates to 19 letters in total. All issues raised have been considered. The key material planning considerations have been summarised below as follows:

- o The location of the proposed shepherd's huts;
- o Impact the proposed development would have on the visual amenities of the area;
- o Impact on amenity and privacy of neighbouring residential properties;
- o Pollution;
- o Impact on nature conservation;
- o Impact on listed buildings;
- o Water supply and drainage;
- o Restricted use of footpath;
- o Road safety.

Consultations

Access Officer: No objection. The Land Reform (Scotland) Act 2003 (LRA) introduced a right of responsible public access to most areas of land and inland water in Scotland. This gives everyone a right to take non-motorised access to walk, cycle and horse-ride over most land, by following the Scottish Outdoor Access Code.

Rights of Way are specifically protected by law under the Countryside (Scotland) Act 1967 sec. 46.

Anyone exercising their access rights must do so responsibly by following the Scottish Outdoor Access Code and land owners/managers have a reciprocal responsibility in respecting the interests of those exercising their rights.

Scottish Borders Council (SBC) has a statutory duty to uphold these rights.

SBC does not hold any records of a core path or right of way through this property, however members of the community claim to have used this path for many years and the previous owner cleared the path of vegetation to keep it open. The current owner has prevented access to the site by padlocking a gate and installing 2 wooden barriers.

The issue of the claimed right of way has not yet been resolved.

The shepherd's huts should therefore be sited far enough away from the line of the claimed right of way (orange line on map below) so as not to jeopardise any possible rights of access along this path.

Community Council: No response received at the time of writing this report.

Economic Development: No response received at the time of writing this report.

Flood and Coastal Management: No objection. They advise that the Indicative River, Surface Water & Coastal Hazard Map (Scotland) known as the "third generation flood mapping" prepared by SEPA indicates that the site is at risk from a flood event with a return period of 1 in 1000 years. That is the 0.1% annual risk of a flood occurring in any one year.

Review of the SEPA flood maps shows that only a small area along and near the south east boundary for the application site is indicated to be within the 1:1000 year flood envelope of the River Tweed.

The proposed locations for the huts are outside the indicative flood envelope with the one proposed nearer the river being located approximately 8 metres away from the indicative flood envelope.

They have no objection to the proposal on the grounds of flood risk. This is provided that the final locations of the huts will be as currently proposed or further away from the River Tweed.

Roads Planning Service: Objection. They have previously been unable to support applications for residential development served by this access due to the excessive gradients of the access track, lack of width to accommodate vehicular and pedestrian traffic on what is a right of way and finally the sub-standard junction visibility to the south west when exiting onto the A6112, which is obscured by the roadside wall.

They appreciate the applicant intends to discourage people arriving by private car, however this cannot be controlled by condition and in any case vehicular access will still be required to service the proposed holiday lets.

Visit Scotland: No response received at the time of writing this report.

PLANNING CONSIDERATIONS AND POLICIES:

Scottish Borders Local Development Plan 2016

PMD1: Sustainability

PMD2: Quality Standards

ED7: Business, Tourism and Leisure Development in the Countryside

ED10: Protection of Prime Quality Agricultural and Carbon Rich Soils

HD3: Protection of Residential Amenity

EP1: International Nature Conservation Sites and Protected Species

EP2: National Nature Conservation Sites and Protected Species

EP3: Local Biodiversity

EP7: Listed Buildings

EP10: Gardens and Designed Landscapes

EP13: Trees, Woodlands and Hedgerows

IS5: Protection of Access Routes

IS7: Parking Provision and Standards

IS8: Flooding

IS9: Waste Water Treatment Standards and Sustainable Urban Drainage

Supplementary Planning Guidance

Biodiversity 2005
Placemaking and Design 2010
Trees and Development 2008
Waste Management 2015

Recommendation by - Cameron Kirk (Assistant Planning Officer) on 14th December 2021

Site description

The application site is located to the south of the village of Lennel, which lies approximately 800 metres north east of the settlement of Coldstream. The application site is accessed via a steep access track from the public road (A6112). There is an existing agricultural building located to the north east of the application site. The application site is primarily an area of grassland with mature trees within and adjacent to the application site.

Residential properties lie to the north and north west, ancient woodland lies to the north east, agricultural land lies to the south and a nursing home and its grounds lie to the south west and west of the application site.

A promoted path (Council ref no. COLS/113P/2, right of way 113P) flanks the north boundary of the application site. A core path (Council ref no. COLS/43/6, right of way 43) connects with the aforementioned promoted path at the eastern corner of the application site and lies to the south of the application site, towards the River Tweed.

The application site lies to the west of Lennel, Charley's Brae Site of Special Scientific Interest, and to the north of River Tweed Site of Special Scientific Interest and River Tweed Special Area of Conservation.

The application site is identified as being an area of prime quality agricultural land. A category A listed building, Lennel House, lies to the south west of the application site and it also lies within Lennel Designed Landscape (SBC).

Proposed development

Planning permission is sought to site two shepherd's huts for short term holiday let accommodation. The proposed shepherd's huts would be sited approximately 14 metres to the east and approximately 33 metres to the west of the existing agricultural building located within the application site. The proposed shepherd's huts would measure approximately 5.5 metres (length) by 2.5 metres (width) by 3 metres (height). Each of the proposed shepherd's huts would provide accommodation for two people. The precise details for the external materials and colours for the shepherd's huts have not been provided.

The application relates solely to the siting of two shepherd's huts and no other alleged development which has taken place within the application site.

Relevant planning history

07/01332/OUT Erection of two dwellinghouses. Refused 25 September 2007.

08/00759/OUT Erection of dwellinghouse. Refused 22 July 2008. 08/00055/REF Appeal dismissed 19 May 2009.

20/00586/PREAPP - Pre-application enquiry.

Assessment

Principle of development

In order to establish the principle of development it must be assessed against Policy ED7: Business, Tourism and Leisure Development in the Countryside. Point b of Policy ED7 encourages development that is to be used directly for leisure, recreation or tourism appropriate to the countryside location, and where relevant, it is in accordance with the Scottish Borders Tourism Strategy and Action Plan.

Two shepherd's huts would be sited within the application site which would provide accommodation for two people per hut. The applicant has provided a supporting business case for the proposed development. They advise that the emphasis of the shepherd's huts would be off grid sustainability. They hope to attract couples who intend to have an active outdoor holiday, encompassing outdoor activities, such as, walking and cycling, rather than family groups who may be more car dependant. The applicant would discourage anyone from arriving by car. Instead, they hope that any visitors would arrive to the proposal by means of public transport.

The nature of development would be appropriate in this location and would provide an additional tourist facility within the Scottish Borders, which would, in turn, provide a degree of support to the local economy from visiting tourists. The general principle is considered to be acceptable subject to further policy consideration and technical matters below.

Layout design and materials

The proposed shepherd's huts would be small structures which would be of an appropriate scale, character and appearance that would relate well to this semi-rural setting. They are fairly typical of other shepherd's huts found throughout the Scottish Borders. No details have been provided for the external materials and colours for the shepherd's huts. This information would be sought by way of condition.

The proposed shepherd's huts would be visible within the immediate context and from the promoted path that flanks the north boundary of the application site. The application site is fairly well contained from the public road and village given the intervening buildings and mature planting. Therefore, it is not expected that the proposed development would unduly impact upon the composition or quality of the landscape character.

Built heritage

The application site is located to the north east of Lennel House, which is a category A listed building and it is located within Lennel Designed Landscape. Considering the scale and nature of the proposed development, it is not anticipated that it would have a significant adverse impact on the setting of the listed building or the designed landscape.

Impact on residential amenity

The proposed development would not unduly impact upon the daylight or sunlight of nearby residential properties, nor would it result in overshadowing.

The proposed shepherd's huts would be sited some 30 metres from the boundary of residential properties to the north. Given the intervening land, the access track/promoted path and boundary treatments separating the residential properties from the proposed shepherd's huts, it is not expected that the proposal would unduly impact upon the privacy of those residential properties. The nursing home to the south west of the application site would be some distance from the proposed shepherd's huts. Again, it is not expected that they would result in a loss of privacy to this facility.

In addition, concerns have been raised regarding the impact the proposed development would have on the amenity of neighbouring residential properties. The proposal would be fairly minor in scale which would provide accommodation for a total of four people at any one time. It is not anticipated that the proposal would generate excessive levels of noise for visitors staying in the huts.

It is understood that stoves would be installed to each of the proposed shepherd's huts. Stoves have the potential to create smoke and odour. Considering the scale of the proposed shepherd's huts it would be expected that any stoves to be installed would be domestic in scale. They would be located a sufficient distance from neighbouring properties. Therefore, it is not anticipated that any stoves to be installed would unduly impact upon the amenity of neighbouring residential properties. An informative would be attached pertaining to stoves.

In addition, concerns have been raised regarding the composting toilets that would be used to service the proposed shepherd's huts as it is felt that they would generate odour and pollution. It is understood that the composting toilets would be located within the proposed shepherd's huts. They should be used and maintained in accordance with the manufacturer's guidance. Suitable arrangements should be made to dispose of waste on or off site. Any legislation relevant to composting toilets must be adhered with to avoid odour or pollution.

Furthermore, concerns were also raised that camp fires would be lit within the application site. The applicant has stated that camp fires would be prohibited within the application site.

In consideration of the above, it is not expected that the proposed development would not unduly impact upon the amenity or privacy of neighbouring residential properties. Should any of the aforementioned matters arise then Environmental Health would be able to deal with them under their statutory powers.

Roads

The application site is accessed from the public road (A6112) by a steep access track. The access track is also a promoted path (Council ref no. COLS/113P/2, right of way 113P). It is understood that the applicant has a right of access over the access track to access the application site.

The applicant advises that visitors would be discouraged from travelling to the proposed development by car. Instead they would be encouraged to use public transport. Lennel is set within a rural location and it has limited public transport infrastructure. No local bus service operates in Lennel other than the school bus. The nearest bus service would be to the eastern end of the settlement of Coldstream, some 800 metres away from the application site.

Roads Planning Service was consulted as part of the application process. They advise that they have previously been unable to support applications (07/01332/OUT and 08/00759/OUT) for residential development served by this access due to the excessive gradients of the access track, lack of width to accommodate vehicular and pedestrian traffic on what is a right of way and finally the sub-standard junction visibility to the south west when exiting onto the A6112, which is obscured by the roadside wall.

They appreciate the applicant intends to discourage people arriving by car, however this cannot be controlled by way of condition. Additionally, the existing access would be required to be upgraded to service the proposed development and the existing access track falls outside of the applicant's control. Therefore, it cannot be upgraded to an adequate standard to serve the proposal.

The proposed development fails to comply with Policy PMD2: Quality Standards in that it would be result in extra vehicular traffic on a sub-standard access to the detriment of pedestrian and road safety. Regrettably, the application cannot be support by Roads Planning Service.

Trees

There are mature trees located within and adjacent to the application site. An area of ancient woodland can be found to the north east of the application site. Concerns have been raised by objectors that the proposed development would adversely impact upon the woodland resource. The shepherd's huts would be sited where there are no trees. Therefore, it is not expected that the proposed development would unduly impact upon existing trees.

Ecology

The application site lies to the west of Lennel, Charley's Brae Site of Special Scientific Interest, and to the north of River Tweed Site of Special Scientific Interest and River Tweed Special Area of Conservation. The application site itself does not lie within any ecological designations. Concerns have been raised by objectors that the proposed development would impact upon nature conservation. It would not be possible to rule out the presence of any protected species within the application site without a Preliminary Ecological Appraisal first being undertaken by a suitably qualified professional to establish the presence of any such species. Considering the proximity of the application site to the aforementioned ecological designations, it would be appropriate for a Preliminary Ecological Appraisal to be undertaken to establish if any species are

present on site and whether any further surveys or mitigation would be required, before any development could commence, should the application be granted.

As the Planning Authority are unable to support the application based on Roads Planning Service's response, the Planning Authority felt that it would be unreasonable to request further information pertaining to nature conservation from the applicant, as this would be an onerous request, in terms of time and money, when they Planning Authority is inclined to refuse the application. Therefore, this information has not been requested by the Planning Authority. All matters pertaining to nature conservation are still outstanding and the Planning Authority cannot dismiss any claims that the proposed development would not unduly impact upon wildlife or the natural environment.

Rights of way

A promoted path (Council ref no. COLS/113P/2, right of way 113P) flanks the north boundary of the application site. A core path (Council ref no. COLS/43/6, right of way 43) connects with the aforementioned promoted path at the eastern corner of the application site and lies to the south of the application site, towards the River Tweed.

A number of objectors raised concerns over an alleged footpath that runs through the application site, connecting the core path to the south west to the promoted path to the north east. The Council's Access Officer was consulted as part of the application process. They advise that the Council does not hold any records of a core path or right of way through the application site. However, members of the community claim to have used this path for many years and the previous owner cleared the path of vegetation to keep it open. The applicant is understood to have prevented access to the site by padlocking a gate and installing two wooden barriers.

It is understood that the Council were already aware of this issue prior to this planning application being submitted. The issue of the claimed right of way has not yet been resolved. Nonetheless, any resolution of the claimed right of way does not fall within the remit of this planning application.

The Access Officer advises that the shepherd's huts should therefore be sited far enough away from the line of the claimed right of way so as not to jeopardise any possible rights of access along this path. The proposed shepherd's huts would be sited a sufficient distance away from the path in question as to not inhibit its use.

Waste

Any waste generated by the proposed development would have to be dealt with in an appropriate manner. The applicant has stated that only general 'household' waste would be generated by the proposed development. Their intention is to ensure this waste is recycled on site and stored in separate containers, such as marked 'wheelie bins' and emptied weekly. A waste management plan would be secured by condition to ensure that the precise details for dealing with waste are submitted to and agreed by the Planning Authority.

Flooding

The Council's Flood and Coastal Management Officer was consulted as part of the application process. They advise that the Indicative River, Surface Water & Coastal Hazard Map (Scotland) known as the "third generation flood mapping" prepared by SEPA indicates that the site is at risk from a flood event with a return period of 1 in 1000 years. That is the 0.1% annual risk of a flood occurring in any one year.

Review of the SEPA flood maps shows that only a small area along and near the south east boundary of the application site is indicated to be within the 1:1000 year flood envelope of the River Tweed. The location for the proposed shepherd's huts would fall outwith the indicative flood envelope, with the shepherd's hut to the east of the agricultural building being located approximately 8 metres away from the indicative flood envelope.

They have no objection to the proposed development on the grounds of flood risk provided the shepherd's huts are located as indicated on the submitted drawing. In light of their response, it is not expected that the proposed development would take place in an area susceptible to flooding.

Prime quality agricultural land

The application site is identified as being an area of prime quality agricultural land. The application site is not used for arable or livestock farming at this time. The proposed development would be minor in scale and would only cover a small portion of the application site. The shepherd's huts not preclude other areas of the application site being used for arable or livestock farming. The proposed structures could be easily removed at a future time should there be a desire to use the land for farming where they are sited.

Conclusion

In consideration of the above, the development is contrary to Policy PMD2 of the Scottish Borders Local Development Plan 2016, in that the proposed development would generate extra vehicular traffic on a sub-standard access to the application site to the detriment of pedestrian and road safety. It is therefore recommended that the application be refused.

REASON FOR DECISION :

The development is contrary to Policy PMD2 of the Scottish Borders Local Development Plan 2016, in that the proposed development would generate extra vehicular traffic on a sub-standard access to the application site to the detriment of pedestrian and road safety.

Recommendation: Refused

- 1 The development is contrary to Policy PMD2 of the Scottish Borders Local Development Plan 2016, in that the proposed development would generate extra vehicular traffic on a sub-standard access to the application site to the detriment of pedestrian and road safety.

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