

Appeal Decision Notice

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Decision by Edward Hitchings, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: P/PPA/140/411
- Site address: land to the east of Lennel House, Lennel, Coldstream, Berwickshire TD12 4EX
- Appeal by Mr H.Fleming against the decision by Scottish Borders Council
- Application for outline planning permission 08/00759/OUT dated 25 April 2008 refused by notice dated 22 July 2008
- The development proposed is the erection of one dwelling for use by a person last employed in an agricultural enterprise
- Application drawings: 1:2500 site plan, level survey and cross-section of access
- Date of hearing: 7 May 2009

Date of appeal decision: 19 May 2009

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**Decision**

I dismiss the appeal and refuse outline planning permission.

**Background**

Lennel House is a grade A listed building with extensive landscaped grounds that include a substantial stable block, garden features and internal and boundary walls. The appeal scheme includes a visibility improvement that would require the setting back of about 38 metres of the north-eastern end of the roadside boundary wall to provide a visibility splay for vehicles leaving the appeal site. The council considered this wall to be part of the grade A listing of the house, and that its rebuilding on a new line would require a separate listed building consent. However, the appellant argued that it formed part of a separate curtilage at the time of the listing in 1971 and, therefore, was not included in the listing. Local residents produced evidence to the contrary. It is not for me to make a definitive ruling on this point, but for the purposes of this appeal I shall regard this roadside wall as being listed as part of the curtilage of the house.

The council and others queried whether the appellant has the necessary legal rights to carry out his proposed improvements to the access including the creation of the visibility splay. These are shown by the submitted plans to be outside the appeal site and outside his ownership. It would be for the appellant, before implementing any permission, to satisfy himself that he has the necessary private rights. I take the view that the public interest could be protected by ensuring, by condition, that access improvements are completed before other works on site begin.



## Reasoning

1. The determining issues in this appeal are: (1) whether the proposal accords with policies H5 and H6 of the Scottish Borders Structure Plan (SP) and policies D2 and BE1 of the adopted Scottish Borders Local Plan (LP); and notwithstanding (2) whether approval or refusal is justified by other material considerations.
2. The relevant policies, in particular LP policy D2, with associated supplementary guidance (New Housing in the Borders Countryside 2008), define exceptions to the normal presumption against development in the countryside. There are 2 categories relevant to this case, one that permits additions to building groups and the other that permits dwellings for use by a person last employed in agriculture that releases another house for agricultural occupation. The latter is a refinement of SP policy H6 that permits "... houses essential at that location for the needs of agriculture ...".
3. There is no doubt that, for the purposes of this policy, Lennel is a building group and that, in principle, the addition of a house to this group would be acceptable. However, the site must also meet the tests of being well related to the existing group, and it should also have no unacceptable adverse impacts on the landscape or natural heritage.
4. I found Lennel to be composed of 3 main elements, Lennel house and grounds, the Lennel housing group, and Lennel Brae. To my mind, retaining the distinctive character of each element is important to protecting the special character of the settlement as a whole. The landscaped grounds and formal gardens of Lennel House occupy a long length of hillside on the west side of the Tweed valley stretching from the main road on the rim of the valley down to the edge of the flat valley floor. Facing southeast across the valley, the house effectively protects its exclusiveness and privacy by the long wall along the main road. The Lennel housing group lies at the northern corner of the grounds of Lennel House and consists of a cluster of houses and traditional cottages around the junction of Oxenrig Lane with further houses and bungalows extending to the north, mainly on the east side of the lane.
5. Lennel Brae begins with a small open area adjoining the main road that has the character of a village green and is furnished with a bench and a seat facing southeast across the valley. From this point a track, agreed to be a public right of way, drops steeply and curves downwards into the floor of the valley and extends to the edge of the river. On the northeast side of the track is a steep open bank below the gardens of 2 houses on the main road with woodland beyond. On the opposite side, behind a wall, are enclosures that rise up to the edge of the formal terraced gardens of Lennel House.
6. The appeal site is the lowest of the enclosures behind this wall. A house in the position shown on the site plan would be only about 50 metres from the closest houses on the main road. However, it would have no close visual relationship with these buildings or the rest of the housing group because it would be about 13 -14 metres below the main road with intervening banks and vegetation. Consequently, I do not consider that a house here would be well related to the group. Although the boundary wall of the gardens continues below the site and there is an existing farm building close to it, these are set amongst trees at a lower level. They have little impact on the character of the brae as a whole that, within a short distance from the main road, becomes deeply rural with a mix of attractive trees and woodland and open pasture on the valley floor. A house in the position proposed with all the associated domestic elements, including parking and the necessary improvement of the track to a higher standard, would urbanise the central part of the brae

and detract significantly from its informal landscape character. It would also intrude into the middle ground of the pleasant view of the Tweed valley from the small green at the top of the brae.

7. The appellant was previously employed in agriculture as a partner and tenant of the 280 hectare Lennelhill Farm, but the partnership and tenancy had been terminated by his landlord and he had been forced to give up the farmhouse. He is now self-employed as a contract farm worker and is now accommodated at a house he owns in Greenlaw. He still owns the agricultural building adjoining the site and about 4 hectares of grazing land that are currently managed as part of another farm. He made a case for a house on this site based on this personal history and current circumstances rather than on the need to manage this land.

8. Although not arising from a more normal retirement situation, the circumstances leading to the loss of the appellant's former home fitted well with the criteria in that it released an existing house for continued agricultural use. However, the council's normal practice of requiring a section 75 agreement to tie the vacated house to the agricultural business, and to restrict its occupancy to a person solely or mainly employed in agriculture, cannot now be implemented due to the separation of ownership. There is no evidence that the appellant's current housing in Greenlaw is inadequate, and I am not convinced that he would be unable to pursue his current occupation from that location. A particular difficulty is that, in the absence of a functional agricultural requirement, a permanent house on this site lacks justification, because, unlike a retirement home on a viable agricultural unit, it is unlikely to be suited to meeting the requirements of an agricultural worker in the long term.

9. Furthermore, the last section of LP policy D2 requires that, in all instances of countryside housing referred to in the policy, there must be no negative impact on the landscape. My earlier conclusion on the landscape impact reinforces my view that the personal circumstances of the appellant do not justify a new dwelling on this site.

10. In coming to this conclusion I have also taken into account SP policy H5. Outwith defined settlements, but associated with existing building groups, it notes that new housing should be supported if it is in accordance with the supplementary planning guidance 'New Housing in the Borders Countryside'. The proposal does not comply with the advice that extensions to building groups should not be detrimental to the landscape characteristics or scenic quality of an existing group. Although Lennel is served by public transport and the appellant intends to build an energy efficient building, this does not outweigh the landscape objection.

11. Turning now to the effect on Lennel House and its setting, I was made aware that the council is still considering proposals for housing to the east of the stables, but that the current scheme would not involve re-siting of the north-eastern section of the roadside boundary wall. During my site visit, I noted that visibility to the east at the main road entrance is adequate, but to the west I have no doubt that the setting back of the wall, as the appellant proposes, would be necessary to create a safe egress from the proposed house. This part of the wall is not visible from Lennel House, but nevertheless it is an integral part of the long wall that, together with the side wall of the stable block, runs in parallel with the road. This part of the wall is an essential part of the character of the grouping around the road junction where the adjoining houses and cottages are grouped with it and the green at the top of Lennel Brae.

12. Although I do not doubt the appellant's intention to rebuild as near to the same quality and style as possible, I believe that it would still look like a modern replacement built to create a modern visibility splay. Aside from the loss of the original structure (a matter more relevant to any necessary listed building consent application), I consider that part of the existing character of the grouping around the junction would be lost.

13. I accept that improved visibility would benefit any agricultural or forestry vehicles that might make use of the track and other vehicles servicing a small sewerage installation, but do not consider that this small number of movements adds significant justification to the case for an improved visibility splay.

14. The appeal site is an overgrown enclosure sloping down from the edge of the Italianate garden, situated in the southeast corner of the grounds of Lennel House. I have no reason to doubt that the small colonnaded pavilion on the upper side of this garden, with stone balustrade balcony above, with steps leading down on each side, are part of the curtilage and grade A listing of Lennel House. Although I did not have access to this balcony, I judge that at least the roof of a house on the appeal site would intrude into fine views of the Tweed valley from this balcony. I doubt that this relationship is directly comparable to the permission at Nisbet House, Duns, referred to by the appellant, where 2 houses have been allowed next to a walled garden. Whilst I accept that the Italianate garden appears to be currently disused, I consider nevertheless that there would be some harm the setting of the listed building that is supportive of my conclusion in this case.

15. I found the existing access track to be about 2½ metres wide in its narrower central section. The council has suggested that it would be necessary to widen it to 3.7 metres to cater for traffic to the new house and the public right of way. I doubt that, in practice, such a significant widening would be necessary for the small number of vehicle and pedestrian movements. However, a modest widening to at least 3 metres would be necessary to allow a car to pass a pedestrian. Even this modest widening would have a significant adverse effect on the character of the brae, which in the narrow central section has a steep bank on one side and a wall on the other.

16. The council was also concerned by the gradient and considered that at a maximum of 1:5¾ this would be unduly steep for emergency vehicles, but were unable to point to any published standards to support their case. I believe that although the route is steep, providing that it were widened to about 3 metres and the current loose surfacing replaced by either concrete or a tar bound surface over the steeper sections, it would be capable of accommodating emergency vehicles.

17. I conclude that the proposal would be contrary to the development plan, in particular to LP policy D2, because it would not be well related to an existing building group and would have an adverse impact on the landscape, and to LP policy BE1 because the scheme would not maintain the special architectural and historic quality of the boundary wall and because the setting of the Italianate garden would be adversely affected by the scheme. I have considered all other material circumstances raised in writing and at the hearing, including the personal circumstances of the appellant, but find nothing to justify a departure from the development plan.



Reporter