

## 21/01344/Ful Siting of 2 x Shepherd's Huts at Land at Lennel, Coldstream

I am the applicant in this case and would like to respond to the comments made by Keith Patterson (Roads Planning) and Keith Robeson (Outdoor Access Officer)

Please add the following guest response to the portal for public viewing:

### Roads (Keith Patterson)

Mr. Patterson has objected to the proposal as he feels the access track to the property is unsuitable. Despite the fact that guests will **NOT** be allowed to arrive on site by vehicle, he states that no planning condition can prevent people arriving by car. That may well be the case, but I can categorically state that **NO** guests will arrive on site by vehicle, *as they simply can't*. There isn't the facility for them to park on site and the access track simply isn't suitable for anything other than a 4x4 vehicle. I have never stated that vehicle use would be integral to the application, quite the opposite in fact.

In addition, given the amount of scrutiny of this site from nearby residents, I have no doubt whatsoever that any guests arriving by car would immediately be reported to the council.

**The ethos of no vehicles allowed sits perfectly with my target audience of walkers, attracted to the area to participate in the newly announced Tweed Trail, which is heralded by Scottish Borders Council. If guests are walking the length of the Tweed, from source to sea, they couldn't possibly have vehicles. I hope this will alleviate concerns expressed by Mr. Patterson and I invite him to respond having read this.**

My land is some 1.67 acres in size. This application was *never* intended to change the use of the **WHOLE** land and I continue to have a right (by vehicle or on foot) to use the access track down to my land. There is a cowshed already situated there and I will lawfully continue to use the track by vehicle to access my land regardless of the outcome of this planning application. So what would be the problem in my combining attending my land with servicing the huts at the same time? If I am already attending my current set up, there would be no increase in traffic on the track whatsoever.

### Rights of Way (Keith Robeson)

This seems to be the main bone of contention in this case, particularly with the objectors. The legal position is this: There is no legal right of way nor has there ever been any legal right of way across my land. There are no core paths. There are no adopted paths. There is no application to make a right of way. Therefore, as indicated by Mr. Robeson in his remarks, there are no rights of way still to resolve.

Aside from rights of way, the Land Reform (Scotland) Act 2003 does indeed promote responsible public access to land in Scotland. This is commonly referred to as 'The Right to Roam'.

However, Section 6 of the act states:

**6Land over which access rights NOT exercisable**

(1)The land in respect of which access rights are not exercisable is land—

(a)to the extent that there is on it—

**(i)a building or other structure or works, plant or fixed machinery;**

(ii)a caravan, tent or other place affording a person privacy or shelter;

(b)which—

**(i)forms the curtilage of a building which is not a house or of a group of buildings none of which is a house;**

(ii)forms a compound or other enclosure containing any such structure, works, plant or fixed machinery as is referred to in paragraph (a)(i) above;

(iii)consists of land contiguous to and used for the purposes of a school; or

(iv)comprises, in relation to a house or any of the places mentioned in paragraph (a)(ii) above, sufficient adjacent land to enable persons living there to have reasonable measures of privacy in that house or place and to ensure that their enjoyment of that house or place is not unreasonably disturbed;

(c)to which, not being land within paragraph (b)(iv) above, two or more persons have rights in common and which is used by those persons as a private garden;

(d)to which public access is, by or under any enactment other than this Act, prohibited, excluded or restricted;

(e)which has been developed or set out—

(i)as a sports or playing field; or

(ii)for a particular recreational purpose;

(f)to which—

(i)for not fewer than 90 days in the year ending on 31st January 2001, members of the public were admitted only on payment; and

(ii)after that date, and for not fewer than 90 days in each year beginning on 1st February 2001, members of the public are, or are to be, so admitted;

(g)on which—

(i)building, civil engineering or demolition works; or

(ii)works being carried out by a statutory undertaker for the purposes of the undertaking,  
are being carried out;

(h)which is used for the working of minerals by surface workings (including quarrying);

(i)in which crops have been sown or are growing;

(j)which has been specified in an order under section 11 or in byelaws under section 12 below as land in respect of which access rights are not exercisable.

(2)For the purposes of subsection (1)(a)(i) above, a bridge, tunnel, causeway, launching site, groyne, weir, boulder weir, embankment of a canalised waterway, fence, wall or anything designed to facilitate passage is not to be regarded as a structure.

Section 6(1) (a) (i) and (b) (i) apply in this instance. There is also legal authority in the case of *Gloag v Perth and Kinross County Council (2007)*. Therefore, the land is outside the right to roam legislation.

Mr. Robseon is aware of all of the above but continues to remain unbiased. His comments on the whole are moot and fall outside material planning considerations.

Mr. C. L. Brass LL. B (Hons)

Applicant

23/9/2021