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Ms Louise McGeoch
Clerk to the Local Review Body
Scottish Borders Council

10th February 2022

BY EMAIL ONLY

Dear Ms McGeoch

Thank you for your recent correspondence and passing on third party comments of 1st February. We are grateful for the opportunity to respond to those comments.

The Appellant is mindful that their case has already been set out for the Local Review Body at great length in both the Planning Statement and Local Review Statement and so endeavour to keep this representation concise. Where possible submitted Statements will be referenced for information already disclosed as we consider that meaningful revision is not required.

Principle of Development

Perhaps the most important point to convey is that both comments submitted in objection have falsely attempted to cast doubt on the existing barn on-site being part of the local built environment. The comments of 19th January argue that the site is not brownfield, while the comments of 25th January describe the existing local built environment while selecting to ignore the barn on-site.

The comments of 19th January have correctly identified the definition of brownfield land provided in the Glossary of Scottish Planning Policy (SPP) 2014 as:

"Land which has previously been developed. The term may cover vacant or derelict land, land occupied by redundant or unused building and developed land within the settlement boundary where further intensification of use is considered acceptable."

However, the interpretation of this definition in those comments is seriously mistaken. Land which has been previously developed in the countryside does not require to be vacant before being considered to be a brownfield site, for planning purposes. Such a definition would preclude any actively used existing building outside a defined Development Boundary from being considered to be brownfield and would almost completely prejudice any redevelopment of existing farmyards.

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The planning system fundamentally distinguishes between greenfield and brownfield land. All existing buildings which are still in use – including in the countryside – are considered to be brownfield; while vacant and derelict land and buildings can be considered to be brownfield depending on their physical condition and whether they are considered to be abandoned or not (*“the term may cover”*).

As the existing barn on-site is substantially intact and remains in low level use the site unequivocally represents brownfield land, in planning terms.

The importance of including all existing buildings in any analysis of a local built environment is obvious and therefore there is no need to labour this point.

The comments have alleged untruthfulness on the part of the Applicant and their agent by omitting the slighter and weaker elements of the boundary treatment of Deuchar Mill Cottage. A photograph showing clear visibility between the site and existing dwellings in the Building Group has been included in one set of comments.

While the coniferous trees on the boundary of Deuchar Mill Cottage are considered to be insufficient in scale to represent a distinct landscape feature; they are the strongest element of that boundary. This being the case there is no requirement for the Appellant’s case to address weaker elements of the boundary.

The comments of 25th January set out a rationale for the boundary of Deuchar Mill Cottage not being distinctly defined in order to allow views of surrounding countryside. It is noted that these comments were not prepared by the owner of Deuchar Mill Cottage. However, limiting the extent and scale of a boundary to allow views from an existing dwelling is entirely consistent with treating the boundary of a residential curtilage and completely incompatible with establishing a distinct landscape feature which encloses an existing Building Group. The rationale presented in those comments – assuming it is correct – represents a clear and substantial commendation of the Appellant’s case.

Further, commenters have raised complaint that they believe the proposed development would create an undesirable view. This complaint has been made while ignoring the commenters other complaint that the existing barn on-site is unsightly. Notwithstanding the clear contradiction therein, the planning system does not afford any person a ‘right to a view’ and therefore no weight can be given to any complaint to that effect.

Transport

It is noted that both commenters are upset by the construction of the new access track serving the application site. However, the Planning Application which is subject of this Notice of Review proposes the track. It is right and proper that the Local Review Body be allowed the requisite time to consider whether or not to allow the appeal and grant planning permission.

It has been alleged that “the plan submitted” is erroneous and deceptive, partly owing to account not being taken of a “blind bend to the east”. A Visibility Splay Plan prepared by Cundall (available in Appendix 2 of the Local Review Statement) explicitly establishes that the visibility sightlines available at the new access do not rely on land or road space beyond the bend to the east – which lies over 120 metres from the access.

The extent to which the A708 is used by motorbikes is not a material consideration.

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It is noted that commenters believe the A708 has been incorrectly excluded from the Trunk Road Network. However, this is not a material consideration and addressing the complaint to Scottish Borders Council is procedurally incorrect. All enquiries on the adoption of new Trunk Roads should be directed to Transport Scotland. Applicants, Planning Officers, and Planning Committees are required to consider the Trunk Road Network as currently adopted.

This position is without prejudice to the right of the Council to push Transport Scotland to adopt any road in the Borders as a Trunk Road, now or in the future.

It is noted that the comments of 19th January have requested that Police Scotland be consulted on road safety. It is considered that there is no lawful basis to this request and the Appellant objects to further consultation of any Council Officer or partner, for two reasons.

Firstly, the response of the Roads Planning team of 1st June 2021 has already explicitly set the required standard for road safety, copied below:

"Visibility splays of 2.4 by 120 metres in both directions onto the public road from the access would be required, along with 120 metre forward visibility for vehicles travelling east, in order to react to a vehicle waiting to turn right into the development site."

This standard has been met by the application plans, as set out in paragraphs 3.18-3.28 of the Local Review Statement.

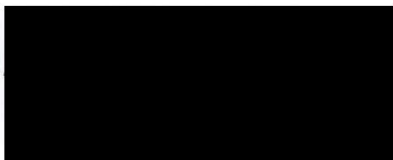
Secondly, Police Scotland are usually consulted by Planning Authorities (SBC and others spread across Scotland) on matters of crime prevention – not road safety. Unlike the highway authority, Police Scotland do not have a statutory duty to maintain roads development management expertise. It is unknown whether the Council have an arrangement with Police Scotland for the provision of road safety advice – indeed given that the Council maintain a Roads Planning team it would be entirely reasonable if there wasn't.

Conclusion

The Appellant is grateful for this opportunity to address the public comments of 19th & 25th January and thank the Local Review Officer, the Clerk to the Local Review Body, and her staff accordingly.

It is our hope that members of the LRB find these comments to be clear and helpful in completing their determination of the matter at hand.

Your sincerely



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