

SCOTTISH BORDERS COUNCIL

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

PART III REPORT (INCORPORATING REPORT OF HANDLING)

REF : 21/01257/FUL
APPLICANT : Mr A Elliot
AGENT : Stuart Aitchison
DEVELOPMENT : Erection of dwellinghouse
LOCATION: Garden Ground Of Kilknowe House
East End
Earlston
Scottish Borders

TYPE : FUL Application

REASON FOR DELAY:

DRAWING NUMBERS:

Plan Ref	Plan Type	Plan Status
LOC	Location Plan	Refused
PLAN 1	Proposed Plans	Refused
PLAN 2	Proposed Site Plan	Refused
PLAN 3	Proposed Elevations	Refused

NUMBER OF REPRESENTATIONS: 1

SUMMARY OF REPRESENTATIONS:

One representation has been received raising the following issues:

- o Access to this site is over private land;
- o Flooding from the burn;
- o Mature trees would have to be removed to build a house on this site.

CONSULTATIONS:

Roads Planning Service: I have no objections to this proposal. There is an existing vehicular access serving the site and there is ample ground within the site to accommodate the parking and turning required for a new dwelling.

Community Council: The site is of a suitable size to accommodate the proposed dwelling.

Scottish Water: In terms of water supply, there is currently sufficient capacity in the Howden Water Treatment works to serve the development. There is currently sufficient capacity for a foul only connection in the Earlston Waste Water Treatment Works.

Education and Lifelong Learning: No response.

Access Officer: No response.

Flood Protection Officer: In terms of information that this Council has concerning flood risk to this site, I would state 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 200 years. That is the 0.5% annual risk of a flood occurring in any one year.

The maps show the site is within the 1:200 year floodplain of the Turfford Burn. Additionally, it is also located immediately upstream of a road bridge and a foot bridge across the Turfford Burn.

The Earlston Flood Study produced for SBC in 2017, provides more accurate flood extents and flood depth than the indicative SEPA maps. The flood maps produced as part of this study indicate that during a 1:100 year event the site would be flooded up to 0.25m and the Georgefield Road, which is the only access and egress route for the site, would be flooded 0.25m - 1m in depth.

During a 1:200 year +CC change event the application site would be flooded up to 75cm. Georgefield Road would be flooded up to 0.25 - 1m, including the junction with East Green.

The road flooding stated above encompass Georgefield Road from East Green to past the junction with Turfford Park. Road flood depths of 0.25m or more are likely to greatly impede safe access and egress of a site.

Because of the site location upstream of two bridges and the indicated flood depth for the proposed dwellinghouse and the only access/egress road for the site during a 1:200 year +CC flood event, I would object to this development on flooding grounds.

In the submitted planning statement applicant refers to flooding of the site and the two dwellinghouses on the opposite side of the Georgefield Bridge; "The applicant has been in the house for 40 years and has not witnessed flooding to the top of the site or onto the proposed access over the mutual ground at the part of the ground near the existing building" and "On this lower ground planning permission has been granted for housing and if there was sufficient problems with flooding this would not have been granted".

With regards to any flooding that may have occurred in the past 40 years, as stated above, flood risk management legislation requires us to consider flooding which (statistically) may only occur every 200 years.

Additionally, the planning applications for the two houses the applicant refers to were received in 2002 and 2003 respectively, several years before the current Flood Risk Management Act was introduced in 2009.

Therefore I consider the development proposal incompatible with current legislation on flood risk and residential developments as set out in the Flood Risk Management (Scotland) Act 2009 and Scottish Planning Policy.

APPLICANT'S SUPPORTING INFORMATION:

o Supporting Statement: Flooding Risk

PLANNING CONSIDERATIONS AND POLICIES:

Local Development Plan 2016

PMD1: Sustainability

PMD2: Quality Standards

PMD5: Infill development

HD3: Protection of Residential Amenity

EP13: Trees, Woodland and Hedgerows

IS2: Developer Contributions

IS3: Developer Contributions Related to the Borders Railway
IS7: Parking Provisions and Standards
IS8: Flooding
IS9: Waste Water Treatment Standards and Sustainable Urban Drainage

Supplementary Planning Guidance:

Placemaking and Design 2010
Householder Development (Privacy and Sunlight) 2006
Trees and Development 2008
Development Contributions updated April 2021

Scottish Planning Policy. Revised December 2020
Flood Risk: Planning Advice

Recommendation by - Julie Hayward (Lead Planning Officer) on 28th September 2021

Site and Proposal

The site is situated to the rear of a single storey workshop that fronts onto East End (A6105) in Earlston. The site is garden ground with a gravel surface and lawn belonging to Kilnknowe House, a first floor flat above Elliot's electrical repair shop adjoining the workshop. There is a stone garage outwith the site abutting the north west boundary. Access is from the public road to the west via timber gates. There is a brick wall on the southern boundary and a timber fence on the eastern boundary. There are a number of trees within the site.

The shop with a flat above is to the north west, with a parking area and associated store/workshop on the north boundary. There are houses to the north east, with the garden of Brookfield running along the eastern boundary, and a play area to the south east. The Turfford Burn is situated to the south of the site with the industrial estate beyond. The nursery and access to the school are to the west.

The proposal is to erect a one-and-a-half storey dwellinghouse on the northern section of the site. This would have two bedrooms with pitched roof dormer windows. No details of the external materials have been provided.

The trees would be retained. Access would be via the existing access from the public road serving a parking area.

Planning History

91/00337/OUT: Site for dwellinghouse. Site Adjacent To A & J Elliot East End Earlston. Approved 27th August 1991.

93/00352/REM: Erection of dwellinghouse. Garden ground rear of Kilnknowe House Earlston. Approved 24th June 1993.

10/00644/PPP: Erection of dwellinghouse. Withdrawn 21st August 2015.

20/01334/PPP: Erection of dwellinghouse. Refused on 24th March 2021 for the following reason:

The proposal is contrary to policy IS8 of the Scottish Borders Local Development Plan 2016 in that the site is at significant risk of flooding. The erection of a dwellinghouse on this site would place persons and property at significant risk of flooding, where access and egress could not be safely achievable during a flood event.

Planning Policy

The site is within the development boundary for Earlston and so must be assessed against policy PMD5. Within development boundaries development on non-allocated, infill or windfall sites will be approved if certain criteria are met. These criteria will be assessed within this report.

One criterion is that the proposal should not conflict with the established land use of the area. This part of Earlston is characterised by a mix of uses including residential properties, commercial properties and education. The proposal would be in keeping with the character of the area.

Planning permission was granted to erect a house on the southern part of the garden ground in 1991 (outline) and 1993 (reserved matters) but this lapsed. An application for a house was submitted in 2010 but later withdrawn. A Planning Permission in Principle application for the same proposal as currently submitted was refused earlier this year due to the potential risk of flooding of the site.

Siting, Layout and Design

Policy PMD2 requires all development to be of high quality in accordance with sustainability principles, designed to fit in with Borders townscapes and to integrate with its landscape surroundings. The policy contains a number of standards that would apply to all development.

Policy PMD5 requires that the development respects the scale, form, design, materials and density of its surroundings; the individual and cumulative effects of the development should not lead to over-development or town cramming; the proposal should not detract from the character and amenity of the surrounding area.

The proposed dwellinghouse would be sited to the rear of properties on East End (A6105), the main road through Earlston, and would not have a road frontage as the house would be built on the northern part of the site to the rear of the workshop. This would constitute backland development. However, there are other examples of backland plots within Earlston.

The site is large enough to accommodate a house, garden ground, parking and access and so the proposal does not constitute over-development, though there would be a loss of garden ground for the Kilknowe House, the first floor flat.

Proposed floor plans and elevation drawing have been submitted that show a small, one-and-a-half storey house and demonstrates that adequate accommodation could be provided. These drawings are lacking in detail and should the application be approved, detailed floor plan and elevation drawings (including external materials) would be required. Assuming the development is of a high quality in terms of the design and materials, the proposal would not harm the visual amenities of the area.

Impact on Residential Amenities

Policy PMD5 states that the development should not result in any significant loss of daylight, sunshine or privacy to adjoining properties as a result of overshadowing or overlooking. Policy HD3 states that development that is judged to have an adverse impact on the amenity of residential areas will not be permitted.

The Council's Supplementary Planning Guidance: Guidance on Householder Developments July 2006 contains guidance on privacy, overlooking and access to light that can be applied when considering planning applications for new developments to ensure that proposals do not adversely affect the residential amenities of occupants of neighbouring properties.

There is a dwellinghouse to the east, Brookfield. This has a lean-to extension on the side elevation but no windows and there is a timber fence on boundary. The site plan shows the proposed house would have the same rear building line as Brookfield and no windows are proposed in the side elevation. There would be no significant overlooking or loss of light to this property.

There would be no impact on the first floor flat.

The storage/workshop building to the north is used in connection with the electrical repairs shop to store and repair washing machines so should not result in unacceptable noise nuisance. Only a roof light is proposed in the rear roof slope of the proposed dwellinghouse, no windows, which would help limit any noise nuisance.

Flooding

The Scottish Planning Policy (SPP) promotes a precautionary approach to flood risk. SPP states that the planning system should prevent development which would have a significant probability of being affected by flooding or would increase the probability of flooding elsewhere. The avoidance of flood risk, by not locating development in areas at risk of flooding, is recognised as a key part of delivering sustainable flood risk management.

The SPP sets out a flood risk framework to guide development. This establishes three categories of coastal and watercourse flood risk (little or no risk; low to medium risk; and medium to high risk) and the appropriate planning approach within each category. It sets out the types of development that may or may not be acceptable depending on the level of flood risk.

In areas where there is a Medium to High Risk, where the annual probability of coastal or watercourse flooding is greater than 0.5% (1:200 years), residential development within built-up areas would only be acceptable where flood protection measures to the appropriate standard already exist and are maintained, are under construction, or are a planned measure in a current flood risk management plan.

Policy IS8 of the Local Development Plan advises that as a general principle, new development should be located in areas free from significant flood risk and developments will not be permitted if it would be at significant risk of flooding or would materially increase the probability of flooding elsewhere. The ability of flood plains to convey and store flood water should be protected.

The site is at risk from a flood event with a return period of 1 in 200 years. That is the 0.5% annual risk of a flood occurring in any one year. The site is within the 1:200 year floodplain of the Turfford Burn and is also located immediately upstream of a road bridge and a foot bridge across the Turfford Burn.

The Supporting Statement submitted with the application advises that the applicant has lived in the house for 40 years and the top of the site and access has never flooded. When there is substantial rain the stream adjacent burst its banks and over flows onto the road and over the bridge but once this happens, the burn does not flood the top of the site as the ground beyond the bridge is lower and therefore there is adequacy for the water to be spread over a large area. Planning permission has been granted for a house on the site and if there was problems with flooding this would not have been granted.

The Council's Flood Protection Officer advises that Earlston Flood Study produced for SBC in 2017 provides more accurate flood extents and flood depth than the indicative SEPA maps. The flood maps produced as part of this study indicate that during a 1:100 year event the site would be flooded up to 0.25m and the Georgefield Road, which is the only access and egress route for the site, would be flooded up to 0.25m - 1m in depth. During a 1:200 year plus climate change event the application site would be flooded up to 75cm and Georgefield Road would be flooded up to 0.25 - 1m, including the junction with East Green. This road flooding encompass Georgefield Road from East Green to past the junction with Turfford Park. Road flood depths of 0.25m or more are likely to greatly impede safe access and egress of a site.

The Flood Protection Officer advises that because of the site location upstream of two bridges, the indicated flood depth for the proposed dwellinghouse and the only access/egress road for the site during a 1:200 year plus climate change flood event, they object to this development on flooding grounds.

With regards to any flooding that may have occurred in the past 40 years, as stated in the Supporting Statement, flood risk management legislation requires the Council to consider flooding which (statistically) may only occur every 200 years. Additionally, the planning applications for the two houses referred to were received in 2002 and 2003 respectively, several years before the current Flood Risk Management Act was introduced in 2009.

Therefore, the Flood Protection Officer considers the development proposal to be incompatible with current legislation on flood risk and residential developments as set out in the Flood Risk Management (Scotland) Act 2009 and Scottish Planning Policy. The proposal would place persons and property at risk, preventing safe access and egress to and from the site and so the application cannot be supported. This is consistent with the decision taken on the previous application for this site earlier this year and the policies, circumstances and information submitted with the application have not changed to warrant a different decision for this application.

Trees and Hedges

Policy EP13 seeks to protect trees and woodlands from development.

There are trees within the site (three cherry trees and one Norwegian Maple) and an approximate root protection area for the trees is shown on the site plan. There is also a row of trees outwith the site that overhang the southern boundary. It is desirable to retain these trees as they contribute to the visual amenities of the area and provide a degree of screening when the site is viewed from the west and south. Conditions to protect the trees during construction and to retain them thereafter would be required if the application is approved.

Access and Parking

Policies PMD2 and PMD5 requires that adequate access and servicing can be achieved. Policy IS7 requires that car parking should be provided in accordance with the Council's adopted standards.

The site would utilise the existing access onto the public road and is large enough to accommodate parking and turning. The Roads Planning Service has no objections subject to conditions securing the parking and controlling any gates.

Water and Drainage

Policy IS9 states that the preferred method of dealing with waste water associated with new development would be a direct connection to the public sewerage system.

The dwellinghouse would connect to the public water supply and drainage network and the exact details would be secured as part of the Building Warrant. Scottish Water has no objections in principle to this development but surface water drainage must be via a SUDS. This can be controlled by a condition, if the application is approved.

Developer Contributions

Financial contributions, in compliance with policies IS2 and IS3, are required in respect of education (Earlston Primary School: £2,709 and Earlston High School: £3,809) and the Borders railway (£2,093). These would be secured by a legal agreement should the application be approved.

Other Issues

The applicant is Mr M Elliot of Kilknowe House and the objection is from Mr James Elliot of East End Earlston. The site plan indicates that the applicant owns the land to which the application relates and the access and parking area to the rear of the shop and flat.

REASON FOR DECISION :

The proposal is contrary to policy IS8 of the Local Development Plan 2016 in that the site is at significant risk of flooding and allowing a dwellinghouse to be erected on this site would put persons and property at risk of flooding. In addition, access and egress could not be safely achievable during a flood event.

Recommendation: Refused

- 1 The proposal is contrary to policy IS8 of the Local Development Plan 2016 in that the site is at significant risk of flooding and allowing a dwellinghouse to be erected on this site would put persons and property at risk of flooding. In addition, access and egress could not be safely achievable during a flood event.

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