

SCOTTISH BORDERS COUNCIL

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

PART III REPORT (INCORPORATING REPORT OF HANDLING)

REF : 21/01262/FUL

APPLICANT : Ms Louise Weddell

AGENT : Timber Bush Associates Ltd

DEVELOPMENT : Removal of Condition 2 of planning permission 18/01000/FUL pertaining to use as holiday let accommodation

LOCATION: Warlawbank Steading
Reston
Eyemouth
Scottish Borders
TD14 5LW

TYPE : FUL Application

DRAWING NUMBERS:

Plan Ref	Plan Type	Plan Status
PL01	Location Plan	Approved

NUMBER OF REPRESENTATIONS: 3
SUMMARY OF REPRESENTATIONS:

CONSULTATIONS

SBC Education: No response.

SBC Environmental Health: Object to the removal of Condition 2 of the planning permission 18/01000/FUL for the reasons set out in the response to that application. The site is in close proximity to an agricultural building used for keeping livestock. This exposes the development to noise, odour, dust and insects that would adversely impact the amenity of the proposed dwelling. Whilst legislation exists in terms of section 79 of the Environmental Protection Act 1990 to protect the public from the impacts of statutory nuisance, the EHO is of the opinion that the existing legislation will not adequately protect residents from loss of amenity.

SBC Roads Planning: The Roads Planning response to the 2018 application raised no concerns over the principle of such a development and looked for conditions relating to the parking/access to be added to any consent granted. The number of vehicular movements associated with a holiday let accommodation and a private dwelling are similar making this proposal unlikely to negatively affect the surrounding roads.

Community Council: No response.

REPRESENTATIONS

Objections were received from three members of the public, from three separate households. The following issues were raised:

- the building referred to in the Environmental Health response to application 18/01000/FUL remains and is in constant use, including from the early hours of the morning
- water supply insufficient
- the property has not been marketed at an appropriate price
- application 18/01000/FUL included a business case do the figures provided still stand or were they misleading?
- vehicular access in poor condition/ requires upgrade.

PLANNING CONSIDERATIONS AND POLICIES:

Local Development Plan 2016:

PMD2: Quality Standards
 ED7: Business, Tourism and Leisure Development in the Countryside
 HD2: Housing in the Countryside
 HD3: Protection of Residential Amenity
 IS2: Development Contributions
 IS7: Parking Provision and Standards

Other considerations:

Development Contributions Supplementary Planning Guidance 2011 (Updated 2021)
 New Housing in the Borders Countryside Supplementary Planning Guidance 2008
 Privacy and Amenity Supplementary Planning Guidance 2006
 Planning Circular 4/1998: The Use of Conditions in Planning Permissions

Recommendation by - Paul Duncan (Assistant Planning Officer) on 8th October 2021

SITE DESCRIPTION

Warlawbank is located on Horsely Hill, around a mile north-west of Auchencrow village in East Berwickshire. The proposed site comprises a vacant yard area enclosed by old stone walling and the ruins of former buildings. The applicant's dwellinghouse (Warlawbank Steading) sits adjacent to the east. A modern livestock building is located a matter of metres from the site, to the north-west. It is not within the applicant's ownership and forms part of a separate party's farming operation.

PLANNING HISTORY

Relevant planning history at the application site can be summarised as follows:

11/00447/FUL - Planning permission granted for the erection of a dwellinghouse subject to condition 4 which restricted its use to provision of ancillary accommodation to the applicant's existing dwellinghouse (Warlawbank Steading). The condition also prevented the sub-division or sale of the consented building as a separate dwellinghouse. The reason for the condition was proximity to the aforementioned modern livestock building which lies to the north-west, which would impact residential amenity, and parking/ turning issues.

18/01000/FUL - Planning permission granted for the erection of a dwellinghouse for holiday let. The report of handling states that amenity issues resulting from proximity to the livestock building/ sheep handling facilities meant that the Environmental Health Service considered the proposed erection of a dwellinghouse for permanent residential use unacceptable in amenity terms. The permission is not thought to have been implemented, and would be due to lapse next year.

PROPOSED DEVELOPMENT

This application seeks to remove condition 2 of planning permission 18/01000/FUL.

This is the Council's standard holiday accommodation condition and it reads as follows:

The development hereby approved shall be occupied for holiday use only and shall not be used as a person's sole or main residence or as temporary or permanent residential accommodation. The occupation of the holiday units shall be restricted to genuine holidaymakers for individual periods not exceeding 4 weeks in total within any consecutive period of 13 weeks. The operator shall maintain an up-to-date register of the names of all holiday makers staying in the holiday units and their main home addresses. This information shall be made available for inspection at all reasonable times by an authorised officer of the planning authority.

Reason: The accommodation on the site is not designed for permanent occupation and permanent residential use would be contrary to the council's housing in the countryside policies.

A short supporting statement was provided with the application.

ASSESSMENT

The previous application (planning reference 18/01000/FUL) was assessed against the current Local Development Plan 2016. There have been no substantive changes to key policies or guidance of relevance to this application subsequently. The suitability of the condition can therefore be considered primarily against the Government's Circular 4/1998 (The Use of Conditions in Planning Permissions). The Circular is a material consideration and sets out government policy on the use of conditions in planning permissions.

- The Six Tests of Planning Circular 4/1998

The Circular details six tests which all conditions should meet. These are: necessity; relevance to planning; relevance to the development; enforceability; precision; and reasonableness.

The application proposes to remove condition 2 entirely. The supporting statement advances the applicant's case for removing the condition. Each test is considered below with reference to the applicant's case where relevant.

- Necessity

The condition secures control over the consented use of the development as a holiday let. Without the condition, the Planning Authority would lose this control.

The erection of a dwellinghouse for residential use has been consistently opposed by the Planning Authority and the Environmental Health Service on residential amenity grounds since the first application in 2011. As noted above, and in the Environmental Health Service response, the development would be located in close proximity to a livestock building/ sheep handling facility. The building is located around 5m from the site. This exposes the development to a risk of noise, odour, dust and insects that would be harmful to its amenity.

The responsibility for protecting residential amenity from development impacts lies with the Planning Authority, in conjunction with Environmental Health. As well as protecting existing residential properties, Local Development Plan policy HD3 (Protection of Residential Amenity) also requires future residential areas to have suitable levels of amenity. Local Development Plan policy PMD2 (Quality Standards) requires all development proposals to be compatible with neighbouring uses. Policy HD2 (Housing in the Countryside) requires compliance with the New Housing in the Borders Countryside Supplementary Planning Guidance. This states that sites close to working farm buildings will be given careful consideration to ensure no potential conflict.

Potential homebuyers and tenants reasonably expect new developments to offer modern standards of residential amenity and may not be familiar with local circumstances when buying a property. It is the Planning Authority's duty to ensure such standards are met. To ignore such matters would potentially leave the Planning Authority open to legal challenge and censure by the Ombudsman for failing to safeguard amenity for future residents.

The application supporting statement does not argue that circumstances locally have changed since the previous application. Objector comments indicate that the building remains in constant use, including from the early hours of the morning. Nor does the supporting statement put forward any challenge to Environmental Health Service's previous assessment that the residential use of the development would not

be acceptable. The Service considered the use of the property for holiday let, for short periods of time, to be acceptable. The terms and parameters of such uses would be very different to permanent residential occupation and less likely to cause long term amenity concerns. The Service has confirmed that its previous stance on residential use still holds.

The removal of the condition is considered contrary to Local Development Plan policies PMD2 (Quality Standards), HD2 (Housing in the Countryside), and HD3 (Protection of Residential Amenity) as the use of the development for residential purposes would be incompatible with neighbouring farm uses, including the working farm building, with unacceptable levels of amenity for occupants.

Furthermore, development contributions are currently sought towards local primary and high schools at this location. Removal of the condition would result in a loss of control over the consented development, enabling the creation of a new residential unit without addressing deficiencies in local education created as a result of the development. This would be contrary to Local Development Plan policy IS2 (Development Contributions).

- Relevance to planning and the development

The condition remains relevant to planning. It has a clear planning purpose, and also remains relevant to the development, to which it is directly related to.

The application supporting statement argues that the addition of a dwellinghouse would make the village more sustainable by creating a small community at Warlawbank. Whilst not a matter for this application, this is not a point of dispute. The erection of a dwellinghouse for residential use was found to meet the principal requirements of rural housing policy HD2 (Housing in the Countryside) as regards presence of a building group, capacity for that group to expand, and relationship of the development to that group. As noted above, the issue is the conflict of residential and farm uses in close proximity to each other, and resulting impacts on amenity. The argument put forward is of limited relevance.

The statement also argues that the property may now be desirable for homeworking. Working patterns have altered since the previous permission was granted, but this also has little relevance to the stated issues of concern.

- Precision

The condition wording is standard and its precision has not been challenged.

The condition could be made more precise by amending the wording of the reason for the condition to explain in more detailed and specific terms why this development could only be approved as a holiday let. As it is the removal of the condition as opposed to its variance that has been sought, this is not considered to be a necessary matter for this application.

- Enforceability

The condition is commonly used by the Planning Authority. It is tried and tested and its enforceability has not been challenged. Removing the condition would result in a loss of enforceability over the previously consented development.

- Reasonableness

The applicant's supporting statement makes various points which could be interpreted as challenging the reasonableness of the condition and the restriction on the use of the development as a holiday let only. The statement advises that the property has been on the market for several months and is proving difficult to sell as a holiday let development. No detailed information has been provided in this regard. Regardless, this is not a matter for this application. If the applicant's previous business case for the consented development no longer stacks up, this would not justify a departure from policy.

- Other Matters

The Roads Planning Service do not object to removal of the condition and would require the same standards to be met for a residential dwellinghouse as for a holiday let.

Issues around water supply, foul waste and drainage were rehearsed at the time of the previous application and would not be determinative issues for this application.

REASON FOR DECISION :

The proposed removal of Condition 2 of planning permission 18/01000/FUL would be contrary to Local Development Plan 2016 policies PMD2 (Quality Standards), HD2 (Housing in the Countryside), HD3 (Protection of Residential Amenity) and IS2 (Development Contributions) as the Planning Authority would lose control over the consented use of the development for holiday let purposes. The use of the development for residential purposes would be incompatible with neighbouring farm uses, with unacceptable levels of amenity for occupants, and would result in the creation of a new residential unit without addressing deficiencies in local education created as a result of the development. Other material considerations do not justify a departure from the Development Plan in this case.

Recommendation: Refused

- 1 The proposed removal of Condition 2 of planning permission 18/01000/FUL would be contrary to Local Development Plan 2016 policies PMD2 (Quality Standards), HD2 (Housing in the Countryside), HD3 (Protection of Residential Amenity) and IS2 (Development Contributions) as the Planning Authority would lose control over the consented use of the development for holiday let purposes. The use of the development for residential purposes would be incompatible with neighbouring farm uses, with unacceptable levels of amenity for occupants, and would result in the creation of a new residential unit without addressing deficiencies in local education created as a result of the development. Other material considerations do not justify a departure from the Development Plan in this case.

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