

**SCOTTISH BORDERS COUNCIL**

**PLANNING AND BUILDING STANDARDS COMMITTEE**

**4 JULY 2022**

**APPLICATION FOR PLANNING PERMISSION**

|                   |   |
|-------------------|---|
| <b>ITEM:</b>      | <b>REFERENCE NUMBER:</b> 22/00147/FUL & 22/00148/LBC  |
| <b>OFFICER:</b>   | Carlos Clarke   |
| <b>WARD:</b>      | Tweeddale East  |
| <b>PROPOSAL:</b>  | Erection of dwellinghouse with garage/plant room and formation of new access; and ground work to Lade to facilitate new dwellinghouse |
| <b>SITE:</b>      | Land North Of Pirn View, Leithen Road, Innerleithen   |
| <b>APPLICANT:</b> | Mr Alan McMath  |
| <b>AGENT:</b>     | Ericht Planning   |

**SITE DESCRIPTION**

The site comprises an area of woodland at the northerly end of Innerleithen, adjacent the Leithen Road. Through the site is a Category C Listed lade. There are residential properties to east, beyond the public road, and south.

**PROPOSED DEVELOPMENT**

Full Planning Permission is sought for a detached 1 ¾ storey house and detached garage, to be accessed from the Leithen Road. A related Listed Building Consent application has also been submitted for ground works to the C-Listed lade, though there are no direct alterations to the lade itself that require LBC. This report covers both applications.

**DETERMINATION BY PLANNING AND BUILDING STANDARDS COMMITTEE**

The planning application (22/00147/FUL) requires to be determined by the planning committee because it is subject to an objection from the Scottish Environment Protection Agency due to flood risk.

**PLANNING HISTORY**

Applications 21/00897/FUL and 21/00898/LBC sought consent for a similar development but were withdrawn in July 2021

**REPRESENTATION SUMMARY**

One representation has been submitted which can be viewed in full on *Public Access*. The main issues raised are:

- The plans are unclear regarding works to repair and ensure the lade over spilling occurrences are reduced/negated. Any restoration should be in keeping. Clarity would enable support

- The lade breaches in three places when running full
- The Council periodically clears the lade grill of debris, though the application does not recognise that local residents undertake this more regularly. Improved access would allow easier maintenance

## **APPLICANT'S SUPPORTING INFORMATION**

In support of the application, the following were submitted:

- Planning Statement
- Lade structural report
- Flood Risk Assessment (updated during processing of application)
- Ecological assessment (and red squirrel update)
- Design statement
- Commercial plantation report
- Restocking Direction variation
- Tree Survey
- Lease terms for off-site planting

During the application, a tree protection plan was also submitted

## **DEVELOPMENT PLAN POLICIES:**

### **Scottish Borders Council Local Development Plan 2016**

PMD1 – Sustainability  
 PMD2 – Quality standards  
 PMD5 – Infill Development  
 HD3 – Protection of residential amenity  
 EP1 – International nature conservation sites and protected species  
 EP2 – National nature conservation sites and protected species  
 EP3 – Local biodiversity  
 EP5 – Special Landscape Areas  
 EP7 – Listed Buildings  
 EP11 – Protection of Greenspace  
 EP13 – Trees, woodlands and hedgerows  
 EP15 - Development Affecting the Water Environment  
 EP16 – Air Quality  
 IS2 – Developer Contributions  
 IS5 – Protection of access routes  
 IS7 – Parking provision and standards  
 IS8 - Flooding  
 IS9 – Waste water treatment standards and SUDS  
 IS13 – Contaminated Land

## **OTHER PLANNING CONSIDERATIONS:**

Supplementary Planning Guidance:

Development Contributions (2011) Updated 2022  
 Green Space (2009)  
 Landscape and Development (2008)  
 Local Landscape Designations (2012)  
 Sustainable Urban Drainage Systems (2020)

Trees and Development (2020)  
Waste Management (2015)  
Placemaking and Design (2010)  
Scottish Borders Woodland Strategy (2005)  
Guidance on Householder Development (2006)

## **CONSULTATION RESPONSES:**

### **Scottish Borders Council Consultees**

**Roads Planning Service:** No objections. The plans show appropriate parking arrangements and junction visibility. The only thing missing from the plans is the construction specification for the proposed access over the existing unmade road verge. A condition and informative is recommended.

**Landscape Architect:** A number of surveys have been undertaken in support of this application:

The Tree Survey identifies that the trees on site have been managed for commercial timber production, the lower eastern half which is broadleaves, previously managed as coppice rotation for firewood, with the western half beyond the mill lade predominantly a conifer plantation of three separate species in relatively distinct areas. The tree survey identifies the majority of the broadleaved trees as Category C – of low quality and value, while recognising they have amenity value. It recommends the removal of the northernmost two thirds of the now mature commercial woodland to the west of the mill lade for safety reasons if the site is developed and suggests the majority of the coppiced trees to the east of the lade are of an acceptable condition and could be retained subject to a programme of management.

A Condition Statement and Woodland Management Report is restricted to the northernmost two thirds of commercial woodland on the west side of the mill lade. The consultant identifies that the woodland is mature, are beginning to display stability issues with windblown stems evident and that parts of the woodland are suffering from a notifiable pest infestation. The recommendation is for these parts of the woodland to be felled and suggests this would remain the recommendation whether the site is developed or not. The surveyor also identified evidence that red squirrel use the site.

A Red Squirrel Survey identifies evidence of red squirrel activity within the woodland and a red squirrel was noted during the survey. It acknowledged the Condition Statement and Woodland Management Report and made recommendations for ecological mitigation including obtaining a licence for disturbance of red squirrels, and protection of nesting birds during breeding bird season. Their recommended future mitigation for removal of commercial woodland included replanting the whole felled area (west of lade) with broadleaves and Scots pine and the installation of bird, bat and squirrel boxes therein.

The Landscape Architect does not disagree with the finding of the surveys and reports or the engineers report on the mill lade and the necessity to remove trees along the edge of the lade. The development should aim to limit adverse impacts on biodiversity value, ensure appropriate replacement planting and adhere to any planning agreements sought to enhance the woodland resource.

It is noted that the planning statement identifies that the applicant wishes to maintain good woodland cover over the site other than the area being developed for the house and garden ground. A Tree Protection Plan (TPP) as per BS5837:2012 is required,

clearly showing the development footprint, all trees that require to be removed to accommodate the development and all trees to be retained (based on the tree survey and showing Root Protection Areas.) To date none of the Site Plans show the proposed tree removals or differentiate between trees retained or removed. This will clarify how much tree cover can be retained on site to mitigate the visual effects of the development and help settle the house into the landscape.

If a tree management plan is a condition of consent, and demonstrates an appropriate strategy for successional woodland management and replacement to be undertaken, while maintaining a woodland structure, particularly at the outset of the development, she would have less concern about this development and would support a strategy of longer term enhancement of this woodland.

**Outdoor Access Officer:** There are no claimed rights of way on this area of land. Members of the Innerleithen community contacted the Council regarding activity on this site at the beginning of March. One of the matters that was brought to their attention was the existence of the path from Leithen road up and alongside the mill lade. The existence and promotion of route 3 in Paths around Innerleithen and Walkerburn does not affect evidence of use of the path by the mill lade. The Paths Around series promotes a selection of routes around settlements; they are not a comprehensive mapping of all routes that are used. Has no objection in principle, however, it would appear that the red dashed line in the site layout depicts the planning application boundary. If this is correct then the line of the path and the mill lade will fall within this boundary; it would be better if the application boundary was round the house and garden area only and the line of the path shown on the plans outside the house and garden boundary. The development boundary is in excess of land that is required to provide *sufficient adjacent land to enable persons living there to have reasonable measures of privacy* (LRSA ch2. S6(b)(iv)). Therefore, if people wish to exercise their responsible access rights then it is likely that, as the access Authority, the Council would seek to uphold these access rights. Clarification of garden boundary would, in the access officer's opinion, resolve potential issues that may arise.

**Ecology Officer:** No reply

**Education and Lifelong Learning Service:** No reply

**Environmental Health Service:** No reply

**Contaminated Land Officer:** The above application proposes the redevelopment of land which appears to have been associated with St Ronans Mill. This land use is potentially contaminative and it is the responsibility of the developer to demonstrate that the land is suitable for the use they propose. Recommends a condition requiring investigation, and remediation where required.

**Flood Officer:** In response to the initial application and supporting flood risk and lade report:

The site is at risk from a flood event with a return period of 1 in 200 years. Hydraulic modelling was produced for SBC as part of the Innerleithen Flood Study which demonstrates that the proposed development lies out with the 1 in 200 year (0.5%) inundation outlines for the Leithen Water. A Flood Risk Assessment shows that the site is at risk of flooding from the mill lade, caused by overtopping. The main flow path created as a result of overtopping is south of the proposed dwellinghouse, around the area of the proposed soakaway along the site boundary with the road south-east of the building. The highest flood depths in that area are expected to reach 0.05m to

0.15m. A small area in the North-West corner of the proposed building is also at risk of flooding, with modelled flood depths shown as 0.01m 0.04m. This could be mitigated with appropriate Finished Floor Levels and the use of water resilient construction methods for the floor and external walls

The FRA was produced using a site plan with different ground levels to the ones proposed. The site plan in the FRA shows a ground level immediately south of the dwellinghouse as 52.12. The 'Detailed Site Plan with Flooding' shows ground levels to the south of the proposed family room as 51.10. For reference, the area modelled to have the greatest flood depth is shown in the FRA as having ground levels of between 50.61 and 51.14. As it appears that the topography of the site is to be altered to create a lower, more level garden area, it can be expected that the flood depths south of the proposed dwellinghouse will be deeper than those modelled in the FRA. This means the flood envelope shown on the 'Detailed Site Plan with Flooding' is likely be inaccurate to some extent and flood waters could reach the southern part of the proposed dwelling during a 1:200 year event. Given the indicated change in proposed ground levels of approximately 1m, the FO would require the Finished Floor to be raised to at least 51.70m and would strongly recommend the soakaway is moved to outside the main flow path through the site to avoid it being choked or damaged during flood events.

A mill lade structural report was also submitted in support. The report states that the rubble wall which form the banks is in poor condition, including due to trees/invasive roots but complete or permanent removal of the vegetation on the banks is not recommended as the existing roots can help stabilize the banks. It further states that despite the need for repairs, the structure is sound and the proposal is possible without significant risk to the mill lade. The report identifies several areas within the application boundary where flow is obstructed due to minor slippages of the banks. The FO would strongly recommend the applicant repairs the identified slippages to reduce the risk of flooding to the site. Should approval be given, the FO would also ask for conditions to be attached to ensure that;

- The mill lade remediation is submitted to the Planning Authority for approval
- The retaining wall is waterproofed

The FO would also recommend that, to receive flood warnings from SEPA, the applicant signs up to FLOODLINE.

Following the above comments, and the submission of an updated Flood Risk Assessment, the FO advises that their position does not change significantly:

The site is at risk of flooding, from a flow path from the road. The levels of flood water are relatively low to ensure that a finished floor level provides a freeboard of at least 300mm above the 1 in 200 + Climate Change level, which is a suitable level to protect the property from flooding. The flood does extend round the house, with the land lowering proposed. However, the flood depths around the house are anticipated to be between 0 – 0.15m; the maximum depth adjacent to the house is shown to be 0.16m on the southern side. The FO floor level to be 51.7m as previously recommended, to ensure a suitable freeboard allowance.

With regards to compensatory storage, this is being provided in a suitable, pragmatic way and the FO has no issues with their proposal. The storage, given the low levels on site, taken up by the house and garage are very low, 1.32m<sup>2</sup>. The FO does note that the reduction of levels within the existing functional flood plain is not the recommended way to provide storage but in this case, he deems it appropriate (SEPA have objected on these grounds).

With regards to safe access and egress, the depths around the property are relatively low and the depths on the road are shown to be 0.15m, with a velocity of 0.8m/s; emergency vehicles could access the site through this level of flood water and a safe route to the other side of the road on foot is available; this is a route that will be lower than 0.3m in depth of flood water. There still exists a flood risk from the Mill Lade above though from any potential structural breach. This remains a concern for the FO but this should be picked up through the Building Standards process.

As previously outlined, the FO would look for conditions such as remediation plans for the lade to be submitted to the Planning Authority for approval and waterproofing of the lade to be submitted. However, he would be content if this type of detail was being picked up in Building Standards work as this may negate the need for any condition. On the soakaway point previously raised, it is considered this would be a sensible idea.

**Heritage and Design Officer:** Originally objected. Raised concerns including a substantial retaining wall that comprised a heavy engineered approach; the scale of the development; its proximity; the large and relatively complex form. A reduction in scale, and more naturalistic approach to levels was recommended.

Following submission of a revised proposal, the Heritage and Design Officer advises that the amendment provides greater separation. The retaining wall and more developed character of the site remains, though the scale of development is reduced, particularly to the rear. On balance, the development can be considered acceptable from a heritage perspective. Repair and maintenance of the lade should be conditioned, and details of the retaining wall.

## **Statutory Consultees**

**Innerleithen Community Council:** No reply

**Scottish Environment Protection Agency:** Originally objected in principle on the grounds that it may place buildings and persons at flood risk contrary to Scottish Planning Policy. The flood risk principle of paragraph 255 of Scottish Planning Policy promotes a precautionary approach to flood risk and flood avoidance. Paragraph 256 further states “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. Piecemeal reduction of the functional floodplain should be avoided given the cumulative effects of reducing storage capacity”.

The new buildings and the land around them are shown to be at risk of flooding based on the information submitted in support of the application. The proposed development will require some form of flood mitigation which is not sustainable and may increase flood risk to downstream properties. The hydraulic modelling undertaken shows that the downstream properties are already at risk. There are also uncertainties regarding maintaining the mill lade throughout the developments life and there will not be any safe, flood free access and egress to the proposed development.

Given the location of the proposed development within the functional floodplain SEPA do not consider that it meets with the requirements of Scottish Planning Policy and their position is unlikely to change. The cornerstone of sustainable flood risk management is the avoidance of flood risk in the first instance.

The site is partly within the functional floodplain based on SEPA maps. The outputs of the flood risk assessment demonstrates that the proposed development is within the functional floodplain. It is also stated within the FRA that if the proposed development

were to cut into the hillside this would increase the flood depth around the property. It has been described within the FRA that there has been damage to the Lade, A separate report recommends a maintenance regime. There is no information on who owns the lade or responsible for maintenance. The FRA demonstrates multiple overtopping locations, one just south of the development. No breach analysis has been undertaken. The current flood extent is along Leithen Road and within the building footprint. There is no safe flood free access or egress. They have records of flooding from the lade in June 2018.

Following submission of an updated Flood Risk Assessment, SEPA maintain their objection in principle for the reason given above, advising in response to it that:

The new buildings and the land around them are shown to be at risk of flooding based on the information submitted in support of the application. The proposed flood mitigation is not sustainable and contrary to Scottish Planning Policy (SPP) and SEPA guidance. There are also uncertainties regarding maintaining the mill lade throughout the developments life and there will not be any safe, flood free access and egress (on foot) to the proposed development. Given the location of the proposed development within the functional floodplain they do not consider that it meets with the requirements of Scottish Planning Policy and their position is unlikely to change.

The new 'highly vulnerable' residential development and the land surrounding the plot are shown to be at risk of flooding based on the information submitted in support of the application. There is no safe, flood free access/egress to the proposed development for persons on foot and a freeboard allowance of 600mm is not provided. They would only consider a development at this location for a lower vulnerability and would strongly suggest an alternative location outwith the functional floodplain is used. The outputs of this FRA demonstrates that the proposed development is still within the functional floodplain. The FRA has been updated with the proposed ground levels of the development. Within the FRA it is demonstrated within all scenarios that the proposed development is within the functional floodplain and will be surrounded by flood waters. It is demonstrated that there are multiple overtopping locations, one of which is just to the south of the proposed development. Previously they detailed that they hold a record of flooding due to a breach of the Mill Lade. Within the updated FRA a breach analysis has been undertaken that shows during this scenario the site is at an increased risk from the baseline scenario.

The current flood extent is along Leithen Road and within the building footprint. With the mill lade to the west and flooding along the road there is no demonstration of safe (dry), flood free access egress to the proposed development. It is detailed within the updated FRA that emergency vehicles can attend the proposed development. However, this is a matter for the Council to comment on. It is also detailed that the proposed balcony onto the mill lade could be used as a potential alternative route. However, this will lead onto the mill lade which may also be at flood risk. They do not feel this is acceptable and safe flood free access/egress must be provided for new developments.

Within the updated FRA compensatory storage is proposed. This does not deliver a neutral or better effect as this relies on 'floodplain excavation' i.e. excavating a hollow in the floodplain below the level of the development. It is likely that this would not replicate the characteristics of the floodplain and offer no storage potential. This is contrary to SPP which states that "Where built development is permitted, measures to protect against or manage flood risk will be required and any loss of flood storage capacity mitigated to achieve a neutral or better outcome". It is also not in accordance with SEPA Technical Guidance: Chapter 9. The proposed finished flood levels do not

provide the required 600mm above the 1 in 200 year flood extent. It is stated within the FRA that the maximum freeboard is currently 370mm.

### **Non Statutory Consultee**

**Architectural Heritage Society of Scotland:** No reply

### **KEY PLANNING ISSUES:**

The key planning issues are whether the proposed development constitutes appropriate infill in accordance with the Local Development Plan 2016, particularly as regards the siting, scale, form and design of the development; flood risk and compensatory storage; loss of woodland; effect on statutory access rights; and, impact on the Category C Listed lade.

### **ASSESSMENT OF APPLICATION:**

#### Principle

The site is within the settlement boundary and not designated. Policy PMD5 allows for the principle of residential infill development and, aside from access issues (noted below), there are no land use conflicts. The site does function as open space to an extent and its woodland has landscape value. However, as noted further below, there are balancing considerations that would reasonably lead to the conclusion that the principle of residential development is acceptable.

#### Built Heritage

The lade is C Listed. There are no alterations specifically proposed to it, so there is no specific need to apply for Listed Building Consent to build a house and retaining wall alongside it. Structural reports submitted with the application suggest the development should not undermine the structural integrity of the lade (subject to, for example, the retaining wall being properly designed, sequential construction, removal of trees damaging it and its future repair). Fundamentally, it is for the Building Warrant process to ensure the lade is not undermined, though the information provided here suggests this is feasible. A planning condition would reasonably establish the overarching requirement to protect the lade, however, as well as ensure tree removal is carried out with the same intention.

As noted by the Heritage and Design Officer, it is reasonable to ensure the future repair and maintenance of the lade for various reasons, including flood risk, and to balance out the visual effect of building a house alongside it which will have some impact on its setting (as noted below). A condition is recommended to secure a scheme. Granting the Listed Building Consent (albeit without specific works proposed to the lade at this stage) will allow for the implications of any repair proposals to be authorised under that consent.

The impact on the lade's setting is considered further in Placemaking and Design below.

#### Flood risk

The site is at risk of flooding from overtopping of the lade. The proposal includes raised floor levels and alterations to ground levels in order to provide for compensatory storage that would exceed that lost to the development. The original submission



included a Flood Risk Assessment that generated an objection in principle from SEPA. A further FRA again generated an objection from SEPA, as noted above. Their key concerns appear to be that the house and site will be at risk of flooding and the proposal does not provide appropriate freeboard; the flood mitigation comprises excavated storage within an area at risk of flooding in itself; there is no safe access and egress on foot; and, the long term maintenance of the lade is uncertain.

Our Flood Officer, however, considers the floor levels provide appropriate freeboard. The compensatory storage (which has since been confirmed on a subsequent plan) is also considered acceptable by the FO. It will provide for pooling of flood water that would otherwise have gone onto the road. As regards access and egress, the FO notes that the levels are low enough that emergency vehicles can access, and a safe pedestrian route across 0.15m of flood water is available. There is still a risk of flooding from structural breach of the lade but, as noted elsewhere in this report, the lade appears capable of being retained structurally intact despite the development and, a planning condition can secure a programme of repair and long term maintenance. Further to this, the soakaway should be placed outwith the flood area, and a condition should be imposed that provides the Council, as flood risk management authority, with unhindered access to maintain the lade grille. In that regard, it is entirely for the owners to determine whether the public would also have access to do the same.

Fundamentally, therefore, the development will be at risk of flooding, but that risk is capable of mitigation. There would be no increase in run-off to other properties. Though SEPA's concerns with sustainability are noted, it is considered that ensuring the mill is repaired and maintained in the long term, with storage provided within the site to reduce run-off to the road, is a more sustainable outcome than the current situation of leaving the site and lade as it is. It is not considered, therefore, the proposal will conflict with Policy IS8. If the committee is minded to approve the planning application, however, the application will be required to be referred to Scottish Ministers for potential call-in as a result of SEPA's objection.

### Public access

There is no formal public right of way through the site, though a path alongside the lade has been used by the public previously. Incorporating this into the site is not ideal, as it will undermine statutory rights of public access, and the concerns of the Access Officer are noted. The path would be in close proximity to the house and would be within the site boundary, though it would not be directly affected and would not fall within the retained area forming the usable part of garden ground. There would be a clear risk of conflict in any case between users and the house occupants, and a path so close to the house is not acceptable to the applicant. There is a public path on the other side of the road that would provide for the same access to the lade further north. Albeit that route will not provide the same experience as that alongside the lade, this proposal as it stands will achieve long term protection for the lade by securing its repair and maintenance. It will also provide for long term management of the woodland. Neither of these elements would be achieved as a result of maintaining public access alone, and it does not seem particularly practical for both the access and the development to co-exist. Ultimately, it is for the statutory process under the Land Reform Act to examine if there would remain a right to use the route but, as regards this application, it is considered that other factors balance out those rights being determinative.

As noted earlier, there would be a separate requirement to maintain access to the lade grille for the Council as flood risk management authority.

## Services

A condition should secure evidence of mains water and foul drainage connections. Surface water drainage proposals refer to rainwater harvesting and a soakaway. The details of the drainage is ultimately for the Building Standards, though a condition could regulate the development to ensure no increase in run-off. Ensuring the soakaway is not at risk of flooding is recommended by the Flood Officer.

## Ecology

A Preliminary Ecological Appraisal identifies no risk to bats or other protected species. Conditions can reflect its recommendations. A report has also been submitted that identifies that the Spruce trees to the west provide habitat for red squirrels, though the woodland requires felling due to infestation in any case, and will need a license as a result. The matter of woodland removal and replacement is covered further below but, as regards ecological impacts, given the woodland needs removal regardless of this development, the value of it as squirrel habitat does not have a direct bearing on the application, and its replacement with a better quality woodland would provide a long term benefit. Conditions are recommended.

## Trees, landscaping and boundaries

Trees already removed from the site have been subject to a Restocking Direction issued by Scottish Forestry. However, a legal agreement has been concluded by the applicant to provide for replacement planting off-site, and this has satisfied Scottish Forestry.

The application is supported by a tree survey that identifies only five trees are intrinsically of value. The rest is effectively commercial woodland and there are immediate and long term requirements to fell and restock, including as a result of damage to the lade and infestation of the Spruce woodland to its west. The applicant proposes doing so on a phased basis. Infestations, wind throw and shading all count against the development being successfully implemented within the existing woodland, and compensatory flood storage requirements also add to the removal requirements. Following the original submission, a tree protection plan now identifies that the development itself will require 42 trees to be removed, though all are low category trees. Trees will be retained to south and north, thus keeping the wider integrity of the site on approach from those directions on the public road. The Spruce woodland to the west would be removed, though that would occur in any case. The five large trees of value would also be retained. The TPP is not superimposed on the development layout, and our landscape architect has not commented on its submission, though it does appear consistent with it and limits the level of tree loss.

Ultimately, the proposal will have an immediate impact on the woodland within the site. However, the wider landscape impact will be localised, and planning conditions can secure a better quality woodland in place of the Spruce and 42 trees lost; as well as long term management of the remaining trees such that it can eventually be phased felled and replanted with a better quality, more biodiversity-valuable woodland that does not pose such a risk to the lade. Conditions should regulate all matters, allowing for early removal of the Spruce woodlands due to infestations.

Aside from rebuilding the stone wall to the front, no other boundary treatments are proposed. This is not a concern, though a condition should control Permitted Development rights for further means of enclosure, particularly alongside the road and the lade given the site layout and location of the lade.

### Placemaking and design

The site is large in comparison to neighbouring plots; woodland will require removal to facilitate the development; and garden ground will be either side rather than behind. To some extent, a house in this location does not fit firmly into the townscape pattern. However, there are benefits that can be derived from a better quality woodland (as noted above), and from the repair and maintenance of lade; and control over Permitted Development rights for the garden ground would limit the visual impact from the exposed garden.

The proposed house and garage have been amended during the processing of the application in order to address design concerns, particularly as regards potential impact on the Listed lade. The house has been set further back, with design changes to its dormer and porch, and the garage has also been amended. These follow changes already made since the previously withdrawn application such that, ultimately, the proposed house and garage will relate comfortably to the existing townscape, and will not have an unreasonable impact on the setting of the lade or wider landscape designation. Any harm that may result is balanced out by the benefit of securing a long term programme for the lade's repair and maintenance and better long-term woodland. The western elevation onto the lade is the least satisfactory elevation, but its screening from the public road renders it acceptable.

The house and garage will have relatively high floor levels to address flood risk, which is not ideal visually, but the consequences for the public realm will be minor. The development will be retained to the rear by around 2 metres, with the main garden (which comprises compensatory storage), retained by boulder banking to the west, with a slightly higher section between it and the road, to prevent water escaping. Fundamentally, the proposal will have localised and minor visual implications, though more detail is required on the boulder banking to ensure it is as visually sympathetic as possible, and the same for the retaining wall and garden level along the roadside.

### Materials

Materials include a slate roof, stone and render, all of which will be appropriate in this setting, subject to conditions.

### Neighbouring amenity

The proposals will not adversely affect neighbouring properties to a determinative degree as a result of privacy, daylight, sunlight or outlook loss. A condition can regulate plant noise (e.g from the biomass boiler)

### Road safety and parking

The access, parking and visibility splays are all satisfactory and the RPS raises no concerns. Conditions can regulate these aspects.

### Air quality

The proposals include biomass and a solid fuel stove. The Environmental Health Service raised no concerns, through emissions though the operation of these elements are for the applicant to ensure no nuisance results. A standard informative is recommended,

### Waste storage

Bin storage is proposed to the rear and is acceptable

### Energy efficiency

The proposal includes a biomass boiler and reference is made in the design statement to PV panels on the roof, sheep's wool insulation and that the render system is one of the most sustainable available. Ultimately, the extent of energy efficiency is for the Building Standards, though the proposals are agreeable generally. A condition should secure more detail of the PV panels as they are not illustrated on the drawings.

### Contaminated Land

The Contaminated Land Officer recommends a condition given the historic use.

### Contributions

A legal agreement will be necessary to secure financial contributions to Peebles High School and St Ronan's Primary School in order to comply with Policy IS2.

### CONCLUSION

Subject to a referral to Scottish Ministers of 22/00147/FUL, a legal agreement and compliance with the schedule of conditions, the development will accord with the relevant provisions of the Local Development Plan 2016 and there are no material considerations that would justify a departure from these provisions. 22/00148/LBC will not detract from the special architectural and historic interest of the Listed Building subject to conditions.

### **RECOMMENDATION BY CHIEF PLANNING AND HOUSING OFFICER:**

#### **22/00147/FUL**

I recommend the application is approved subject to referral to Scottish Ministers, a legal agreement and the following conditions and informatives:

1. The development shall be implemented in accordance with the plans and drawings approved under this consent, including finished ground and floor levels and site layout on drawing number 2021/02/103/E, unless otherwise agreed in writing with the Planning Authority or otherwise required by any other condition in this schedule. The development shall be implemented in a manner that safeguards the Listed lade from damage resulting from the development.  
Reason: To ensure that the development is carried out in accordance with the approved details and to safeguard the special architectural and historic interest of the Listed lade
2. No development shall commence until evidence confirming that a mains water and foul drainage connection have been approved by Scottish Water has been submitted for the written approval of the Planning Authority. The development shall be serviced only using the approved mains water and foul drainage services, unless otherwise agreed in writing with the Planning Authority. All surface water shall be managed in a manner that maintains run-off from the site at pre-development levels and, notwithstanding any reference otherwise, the soakaway shall not be sited within the compensatory storage area.

Reason: To ensure the development is adequately serviced and manages surface water drainage

3. No development shall commence until a scheme for the repair and future maintenance of the lade has been submitted for the written approval of the Planning Authority. The repair and maintenance scheme shall be implemented in accordance with the approved details. The scheme shall include works for the repair and long term maintenance of the lade, in addition to a scheme for providing unhindered access by the Council as Flood Risk Management Authority to maintain the lade grille at the southern end of the site

Reason: To safeguard the special architectural and historic interest of the Listed lade and minimise the potential risk of flooding to the development

4. The development shall be implemented in accordance with the Tree Protection Plan TPP0522 with retained trees protected with fencing in accordance with BS5837:12 during the development. Only those trees specified for removal shall be removed and all trees to be retained shall be so retained unless otherwise agreed for removal under the terms of Condition 5. Trees shall be removed in a manner that safeguards the Listed lade from any damage resulting from their removal.

Reason: To safeguard trees of value to the landscape setting of the site and safeguard the Listed lade

5. The removal of Woodlands 2 and 3 shall not be commenced until evidence has been provided in writing to the Planning Authority that a license has been obtained from NatureScot for the disturbance of red squirrel habitat or that a license is not required.

Reason: To protect the ecological interest of the site in accordance with Local Development Plan Policies EP2 and EP3

6. No tree felling referred to in the Tree Protection Plan TPP0522 shall be carried out (excepting the removal of Woodland 2 and 3 which shall be permitted to commence prior to part (b) being satisfied) until the following have been submitted for the written approval of the Planning Authority.

- a) A compensatory planting scheme for all trees proposed for removal within the Tree Protection Plan, including location, schedule, timescale for implementation and an aftercare scheme

- b) A long term management and maintenance scheme for all remaining trees, in addition to that of the compensatory planting provided to satisfy part (a). This shall include long term management, maintenance and successional/replacement planting.

All tree felling, planting, management and maintenance shall be implemented in accordance with the approved details. Trees shall be removed and new trees planted in a manner that safeguards the Listed lade from any damage.

Reason: To ensure the development has a sympathetic landscape and visual impact and to maximise the biodiversity value of the woodland in the long term

7. Any noise emitted by plant and machinery on the premises shall not exceed Noise Rating Curve NR20 between the hours of 2300 - 0700 and NR 30 at all other times when measured within all noise sensitive properties (windows can be open for ventilation). The noise emanating from any plant and machinery used on the premises should not contain any discernible tonal component. Tonality shall be determined with reference to BS 7445-2.

Reason: To protect the amenity of neighbouring residential properties

8. The approved access, parking area and visibility splays specified on the approved plans shall be implemented prior to the occupancy of the dwellinghouse. The parking area shall be retained free from obstruction for the parking of vehicles and visibility splays shall be maintained in perpetuity, with rebuilt stone walling constructed so as not to obstruct the splays. The first two metres of the access must be constructed to the following specification, unless otherwise agreed in writing with the Planning Authority - 75mm of 40mm size single course bituminous layer blinded with bituminous grit all to BS 4987 laid on 375mm of 100mm broken stone bottoming blinded with sub-base, type 1.  
Reason: To ensure the development is adequately accessed and serviced in a manner that safeguards road safety
9. The development shall be implemented in accordance with the external material specifications approved under this consent, subject to natural slate roofing being grey in colour; the natural stone specification and details of solar PV panels, which shall be black framed, being first agreed in writing with the Planning Authority; external flues being matt black in colour; and, rooflights on the east elevation of the dwellinghouse being black framed and fitted flush with the slates, all unless otherwise agreed in writing with the Planning Authority  
Reason: To ensure the development has a sympathetic visual impact
10. Further details of the retaining wall, boulder banking, and compensatory storage levels alongside the eastern boundary, shall be submitted for the written approval of the Planning Authority before development commences. The development shall be implemented only in accordance with the approved details, and all ground alterations within the site required to achieve the approved compensatory storage area shall be implemented prior to occupancy of the dwellinghouse, grass-seeded during the first seeding season following completion and kept free from obstruction thereafter.  
Reason: To ensure the development has a sympathetic visual impact and provides appropriate compensatory flood storage
11. Notwithstanding the terms of the General Permitted Development (Scotland) Order 1992 (as amended) or any subsequent revision or replacement Order, there shall be no further development within the application site, unless a planning application for the same has been submitted to and approved by the Planning Authority.  
Reason: To safeguard the special architectural and historic interest of the Listed lade, to ensure the development has a sympathetic visual impact, and to safeguard the future maintenance of the compensatory storage area
12. No building operation or vegetation clearance works shall be undertaken during the breeding bird season (March to August inclusive), unless in strict compliance with a Species Protection Plan for birds, which shall be submitted for the approval in writing of the Planning Authority prior to commencement of the development. The Species Protection Plan shall be implemented as approved.  
Reason: To protect the ecological interest of the site in accordance with Local Development Plan Policies EP2 and EP3
13. No development shall commence until the following have been submitted for the written approval of the Planning Authority
  - a) A scheme for the provision of bird, squirrel and bat boxes within the site
  - b) Details of the lighting scheme demonstrating compliance with BCT guidance on artificial lighting and bats.

The lighting of the site shall comply with the approved scheme and boxes shall be implemented in accordance with the approved details prior to occupancy of the dwellinghouse

Reason: To protect the ecological interest of the site in accordance with Local Development Plan Policies EP1, EP2 and EP3

14. No development shall commence until a scheme to identify and assess potential contamination on site, in addition to measures for its treatment/removal, validation and monitoring, and a timescale for implementation of the same, has been submitted to and approved by the Planning Authority. Once approved, the development shall only proceed in accordance with the approved scheme

Reason: To ensure that potential contamination within the site has been assessed and treated and that the treatment has been validated and monitored in a manner which ensures the site is appropriate for the approved development.

### Informatives

All work within the public road boundary must be undertaken by a contractor first approved by the Council.

If a solid fuel stove is intended, this should be specified as being under 45kw. If specified to be larger, a screening assessment will be required in liaison with the Council's Environmental Health Service to ensure there is no risk of a statutory nuisance from emissions. Solid fuel heating installations can cause smoke and odour complaints and Planning Permission for this development does not indemnify the applicant in respect of nuisance action. In the event of nuisance action being taken there is no guarantee that remedial work will be granted Planning Permission. It is recommended, therefore, that:

- a. the flue should be terminated with a cap that encourages a high gas efflux velocity.
- b. the flue and appliance should be checked and serviced at regular intervals to ensure that they continue to operate efficiently and cleanly.
- c. the appliance should only burn fuel of a type and grade that is recommended by the manufacturer.
- d. if you live in a Smoke Control Area you must only use an Exempt Appliance ([www.smokecontrol.defra.gov.uk](http://www.smokecontrol.defra.gov.uk)) and the fuel that is approved for use in it.
- e. in wood burning stoves you should only burn dry, seasoned timber. Guidance is available on [www.forestry.gov.uk](http://www.forestry.gov.uk)
- f. treated timber, waste wood, manufactured timber and laminates etc. should not be used as fuel. Paper and kindling can be used for lighting, but purpose made firelighters can cause fewer odour problems.

The biomass boiler should also be managed in a manner that limits the potential for emissions to cause a statutory nuisance.

### **22/00148/LBC**

I recommend the application is approved subject to compliance with the schedule of conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with the provisions of Section 16 of the Town and Country Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

2. There shall be no alterations to the lade to facilitate the development of planning reference 22/00147/FUL or satisfy its schedule of conditions unless in accordance with a scheme of details that has first been submitted for the written approval of the Planning Authority. The alterations shall only be carried out in accordance with the approved details

Reason: To safeguard the special architectural and historic interest of the Listed Building

#### **DRAWING NUMBERS**

|                |                             |
|----------------|-----------------------------|
| 2021/02/101/A  | Location Plan               |
| 2021/02/102/G  | Proposed Site Plan          |
| 2021/02/103/E  | Proposed Site Plan          |
| 2021/02/104/E  | Proposed Plans              |
| 2021/02/105/E  | Proposed Plans              |
| 2021/02/106/E  | Proposed Elevations         |
| 2021/02/107/E  | Proposed Elevations         |
| 2021/02/109/E  | Proposed Plans & Elevations |
| SHEET 1 OF 1/A | Topographical Plan          |
| TPP0522        | Tree Protection Plan        |

#### **Approved by**

| Name       | Designation                        | Signature |
|------------|------------------------------------|-----------|
| Ian Aikman | Chief Planning and Housing Officer |           |

The original version of this report has been signed by the Chief Planning and Housing Officer and the signed copy has been retained by the Council.

#### **Author(s)**

| Name          | Designation |
|---------------|-------------|
| Carlos Clarke | Team Leader |





22/00147/FUL / 22/00148/LBC

Erection of Dwellinghouse  
Leithen Road  
Innerleithen

