

SCOTTISH BORDERS COUNCIL

PLANNING AND BUILDING STANDARDS COMMITTEE

1 JULY 2013

APPLICATION FOR MODIFICATION OF A PLANNING OBLIGATION

ITEM: REFERENCE NUMBER: 13/00660/MOD75
OFFICER: Andrew Evans
WARD: Hawick and Denholm
PROPOSAL: Modification of planning obligation
SITE: The Bothy, Farmhouse and Agricultural Land, Westcote, Hawick
APPLICANT: Mr Drew Glendinning
AGENT: Mr N Wright, Buccleluch Rural Solutions

SITE DESCRIPTION

Westcote Farm is located to the North East of Hawick. The Farmhouse is located at the end of a 600m long access track. It is part of a small building group of dwellings, comprising "Westcote Farmhouse", "The Bothy", and "The Auld Byre". Also within the group are 2 approved open market house plots to the north-west, one of which is currently under construction. These plots are on the site of the former farm buildings, now demolished.

The building group dwellings are located 500m to the south of the A698, and are on the site of the former farm steading. A replacement large agricultural shed is located to the north of the group of dwellings.

Outline planning permission (07/00074/OUT) was granted for the erection of a new farmhouse at Westcote in May 2008. This new farm house will be located on lower lying land than the building group, in an isolated position to the north of the building group, and south of the access track. This position is quite well related to the new agricultural building, which is 250m to the North East of the new farmhouse site.

PROPOSED DEVELOPMENT

A Section 75 agreement was originally entered into in April 2008 in the course of determination of that 2007 application. The effects of this agreement are set out later in this report. The application seeks to modify the Section 75 Agreement in connection with the planning permission for the erection of the new farmhouse on the site. The applicant seeks to remove the neighbouring dwellings and land from the agreement, to permit the division of assets.

PLANNING HISTORY

The site has a complex planning history, with the applications relevant to the current proposal being as follows:

Application Ref	Site / Proposal	Decision
07/00074/OUT	Erection of dwellinghouse Land NW Of Westcote Farmhouse	Approved subject to conditions 01.05.2008

		(The outline permission for the farmhouse)
08/00852/FUL	Erection of general purpose/workshop agricultural building Westcote Farm	Approved subject to conditions 16.06.2008
08/01278/REM	Erection of dwellinghouse with integral garage Land NW Of Westcote Farmhouse	Approved subject to conditions 17.09.2008 (The detail of the new farmhouse, following the 2007 outline)
10/00938/FUL	Change of use from disused bothy and alterations to form dwellinghouse Disused Bothy West Of Westcote Farmhouse	Approved subject to conditions & Informatives 07.10.2011

There have been, in addition, applications for conversion of traditional farm buildings to housing, together with permissions for two new houses at the existing farm steading. These applications are not affected by the legal agreement which is the subject of this application, but are referred to in the assessment later in this report.

Effect of Current Legal Agreement

The main provisions of the Agreement is that outwith an identified “development area” the remaining land shall be held as a single unit (Clause 3). Whilst the agreement excludes the new build plots and one of the conversions, it includes “The Farmhouse”, which was the original dwelling on the site and “The Bothy”, the adjacent conversion.

The underlying reasoning behind this legal agreement would have been to ensure retention of sufficient agricultural land to justify a single dwellinghouse for a worker in a location not part of a building group.

REPRESENTATION SUMMARY

No representations have been received.

APPLICANTS’ SUPPORTING INFORMATION

A supporting statement has been submitted by the agent for Mr Glendinning, the current landowner. It confirms the following:

- The applicant Mr Glendinning has now seeks to exclude the original Westcote farmhouse, Bothy, and 1.5ha of land excluded from the 2008 Section 75 agreement.
- The original farmhouse, which originally included the Bothy, was included in the agreement. Since then, two further conversions, the Bothy, and two new build plots have been developed on the site of the original farm steading.
- This has created an attractive residential building group, and to leave the original farmhouse tied to the land, and risk the use of the adjacent area to agriculture would detract from the development now created.
- Full planning permission has been granted for an alternative farmhouse more suitably located for the agricultural activities of the holding.

- Owing to a significant change in the personal circumstances of the applicant, a modification of the legal agreements as suggested will allow for a division of the assets, not possible under the present restrictions.

DEVELOPMENT PLAN POLICIES:

Scottish Borders Structure Plan 2001-2018

Policy H7: Housing in the Countryside: Building Groups

Policy H8: Housing in the Countryside: Isolated Housing

Consolidated Scottish Borders Local Plan 2011

Policy H2: Protection of Residential Amenity

Policy D1: Business, Tourism and Leisure Development in the Countryside

Policy D2: Housing in the Countryside

OTHER PLANNING CONSIDERATIONS:

Planning Circular 1/2010: Planning Agreements.

Supplementary Planning Guidance: New Housing in the Borders Countryside
December 2008

CONSULTATION RESPONSES:

Scottish Borders Council Consultees

Legal Services: Reply Awaited.

Statutory Consultees

None

Other Consultees

None

KEY PLANNING ISSUES:

- Whether the removal of the modification of the legal agreement as suggested would comply with the Council's Housing in the Countryside; and Business, Tourism and Leisure Development in the Countryside policies;
- What the impacts of the variation of the land subject to the legal agreement would be.

ASSESSMENT OF APPLICATION:

Scope of Application

This application seeks to modify the Section 75 Agreement to amend Clause 3 which required all the subjects affected by the agreement to be kept together. The applicant seeks modification of the agreement to remove that burden from the land.

Planning Policy

Planning Circular 1/2010 sets out Scottish Government policy on the use of planning agreements. It confirms that once concluded a planning agreement forms a legal contract between the planning authority and the developer, along with any other signatory (e.g. landowner). As such it may be modified only by mutual agreement.

The proposal in this case is to remove certain land and properties from the planning agreement. In order to determine the acceptability of this, it is necessary to consider the current situation against the Council's housing in the countryside policies.

The new housing at this location and within the application boundary has already been assessed against policy H7 of the Structure Plan (Housing in the Countryside: Building Groups) and policy D2 (A) (Housing in the Countryside: Building Groups) of the Local Plan when consented.

Policy H7 states that proposals for housing associated with existing building groups will be supported where they fit the character of the surrounding group, avoid overdevelopment and meet sustainable construction requirements.

Policy D2 (A): Building Groups of the Local Plan allows housing in such locations. The plan allows for housing of up to a total of 2 further additional dwellings, or 30%, whichever the greater.

The farmhouse granted permission in 2007 was accepted on the basis of exceptional justification, on the basis of need in a location where unrestricted residential development would not have complied with prevailing policy. At that point in time, the only house at the site was the original Westcote Farmhouse.

As a result, and in accordance with normal practice, the permission was subject to a legal agreement requiring that neither the original farmhouse nor the new one were separated from any of the farmland that was the basis for the justification for the new house.

Since that permission was granted, a building group has subsequently been formed by the conversion of redundant traditional agricultural buildings to form 2 dwellings. These converted properties are "The Bothy", and "The Auld Byre". This development took place after the grant of permission for the new farmhouse. Importantly, the group was then capable of addition, with 2 dwellings then being consented on land adjacent to the newly converted group.

"The Bothy" falls within the area of land covered by the legal agreement, but the "Auld Byre" does not.

All of the dwellings within this building group were considered acceptable in their own rights, and their acceptability in planning terms would not have been dependant upon a legal agreement.

A third newbuild was originally approved at the building group, but following changes to the Housing in the Countryside Policy in recent years, this approval has been lost, with the current policy now restricting numbers of new build units beyond that previously permitted.

The consented replacement farmhouse to the north remains a different proposition. It is remote from the building group, and is acceptable under policy D1 only subject to its occupation being in connection with the agricultural operations on the farmland, permitted by part E (Economic Requirement) of Policy D2.

Although originally granted permission in 2007, the planning permission for this farmhouse has been safeguarded by the discharging of planning conditions and the commencement of the build on site. Land levels have been altered, foundations have been laid, and services connected. Accordingly, the applicant has taken the necessary steps to commence development, and hence to secure the consent for the new farmhouse.

Assessment of request and impacts of proposed variation

The modification of the legal agreement would allow the land and housing subject to the application to be removed from the original agreement. Owing to the development of a building group at the site, the justification for these new houses – and the original farmhouse, which is now the focus of a building group – is now acceptable without the need for recourse to an agreement to restrict occupancy or tying to any land.

The current proposals to divide off land subject to the agreement are acceptable in principle. The majority of the agricultural land would be served by the new farmhouse. The new farmhouse dwelling should remain tied to sufficient remaining land for the farm to remain viable, and to maintain the justification for an on site dwelling, remote from the building group.

Developer Contributions

Policy G5 of the Scottish Borders Local Plan Adopted 2008 states that where a site is acceptable but cannot proceed due to deficiencies in infrastructure or due to environmental impacts the Council will require developers to make contributions towards the cost of addressing such deficiencies.

No developer contributions arise as a result of the proposed modification of the legal agreement.

CONCLUSION

It is accepted that the circumstances surrounding this case have changed significantly since the new farmhouse was approved in 2007. It is accepted that the building group at Westcote includes both “The Bothy” and “Westcote Farmhouse”, and the Clause preventing separate sale is no longer appropriate.

RECOMMENDATION BY HEAD OF PLANNING AND REGULATORY SERVICES:

In respect of 13/00660/MOD75 I recommend that the application for the modification of planning obligations is approved and the Section 75 Agreement be amended as follows:

- The properties known as “The Bothy” and “Westcote Farmhouse” should be removed from the agreement.
- The new house plot subject to planning permission 07/00704/OUT and the remainder of the agricultural land which provides the justification for that dwelling are to remain subject to the amended legal agreement. The

agreement will then ensure that sufficient land remains with the dwelling to justify the erection of a dwelling under Scottish Borders Consolidated Local Plan Policy D2 Housing in the Countryside (E) Economic Requirement; and Scottish Borders Structure Plan 2001-2018 Policy H8 (Housing in the Countryside: Isolated Housing).

DRAWING NUMBERS

Promap Site Plan 1 received 9th November 2012.

Promap Site Plan 2 received 9th November 2012.

Approved by

Name	Designation	Signature
Brian Frater	Head of Planning and Regulatory Services	

The original version of this report has been signed by the Head of Planning and Regulatory Services and the signed copy has been retained by the Council.

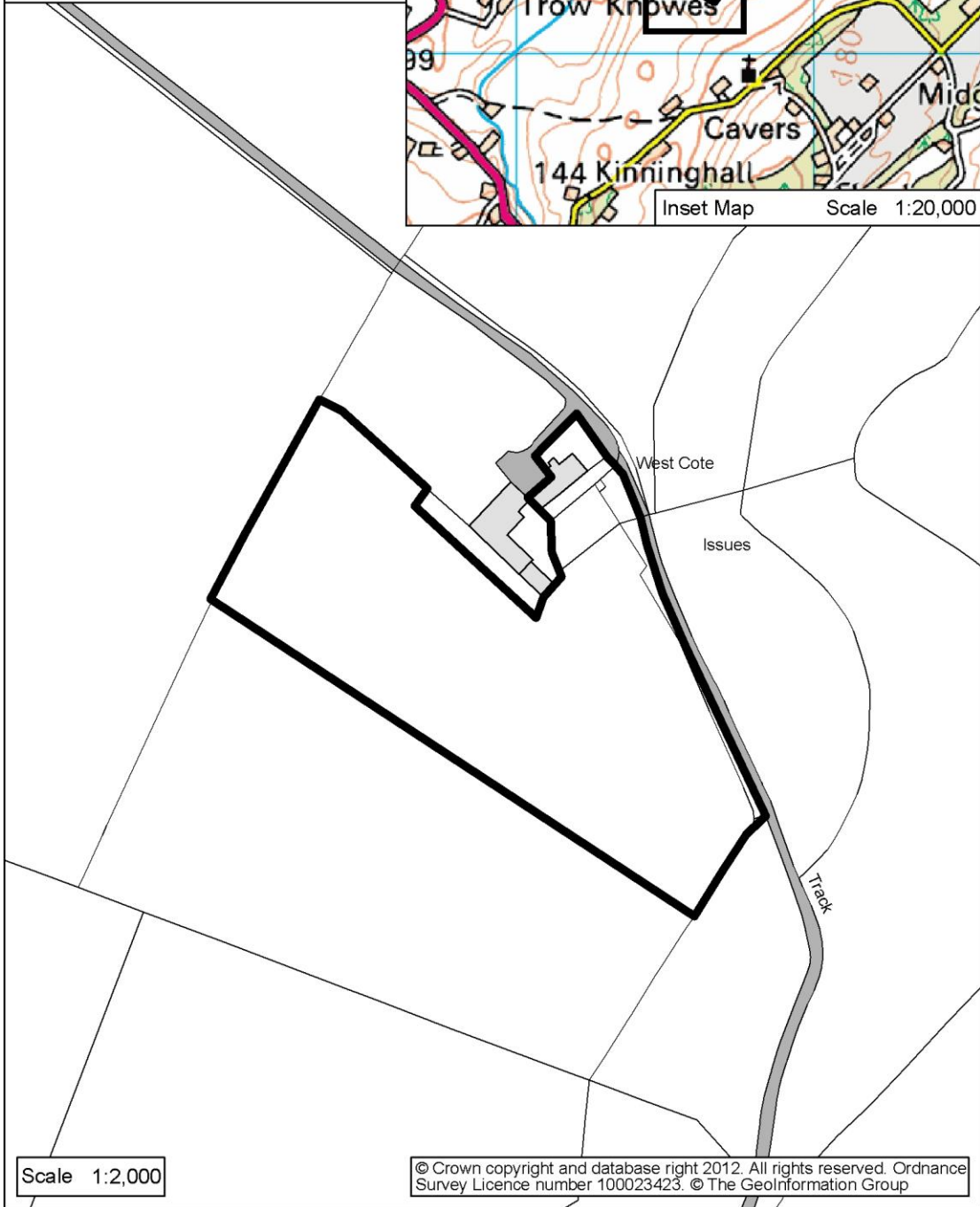
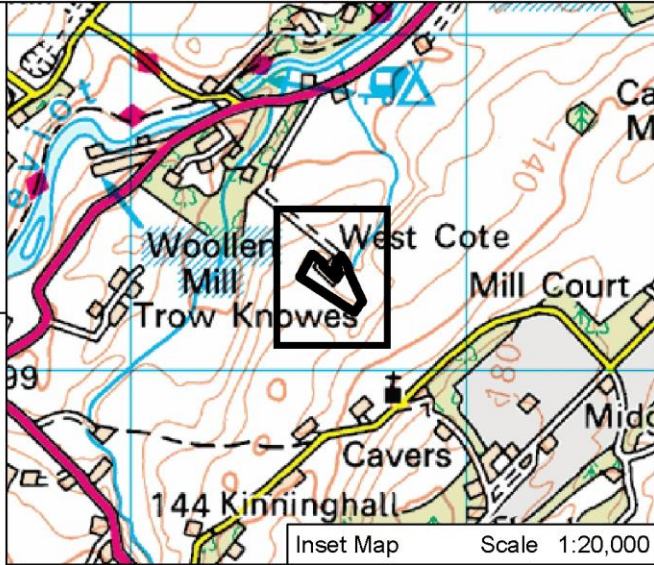
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13/00660/MOD75



The Bothy, Farmhouse
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Scale 1:2,000

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