

SCOTTISH BORDERS COUNCIL

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

PART III REPORT (INCORPORATING REPORT OF HANDLING)

REF: 22/00961/PPP
APPLICANT: Mr & Mrs O McLaren
AGENT: Richard Amos Ltd
DEVELOPMENT: Erection of 2no dwellinghouses
LOCATION: Land At Silo Bins Edington Mill Chirnside
Edington Mill Road
Chirnside
Scottish Borders

TYPE: PPP Application

DRAWING NUMBERS:

Plan Ref	Plan Type	Plan Status
22-B936-LOC	Location Plan	Refused
22/B936/P02 REV A	Proposed Site Plan	Refused

NUMBER OF REPRESENTATIONS: 3
SUMMARY OF REPRESENTATIONS:

One objection was received from the neighbouring farmer who owns a manure store building to the north of the proposed site. The points raised in the objection are summarised below:

- building referred to on site plan as an agricultural building is in fact a poultry manure store;
- permission is in place to extend the manure store;
- residential properties adjacent to an existing manure store would be inappropriate; and
- wish to avoid potential conflicting issues arising between manure store and the proposed development.

Two members of the public wrote in support of the application, raising the following points:

- smaller bungalows are in very short supply;
- would free up housing stock for larger families in need; and
- development would improve appearance of untidy site.

CONSULTATIONS

SBC Access: There are no recorded claimed rights of way on the site. There are other tracks in the area that the public would have a 'right of responsible access' to under the Land Reform (Scotland) Act. There is a permissive path that runs north and east round the proposed development site. As per the LRSA, people have a right of responsible access over this route and other open land. The existence of the route is a benefit to residents and it is noted the route is not impinged by the development site.

SBC Archaeology: The proposed site lies in the general surroundings of an archaeological find, during quarrying operations, of a prehistoric cist burial with Beaker and Food Vessel pottery dating to the Bronze Age. Originally likely covered by a cairn, this is a site type common at such locations in overlooking lower ground or valleys, across the borderlands generally. Sometimes found singly, these are sometimes found together with other cairns or cists as a group of monuments.

In this case the overall plot proposed is distant from the site of the cist, and more particularly more distant from the slope/quarry edge so it does not directly overlook the Whiteadder Water. From Google Street View photography the area proposed for the two houses appears to have been disturbed previously. In this case whilst the presence of any archaeological finds, features and/or deposits cannot be entirely ruled out as below ground-level features, then there is lower potential for any cairn or cist features to have remained undisturbed.

At this stage the locations of the two houses have not been proposed within the plot of land as a whole, but the closer they are towards the valley edge the more likely an archaeological condition (likely for a watching brief) should be expected. If any cists are located, then these may be significant sites and significant pieces of work to excavate if they cannot be otherwise avoided in any full application.

SBC Contaminated Land: The proposed site appears to have been associated with Edington 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. A planning condition is recommended to ensure the development does not start until a site investigation and risk assessment has been carried out, submitted and agreed upon by the Planning Authority. Any requirement arising from this assessment for a remediation strategy and verification plan would become a condition of the planning consent, again to be submitted and agreed upon by the Planning Authority prior to development commencing.

SBC Education and LL: No response.

SBC Environmental Health: In discussions, verbally confirmed the Service's objection to the application due to the proximity of the site of the neighbouring manure store building.

SBC Flood Risk: SEPA's flood risk mapping indicates that the site is not at risk from a fluvial (river) flood event with a return period of 1 in 200 years. A very small section of the boundary of the site on the North Eastern corner may be at risk from surface water at a 1 in 200 year flood event, however, as the flood risk to the site is minimal, and the current house position does not show either of the properties within the 1 in 200 year surface water flood extent, there are no objections on the grounds of flood risk, on the basis of the current application. The applicant should consider this surface water flood risk within their drainage strategy.

SBC Roads Planning Service: No objection, subject to conditions to require 70m visibility splays at the junction onto the public road, on-site parking and access provision in the form of a service layby.

Community Council: The reference to the recently granted planning permission for houses on the mill site is irrelevant as they are not visible from the proposal site. They are below the cliff to the south of the site, so the statement that the proposal forms part of a relationship with the existing group is difficult to see. This link is tenuous at best and the proposed development is not 'a logical extension' of the mill site. A previous application for a dwelling on the old castle site at the junction with the main road north of this site was refused as being out with the development area.

Scottish Water: There is capacity at the water treatment works, however there is no public waste water infrastructure nearby and private treatment options will need to be explored.

SEPA: Referred to SEPA's triage framework and standing advice.

PLANNING CONSIDERATIONS AND POLICIES:

Local Development Plan 2016:

PMD1: Sustainability

PMD2: Quality Standards
ED10: Protection of Prime Quality Agricultural Land and Carbon Rich Soils
HD2: Housing in the Countryside
HD3: Protection of Residential Amenity
EP3: Local Biodiversity
EP8: Archaeology
EP13: Trees, Woodlands and Hedgerows
IS2: Development Contributions
IS5: Protection of Access Routes
IS7: Parking Provision and Standards
IS8: Flooding
IS9: Waste Water Treatment and SUDS
IS13: Contaminated Land

Proposed Local Development Plan 2020

IS5: Protection of Access Routes
IS13: Contaminated and Unstable Land

Other Considerations:

Development Contributions Supplementary Planning Guidance 2011 (Updated 2022)
New Housing in the Borders Countryside Supplementary Planning Guidance 2008
Privacy and Amenity Supplementary Planning Guidance 2006

Recommendation by - Paul Duncan (Assistant Planning Officer) on 25th August 2022

Site Description

The proposed site is a vacant parcel of land located on the east side of the minor public road that serves the Edington Mill building group in Berwickshire. The site is bound to the north by a farm track, which serves an existing brown sheeting clad farm building that operates as a poultry manure store. The poultry store is located approximately ten metres to the north of the proposed site. The western boundary is defined by hedging, which separates the site from the public road. Land further to the west comprises open, flat arable fields. The site's eastern boundary is defined by the farm access track where it continues to open fields to the east. There is no clear boundary to the south, where land operates as an effective yard area for a blue coloured industrial shed building that is thought to operate as a vehicular repair centre. The site connects with the A1107 Chirside to Berwick road around 1.1km to the north via the minor public road to the west, which terminates to the south at the Edington Mill building group, which is situated in a wide gorge on the north side of the Whiteadder Water.

Planning History - Proposed Site

01/00792/OUT - Erection of four dwellinghouses, refused on 8th October 2001 and dismissed at appeal on 17 October 2002.

03/02024/OUT - Erection of 4 no. office suites, refused on 7th June 2004 and dismissed at appeal on 23 November 2004.

Planning History - Beyond Proposed Site

09/00191/FUL - Erection of two dwellinghouses to the south of the proposed site. Approved by the Berwickshire Area Committee in April 2009 subject to the conclusion of a legal agreement, following the conclusion of which, consent was released in February 2022. Development has not commenced.

06/01440/FUL & 21/01806/FUL - Erection of two dwellinghouses to the south-west of the proposed site. The 2006 application was approved in November 2006 and implemented timeously; the 2021 application was later approved for revised design and layout. Development has not commenced.

09/00576/AGN - Erection of brown coloured 24m by 11.6m chicken manure store building to the north of the proposed site. Approved May 2009.

13/01091/FUL - Extension to existing chicken manure store building. Approved 2013. Consent may have been implemented but the building is unbuilt.

There is no known planning application history for the blue coloured industrial building to the south of the proposed site.

Proposed Development

The application seeks planning permission in principle (PPP) for the erection of two dwellinghouses. An indicative site plan was submitted and shows two detached L-shaped dwellinghouses sharing a single access track and service layby off the minor public road. The supporting statement sets out commentary on the design approach that might be taken if PPP was granted.

Assessment

- Principle

The proposed site is outwith any recognised settlement boundary. The principle of the proposed development must therefore be assessed against Local Development Plan (LDP) 2016 policy HD2 (Housing in the Countryside). This sets out the various circumstances whereby new rural housing may be permitted. Of these, the application supporting statement makes the sole case that the development meets Policy HD2 (A - Building Groups). This allows for the consideration of new housing in the countryside provided that the proposed site is well related to an existing building group.

There are established building groups at Edington. One is located a considerable distance to the north, at Edington Farm. Due to distance of separation and intervening woodland, the site is not well related to that group. The other established building group is closer, and located primarily on the north banks of the Whiteadder Water at Edington Mill. It comprises 13no dwellinghouses and two blocks of 5no and 9no unit flatted buildings. There are live permissions for a total of 4no housing units at the Edington Mill building group. There is therefore capacity for expansion in purely numerical terms.

The proposed site is considered to relate poorly to the Edington Mill building group. The separation distance is significant. Natural boundaries such trees and shrubs add to the sense of separation, as does the intervening blue industrial building and its yard. Perhaps most significantly, there is also a significant change in levels that is visually defined by the steep exposed face of the former quarry walls that separate the site from the nearest buildings which form part of the group. The local Community Council objects to the application making a similar observation.

As detailed in the planning history section above, housing has previously been refused on the proposed site (and land to the south, extending to the top of the quarry walls that drop steeply into the gorge of the Whiteadder Water, as this land was included within site boundary at that time). That decision (planning reference 01/00792/OUT) was appealed unsuccessfully to the DPEA whose Reporter upheld the Planning Authority's decision. The Reporter assessed the application against the Berwickshire Local Plan 1994 and the New Housing in the Borders Countryside Policy and Guidance Note (amended 2000). Whilst policies have changed since then, the decision is a material consideration and the Reporter's overall findings remain pertinent.

The Reporter described a very strong contrast between the dramatic, enclosed landscape of the gorge within which the Edington Mill building group is situated, and the wide open farmland above with its long vistas. The Reporter judged that the site undoubtedly lies within the latter landscape. The Reporter noted that there is a lack of natural and strong man-made boundaries to tie the appeal site in with the rest of the mill complex and concluded that the proposal "would amount to the kind of abuse of the guidance resulting in sporadic development in the countryside to which the guidance is opposed". As noted above, the proposed site is smaller, and even more distant from the Edington Mill building group.

Changes on the ground since that decision include the removal of former silo bins on land to the south of the current application site, the conversion of Edington Mill buildings and the erection of new dwellings to the

west of the mill. No subsequent changes would justify a departure from that decision. The removal of the silos was a positive material consideration for the earlier application but was not a sufficient reason to permit housing in the open countryside in breach of policy. The silos have since been removed and no such benefits would apply today. Whilst land to the south of the site (seemingly operating as a yard to the blue industrial shed building to the south) arguably detracts from the amenity of the area, the proposed site, by contrast, is kept in a tidy condition, in keeping with its wider surroundings. The development of this site would not address the condition of separate land. Even if it did, as the Reporter also concluded, this would not give sufficient cause to support the application.

The Supporting Statement indicates that this application is now made largely on the basis that circumstances have changed since the Reporter's decision, following the approval of subsequent applications for housing between the the Mill building group and the proposed site. However, the consented buildings have not been built and do not exist. Policy HD2 requires a site to be well related to an existing building group. The buildings must therefore exist to be taken into consideration. Nor would the decisions alter the above assessment. One of the developments (06/01440/FUL & 21/01806/FUL) is for housing at the foot of the quarry walls, close to the existing building group. The other (09/00191/FUL) is for two contemporary dwellings at the top of the cliff, wrapping over the land and projecting southwards. At the time of that decision, the Planning Officer acknowledged and did not disagree with the 2001 appeal decision. The Officer deemed the 2009 site peripheral to the building group but considered it compatible with Edington Mill and its setting, being a substantially different proposal and site from the 2001 proposal. A key point is that in extending cantilevered over the cliff tops, the 2009 development would secure a far stronger relationship to Edington Mill and the Whiteadder gorge than the current proposal could.

It is worth noting, because the 2001 appeal considered the matter of dispersed building groups at some length, that there is now an established policy for such building groups within the LDP. The policy applies only within the Southern Housing Market Area and is therefore irrelevant for this proposal.

In summary, the proposed site is not considered to be well related to any established building group and accordingly, the development would constitute piecemeal, sporadic new housing development in the countryside. In the absence of any other supporting justification, the proposal is considered contrary to LDP policy HD2.

- Residential Amenity

The key residential amenity issue is the proximity of the chicken manure store building located around ten metres to the north of the proposed site. The building is owned by the local farmer, who objects to the application on the basis that the development may conflict with their operations. The Council's Environmental Health Service also objects due to concerns relating to odour from the manure store, and also the potential for insects, flies and rodents, all of which would affect the amenity of future occupants of the proposed dwellings.

To mitigate such impacts, the application latterly proposed (1) a 5m wide planting strip between the manure store and the nearest proposed dwelling, and (2) that nearest dwelling be designed without openings facing the manure store. The Environmental Health Service is aware of these proposed mitigatory measures, but maintains its objection, considering them insufficient.

It is only fair to note that at time of visiting the site odour was not a significant issue. This was during a long dry period and it is assumed odour would be greater dependent on other factors such as weather conditions (whilst the building has a roof it may be susceptible to water runoff) and management, which the Planning Authority would have no control over. Nor would the Planning Authority be able to prevent other intensive agricultural uses for the building, for example pig farming. The farmer has stated that permission to extend the manure building was implemented, in which case the building could also be extended in the future, exacerbating these concerns.

The responsibility for protecting residential amenity from development impacts lies with the Planning Authority, in conjunction with Environmental Health. Whilst Local Development Plan policy HD3 (Protection of Residential Amenity) is often used to prevent adverse amenity impacts to existing households, it is also used to ensure future residential areas also have suitable levels of amenity. Potential homebuyers and tenants reasonably expect new developments to offer modern standards of residential amenity. It is the Planning Authority's duty to ensure this is the case and to ignore such matters would potentially be open to

legal challenge and censure. Whilst it may be argued that the ultimate responsibility lies with individuals choosing to buy or rent property, this is not the case, and the Council could be admonished by the Ombudsman for failing to safeguard amenity for future residents.

Local Development Plan policy PMD2 (Quality Standards) is also relevant. This requires compatibility with neighbouring uses. More specifically, the New Housing in the Borders Countryside SPG requires that rural housing proposals have no adverse effect on the viability of a farming unit or conflict with the operations of a working farm.

In addition to the manure store building, operations at the car repair/ industrial building to the south could also impact the amenity of future occupants, particularly in terms of noise.

For the reasons outlined, the proposed development is considered to be contrary to Local Development Plan 2016 policies PMD2 (Quality Standards) and HD3 (Protection of Residential Amenity) in that housing at this location would be incompatible with neighbouring farm uses, with a reasonable likelihood of unacceptable residential amenity impacts arising for the future occupants of the proposed dwelling units.

In relation to other residential amenity issues such as overlooking, outlook, access to light and sunlight, there is no reason to believe two dwellinghouses could not be designed to secure suitable levels of amenity in such regards.

- Vehicular Access, Road Safety and Parking

A minor public road runs parallel with the site to the west. The indicative site plan shows a new service layby access junction which connects a new access track serving the two dwellings with the minor public road. The minor public road in turn connects with the A6105 road over 1km to the north. The Roads Planning Service has assessed the application and has no objections to the proposals. The Service requires the provision of 70m visibility splays in either direction at the new junction. It is not known whether this might require removal of trees or hedging on land outwith the applicant's control. Conditions are required for the provision of the new service layby and parking.

- Flood Risk

The site is well outwith the area identified as being at risk of flooding from the Whiteadder Water. A small area on the boundary of the site may be at risk from surface water at a 1 in 200 year flood event. The flood risk to the site is minimal, and the indicative footprint of the proposed dwellings are outwith the areas thought to be at flood risk. The current application is not considered to be in conflict with LDP policy IS8 (Flooding), however further examination would be required at the detailed application stage, in the event the application was approved.

- Other Matters

A permissive path follows the farm track on the north side of the proposed site, outwith the site. The path would not be directly affected by these proposals, so there is no conflict with LDP policy IS5 (Protection of Access Routes).

Issues in relation to archaeological interests and potential land contamination have been raised but could be addressed by condition and would not affect the outcome of determination. Similarly, a legal agreement could be utilised to secure the required development contributions for education and the payment of a commuted sum for off-site affordable housing. Further conditions could also have addressed requirements for water supply, waste water treatment and surface water drainage, none of which appear to raise insurmountable issues.

The site is recorded as Prime Quality Agricultural Land (PQAL), however as noted, there may be contamination issues on the site. Given the uncertainty in this regard, the classification of the site as PQAL would not be a robust reason for refusal.

REASON FOR DECISION:

The development is contrary to policy HD2 (Housing in the Countryside) of the Local Development Plan 2016 and the New Housing in the Borders Countryside Supplementary Planning Guidance 2008 in that it would constitute piecemeal, sporadic new housing development in the countryside that would be poorly related to an established building group and no other supporting justification has been presented. This conflict with the development plan is not overridden by any other material considerations.

The proposed development is contrary to Local Development Plan 2016 policies PMD2 (Quality Standards) and HD3 (Protection of Residential Amenity) as the erection of dwellinghouses at this location would be incompatible with neighbouring farm uses, with a reasonable likelihood of unacceptable residential amenity impacts arising for the future occupants of the proposed dwelling units. Other material considerations do not justify a departure from the Development Plan in this regard.

Recommendation: Refused

- 1 The development is contrary to Policy HD2 (Housing in the Countryside) of the Local Development Plan 2016 and the New Housing in the Borders Countryside Supplementary Planning Guidance 2008 in that it would constitute piecemeal, sporadic new housing development in the countryside that would be poorly related to an established building group and no other supporting justification has been presented. This conflict with the development plan is not overridden by any other material considerations.
- 2 The proposed development is contrary to Local Development Plan 2016 policies PMD2 (Quality Standards) and HD3 (Protection of Residential Amenity) as the erection of dwellinghouses at this location would be incompatible with neighbouring farm uses, with a reasonable likelihood of unacceptable residential amenity impacts arising for the future occupants of the proposed dwelling units. Other material considerations do not justify a departure from the development plan in this regard.

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