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## **REVOCAION OF PLANNING PERMISSION**

**Report by Chief Planning and Housing Officer**

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**PLANNING & BUILDING STANDARDS COMMITTEE**

**24 April 2023**

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### **1 PURPOSE AND SUMMARY**

- 1.1 This report seeks Members approval of a revocation Order under Section 65 of the Town and Country Planning (Scotland) Act 1997, to revoke planning permission 11/01527/FUL for the erection of a dwelling with carport and stables/workshop/store on land North West of Greenlawdean Farmhouse, Greenlaw.**
- 1.2 Under Section 65 of the Town and Country Planning (Scotland) Act 1997, the planning authority has the power to revoke or modify any permission to develop land granted on an application. In exercising this function, the planning authority must have regard to the development plan and any other material considerations. Revocation of planning permission under Section 65 of the Act may be exercised where the permission relates to the carrying out of a building or other operations, at any time before those operations have been completed.
- 1.3 Under the Council's scheme of delegation to the Chief Planning & Housing Officer, the decision to revoke planning permission must be made by the Planning & Building Standards Committee.

### **2 RECOMMENDATION**

- 2.1 It is recommended that the Committee exercise the power conferred by Section 65 of the Town and Country Planning (Scotland) Act 1997 and make an Order revoking the planning permission granted under reference 11/01527/FUL.**

### **3 BACKGROUND**

- 3.1 Planning permission for the erection of a dwelling with carport and stables/workshop/store was approved in 2012 following a successful appeal to the Local Review Body (LRB) on the grounds of non-determination. Having considered the appellants supporting information and the case officer's assessment of the application, the LRB concluded that a building group did exist at Greenlawdean, but the proposed dwellinghouse would not be seen as a logical extension of the group and would not be well related to the existing building group.
- 3.2 The LRB then considered whether a sufficiently strong case had been presented by the applicant to justify the erection of an isolated dwellinghouse for a retiring farmer. At the time the application was submitted and the appeal considered by the LRB, the farm operation was a large and viable business and the proposed new dwelling (for Mr Leggate and his wife) would allow the applicants son (or daughter) to occupy the existing farm house and assume responsibility for the operation of the farm. The LRB agreed that there was a direct operational need for a new house to serve the existing and established rural business. Members also agreed that there were no suitable sites, houses or buildings suitable for conversion within the existing farm steading to accommodate the proposed new dwelling.
- 3.3 The LRB, after considering all relevant information, concluded that the development was compliant with the Development Plan in place at the time of determination, and that there were no other material considerations that would justify departure from the plan. The appeal was upheld, and following completion of a Section 75 Legal Agreement, permission was issued, subject to a number of planning conditions.
- 3.4 The planning permission was subsequently implemented following discharge of all pre-commencement conditions. The planning officer confirmed this in writing in March 2015. The first section of foundations were formed on site in July 2018 and the appointed officer confirmed that the permission had therefore been implemented. No further works have taken place on site but the consent, having been implemented, remains extant.

### **4 REQUEST TO REVOKE PLANNING PERMISSION**

- 4.1 In October 2022, Smith & Garret were instructed by the executors of the late Peter Leggate (applicant) to apply for a revocation of the above consent. Following implementation of the planning permission, the construction of the house was delayed and Mr Leggate unfortunately fell ill, sadly passing in the summer of 2022.
- 4.2 The Leggate family has decided that Mr Leggate's successors will inherit parts of his estate, with the remaining land being sold. There is therefore no longer any need, or desire to construct the approved dwelling, and Mr Leggate's successors have agreed to remove the existing section of foundation, restore the land to its former condition and seek revocation of the consent.
- 4.3 The Section 75 attached to the original consent secured development contributions of £4205 towards Education & Lifelong Learning (to be settled upon completion or occupation of the dwelling). It also ensured that the land is held as a single property and farmed as single agricultural unit and that no party of the farm shall be separately sold or otherwise disposed of. The agent is aware that a further application to remove this legal burden on the land will also be required. This will be considered separately.
- 4.4 Under Section 66 of the Act, where an Order is opposed, it shall not take effect unless it is confirmed by the Secretary of State. Where a planning authority submits such an order, notice is served on the owner of the land affected, the lessee and occupier of the

land affected and any other person who, in their opinion, will be affected by the order. Where a valid objection is received, then the matter would have to be heard at Public Local Inquiry.

- 4.5 Where a Section 65 Order is unopposed (as is the case with this request) the procedures set out under Section 67 of the Act would apply. Instead of submitting the Order to Scottish Ministers for confirmation, the planning authority shall advertise the fact that the Order has been made. The advertisement must specify that the persons affected by the Order have at least 28 days to give notice to the Secretary of State. If no notice is given the Order will take effect without confirmation no less than 14 days after the expiry of the notice period. Any advertisement published must be sent to the Secretary of State not more than 3 days after publication.
- 4.6 Smith & Garratt has confirmed in their letter of 25 October 2022 that the Order, should it be agreed, will be unopposed.
- 4.7 The extant planning permission was assessed against the prevailing policies contained within the Approved Structure Plan 2001-2018 and consolidated Scottish Borders Local Plan 2011. The relevant policies were considered to be H7, H8 and N20 of the Structure Plan and policies G1, G5, D2 and Inf4 of the Local Plan. Other material considerations included the Council's approved Supplementary Planning Guidance note on New Housing in the Borders Countryside.
- 4.8 Since the LRB's decision to approve the application, both the Structure Plan and Local Plan have been replaced by the Scottish Borders Local Plan 2016 and more recently, National Planning Framework 4. These documents now form part of the Council's Development Plan. The SPG on new housing in the countryside has not been updated or replaced.
- 4.9 Whilst the Structure Plan and Local Plan have been superseded, there has not been a significant shift in policy or supplementary planning guidance since the extent permission was approved. There has however been a significant change in personal circumstances, and the need for the new dwelling no longer exists and the request to revoke the permission will not conflict with the principal aims of the Development Plan or supporting guidance.

## **5 IMPLICATIONS**

### **5.1 Financial**

There are no costs attached to any of the recommendations contained in this report. Where planning permission is revoked, Section 76 of the Town and Country Planning (Scotland) Act 1997 provides that the applicant or other persons with an interest in the land affected may claim compensation if they suffer loss as a result. A claim could be made, for example, if building work has already started or expenditure has been incurred in the preparation of plans. In the current case, the risk of the applicant's successor's seeking compensation is considered very low. The agent has indicated that they do not wish to proceed with the development and will not oppose the Order.

### **5.2 Risk and Mitigations**

There is a risk that if the revocation were subject of a valid objection then the matter would have to be considered at a Public Local Inquiry, which would incur the Council additional costs and time. Also (as noted above) the revocation of planning permissions can (in some circumstances) result in claims for compensation from affected parties (see paragraph 5.1 above) but the risk associated with this is considered to be low.

**5.3 Integrated Impact Assessment**

Not applicable

**5.4 Sustainable Development Goals**

No impact

**5.5 Climate Change**

Not applicable

**5.6 Rural Proofing**

Not applicable

**5.7 Data Protection Impact Statement**

There are no personal data implications arising from the proposals contained in this report.

**6 CONSULTATIONS**

6.1 None.

**Approved by**

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

**Author(s)**

| Name               | Designation           |
|--------------------|-----------------------|
| Barry Fotheringham | Lead Planning Officer |

**Background Papers:** Planning application 11/01527/FUL  
Local Review Body Decision 12/00015/RNONDT

**Previous Minute Reference:** None



11/01527/FUL

Greenlawdean Farmhouse  
Greenlaw

