

F E R G U S O N
P L A N N I N G

Revision of Planning Condition at Rachan Chalet

MR I MAXWELL

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Ref:
Council ref: 22/01811/FUL
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Approved by: Tim Ferguson MRTPI
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Revision of Planning Condition at Rachan Chalet

EXECUTIVE SUMMARY

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This Statement is submitted on behalf of Mr Ian Maxwell “the Appellant” against the decision of Scottish Borders Council “the Council” to refuse permission to modify Condition One for Planning Consent Reference 15/01355/FUL, regarding the Land located at Disused Railway Line, Rachan, Broughton. All Core Documents (CD) are referenced in Appendix 1.

Permission was granted for the erection of a residential dwelling on site in March 2005 (04/02222/FUL), which was fulfilled when work commenced on the foundations for the structure in 2010. Subsequent Planning Permission (15/01355/FUL) granted consent for a holiday chalet and change of use of the land to form three holiday pitches.

The Appellant proposes to modify Condition One of the Planning Permission 15/01355/FUL to allow the existing holiday home on the site to be occupied as a permanent residential dwelling. The refusal of the application by Scottish Borders Council (hereafter ‘the Council’) in this instance concerns the viability of the site as a holiday let, and the unsustainable development in a rural location which would occur if the current site were occupied as a private dwelling.

The Appointed Planning Officer considers the existing building as “isolated and physically segregated” from the distinct building group of the area. It is the position of the Appellant that existing structures on the site should be incorporated into the nearby building group as it respects “the local landform, the pattern of fields and the distribution of tree and hedgerow cover” as outlined in supplementary planning guidance regarding New Housing in the Borders Countryside.

During the course of the application’s determination, the following consultee responses were received from Council Officers and partners:

- **Roads Planning team – No Objection**

Reasons for Refusal

Two reasons were cited for the refusal of the Application.

The first stated reason was that no information had been provided “to demonstrate that the proposal is incapable of being operated as a viable holiday accommodation business”. The lack of clarification, the planning officer argued, contradicts policies PMD1 and HD2 of the Local Development Plan 2016 and supplementary planning guidance on New Housing in the Borders Countryside, and would result in “unsustainable development in a rural location”.

It is the position of the Appellant that the health risk to the current owner negates the successful operation of the premises as a holiday let. The appellant currently occupies a caravan adjacent to the nearby workshop and due to the nature of the appellants ongoing health issues and the poor quality of current living arrangements, the new residential dwelling is required as a matter of urgency. Additionally, there is no requirement in either policy or the stated condition for a plan of this kind, and no way to empirically determine the viability of the holiday lets business in this way.

The second stated reason for the refusal stems from the exclusion of the premises from the existing building group, claiming that the property is “isolated and physically segregated from the dispersed Rachan building group”. The development, it is argued, would, as a result, “represent sporadic and unjustified housing development in the countryside”.

The Appellant considers that the existing development is situated within the Dispersed Building Group at Rachan and contributes positively to the local setting and defined sense of place. This is in line with guidance which sets out the building group is “identifiable by a sense of place which will be contributed to by:

- natural boundaries such as water courses, trees, or enclosing landform, or
- man-made boundaries such as existing buildings, roads, plantations or means of enclosure.”

Whilst the Appointed Officer considers the man-made boundary of the access track to the North to be the extent of the Rachan Building Group, as was noted in their Report of Handling 22/01611/FUL, Supplementary Planning Guidance on Housing in the Countryside states (Section 2.b.1) that “Natural boundaries should take precedence over man-made boundaries when defining the extent of a building group.” Due to its setting within the natural boundaries of the Rachan Building Group, as defined by the extensive forestry the property should be considered as part of this group. As the guidance makes clear “The aim is to ensure that building groups are not subject to development that impacts on the amenity or character of the group to the detriment of residents.”, which is demonstrably not the case in this instance.

No physical works are to be undertaken to the exterior of proposal following its change of use; with interior changes limited to the curtilage of the existing building. When operated as a private dwelling, the premises would require no further amenity or services to be utilised in the local area.

The amenity of the property is noted in the Appointed Officer’s Report of Handling, stating, “there would be no impact on either the NSA or the locally designated designed landscape were the condition to be removed.” The proposal is therefore in adherence with policy HD2 Section A.b which seeks to avoid “the cumulative impact of new development on the building group, and on the landscape and amenity of the surrounding area”. The modification to the condition will not cause “unacceptable adverse impacts” to occur as a result.

The Local Review Body, having considered the detail contained within the Planning Application package, together with the information set out herein, will be respectfully requested to allow the Notice of Review and grant Permission for the modification of Condition One.

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INTRODUCTION

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- 1.1 This Statement supports a Notice of Review of the delegated decision of Scottish Borders Council to refuse permission to modify a planning condition for Rachan Chalet.
- 1.2 The application site lies along a section of disused railway line to the Southwest of Rachan Home Farm and is reached from a minor access single track road off the B712 public road between Rachan and Drumelzier. It lies within the Upper Tweeddale National Scenic Area (NSA) and is within the locally designated Rachan Designed Landscape, as noted by the Appointed Officer.
- 1.3 The site is bounded on the West side by extensive forestry, known as the Tomb Plantation, and on its East by a small agricultural plot. (See Fig 1)
- 1.4 The Appellant requires the conversion of the existing holiday home on their land to a permanent residential dwelling. The operation of the premises as a holiday home is no longer viable due to the poor health of Mr Maxwell, which limits his ability to maintain the holiday lets business.
- 1.5 No exterior works are needed for the proposed conversion to a dwelling house, with no resulting effect on the existing amenities and services required by the previous permissions.
- 1.6 The existing building falls within the garden area of a consented residential dwelling, granted permission in 2005 (04/02222/FUL), and is no longer in agricultural use.
- 1.7 Planning Permission (15/01355/FUL) approved a holiday chalet and change of use of the land to form three holiday pitches for motor homes. Conditions were attached for the consent, including condition One as copied below.

“1. The occupation of the chalet and motorhomes shall be restricted to genuine holidaymakers for individual periods not exceeding 4 weeks in total within any consecutive period of 13 weeks. A register of holidaymakers shall be kept and made available for inspection by an authorised officer of the Council at all reasonable times. No more than three motorhomes shall be positioned on the site at any time, and they shall be removed from the site at the end of each occupancy period.”
- 1.8 The map below (Fig 1.) shows the position of the appeal site and gives an overview of the site boundaries.



Fig 1: Location Map as provided by RM Architecture in Planning Statement, showing context of the site. (Source: Ross Martin Architecture)

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REFUSAL OF APPLICATION BY SCOTTISH BORDERS COUNCIL AND PLANNING POLICY CONTEXT

REFUSAL OF APPLICATION BY COUNCIL AND PLANNING POLICY

2.2 Modification to planning condition 22/01811/FUL was refused on 17th January 2023. The Decision Notice (CD10) cited two reasons for refusal, set out below:

1.

“The development would be contrary to policies PMD1 and HD2 of the Local Development Plan 2016 and supplementary planning guidance on New Housing in the Borders Countryside in that no information has been submitted to demonstrate that the proposal is incapable of being operated as a viable holiday accommodation business.”

2.

“Granting permission would result in unsustainable development in a rural location. The resultant dwellinghouse would be isolated and physically segregated from the dispersed Rachan building group. As a result, the development would represent sporadic and unjustified housing development in the countryside. No overriding case for the development as proposed has been substantiated. This conflict with the development plan is not overridden by other material considerations.”

Local Development Plan

2.3 Policy HD2 contains six sections, each of which details circumstances in which new houses will be considered acceptable. Section (A) which addresses development relating to Building Groups is considered to represent the pertinent material consideration in the determination of the appeal proposal.

2.1 Section (A) of Policy HD2 is replicated below:

“(A) Building Groups

Housing of up to a total of 2 additional dwellings or a 30% increase of the building group, whichever is the greater, associated with existing building groups may be approved provided that:

- a) *the Council is satisfied that the site is well related to an existing group of at least three houses or building(s) currently in residential use or capable of conversion to residential use. Where conversion is required to establish a cohesive group of at least three houses, no additional housing will be approved until such a conversion has been implemented,*
- b) *the cumulative impact of new development on the character of the building group, and on the landscape and amenity of the surrounding area will be taken into account when determining new applications. Additional development within a building group will be refused if, in conjunction with other developments in the area, it will cause unacceptable adverse impacts.*
- c) *any consents for new build granted under this part of this policy should not exceed two housing dwellings or a 30% increase in addition to the group during the Plan period. No further development above this threshold will be permitted.*

d) *In addition, where a proposal for new development is to be supported, the proposal should be appropriate in scale, siting, design, access, and materials, and should be sympathetic to the character of the group.”*

2.4 Policy PMD1 has 12 key design principles regarding sustainability and is replicated below:

“In determining planning applications and preparing development briefs, the Council will have regard to the following sustainability principles which underpin all the Plan’s policies and which developers will be expected to incorporate into their developments.

- a) *the long-term sustainable use and management of land*
- b) *the preservation of air and water supply*
- c) *the protection of natural resources, landscapes, habitats, and species*
- d) *the protection of built and cultural resources*
- e) *the efficient use of energy and resources, particularly non-renewable resources*
- f) *the minimisation of waste, including wastewater and encouragement to its sustainable management*
- g) *the encouragement of walking cycling, and public transport in preference to the private car*
- h) *the minimization of light pollution*
- i) *the protection of public health and safety*
- j) *the support to community services and facilities*
- k) *the provision of new jobs and support to the local economy*
- l) *the involvement of the local community in the design, management, and improvement of their environment”*

Supplementary Guidance

3.1 The Supplementary Planning Guidance (SPG) ‘**New Housing in the Borders Countryside**’ includes the following criteria for any new housing in the countryside:

- No adverse effect on the viability of a farming unit or conflict with the operations of a working farm.
- Satisfactory access and other road requirements.
- Satisfactory public or private water supply and drainage facilities.
- No adverse effect on countryside amenity, landscape or nature conservation.
- No adverse impact on ancient monuments, archaeological sites, or on gardens or designed landscapes.
- Appropriate siting, design and materials in accordance with relevant Local Plan policies.
- The safeguarding of known mineral resources from sterilisation unless this is acceptable following an assessment of the environmental implications.

3.2 The section of the Guidance, which covers the expansion of existing Building Groups, states that all applications for new houses at existing Building Groups will be tested against an analysis of:

- a) the presence or, otherwise of a group; and
- b) the suitability of that group to absorb new development.

3.3 The Guidance sets out that the existence of a Building Group “will be identifiable by a sense of place which will be contributed to by:

- natural boundaries such as water courses, trees or enclosing landform, or
- man-made boundaries such as existing buildings, roads, plantations or means of enclosure.”

- 3.4 When expanding an existing building group, the Guidance includes the following points:
- The scale and siting of new development should reflect and respect the character and amenity of the existing group.
 - New development should be limited to the area contained by that sense of place.
 - A new house should be located within a reasonable distance of the existing properties within the building group with spacing guided by that between the existing properties.
 - Ribbon development along public roads will not normally be permitted.

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GROUNDS OF APPEAL AND
 CASE FOR APPELLANT

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4.1 The decision of the Planning Authority to refuse the Application is challenged based on the Grounds of Appeal set out below. It is the submission of the Appellants that the proposal accords with the relevant adopted policy of the Local Development Plan and Supplementary Guidance and that there are no material considerations which justify the refusal of the Application.

4.2 During the course of the Application's determination, the following consultee responses were received from Council Officers and partners:

- **Roads Planning team – No Objection**

GROUND 1: THE PROPOSED DEVELOPMENT REPRESENTS THE REUSE OF EXISTING RESIDENTIAL BUILDING TO ALLOW FOR USE AS A DWELLING. THE PROPOSED DEVELOPMENT LIES ON A SITE WITHIN THE ESTABLISHED BUILDING GROUP AT RACHAN AND WOULD CONTRIBUTE POSITIVELY TO THE LOCAL SENSE OF PLACE AND SETTING.

4.3 It is the Appellant's position that the proposed development offers no material alterations to the existing building, with no effect on the local amenities, services or setting, as noted by the Appointed Officer.

4.4 The appointed Planning Officer states in the Report of Handling that the proposal 'would not affect the material character of the building' and would have no distinction from its current use and occupation. Therefore, the Appellant considers that both usages of the building, existing and proposed, are already well integrated within the character and setting of the area and contribute positively to local character at Rachan.

4.5 The Appellant and Planning Authority agree that the limited impacts on landscape and amenity associated with the proposed development do not represent an "unacceptable adverse impact" and therefore the proposed development accords with Policy HD2 criteria b) of section (A). It is common ground between the Appellant and the Planning Authority that the modification of the property would have no material effect on the amenity of its location with "no impact on either the NSA or the locally designated designed landscape", as described by the appointed Planning Officer's Report of Handling.

4.6 The Appointed Officer cites policy PMD1 in their report of handling, and contests that the proposed development would contradict "the long-term sustainable use and management of land" as stated in the policy. It is the Appellant's position that further building work has not been proposed by the modification of the planning condition in this case, and that the permissions have no bearing and present no precedence for further development in the area. The Appellant contests the usage of policy PMD1 in the justification for refusal in this regard.

4.7 In the original decision regarding the construction of the chalet (04/02222/FUL), no condition was imposed which stipulated that the existing building was not a dwelling, simply that the dwelling should be used as part of a holiday lets business. It stands to reason that with the loss of the holiday lets business (as outlined below), the existing site remains a dwelling, which was deemed integrated within the local place and setting at the time of approval by committee. The appellant argues that this remains the case.

- 4.13 it is the Appellant's position that the distinct building group at Rachan is inclusive of the existing building, as established by the curtilage of the natural boundaries of the Rachan area. The existing building can clearly be seen as within this established building group (See fig.2) and not "isolated and physically segregated from the dispersed building group" as stated in the appointed Planning Officer's Report of Handling.
- 4.14 Whilst the dispersed group is bounded by the boundary of the private road to the North, as mentioned by the Appointed Officer, the SPG maintains that the natural boundaries "take precedence over man-made boundaries when defining the extent of a building group". It is the Appellant's position that the proposed boundary of the Building Group is established by the natural boundaries and inclusive of the existing building, as confirmed by the Local Review Body regarding 21/00011/RREF.
- 4.15 The Dispersed Building Group draws in all existing dwellings in the local area which are accessed from private ways strung between the A701, the B712, and the D54-1 (Fig.2) and numbers 12 existing dwellings in total. This community is known as "Rachan" (as shown by the OS map fig 3.) and is enclosed by the established woodland which defines the area but necessitates noticeable separation distances between most existing dwellings. This is in accord with criteria a) of Section (B) of Supplementary Planning Guidance (SPG) Housing in the Countryside.
- 4.16 The established forestry, known historically as the Tomb Plantation, is mature and of sufficient height to retain visual dominance over all existing dwellings, blocking visuals of the existing building from every direction bar the public access track to the South. It is the appellants position that the forest remains the natural boundary for all dwellings within the group and therefore inclusive of the existing building This can be clearly seen in aerial photographs of the site (fig.4).
- 4.8 The proposal site is within 100m of existing properties such as White Rigg Cottage to the East and Garden Cottage to the North and contributes positively to the place and setting of both properties, with no effect on their sight lines or amenity. (See Fig.2 and 3).
- 4.9 Recent decisions by the Local Review Board regarding a proposal to a nearby plot on the Land East of existing property The Norlands (21/00011/RREF), concluded that a building group was in existence in the Rachan area. Whilst the deposition maintains that the group in question contained four houses, the Review Body noted "further existing houses within a wider grouping amongst woodland at Rachan" (21/00011/RREF). They also noted that there was capacity within this wider group for expansion, subject to "the site being an acceptable addition".
- 4.10 It is the Appellant's position that this wider grouping includes the existing dwelling on the proposal site, which is already established within the place and setting of Rachan and therefore would qualify as "an acceptable addition".
- 4.11 The aerial photograph below (Fig 2) shows the projected boundaries of the Rachan Building Group, with the appeal site highlighted in red. Figure 3 shows the extant building group within the context of the ordnance survey map of the area (Fig 3), noting the distinct labelling of Rachan in its area context.
- 4.12 Additional photographs provided by the appellant show the position and context of the appeal site in relation to buildings within the Rachan group and provide detailed visuals of the existing building (Fig 4).

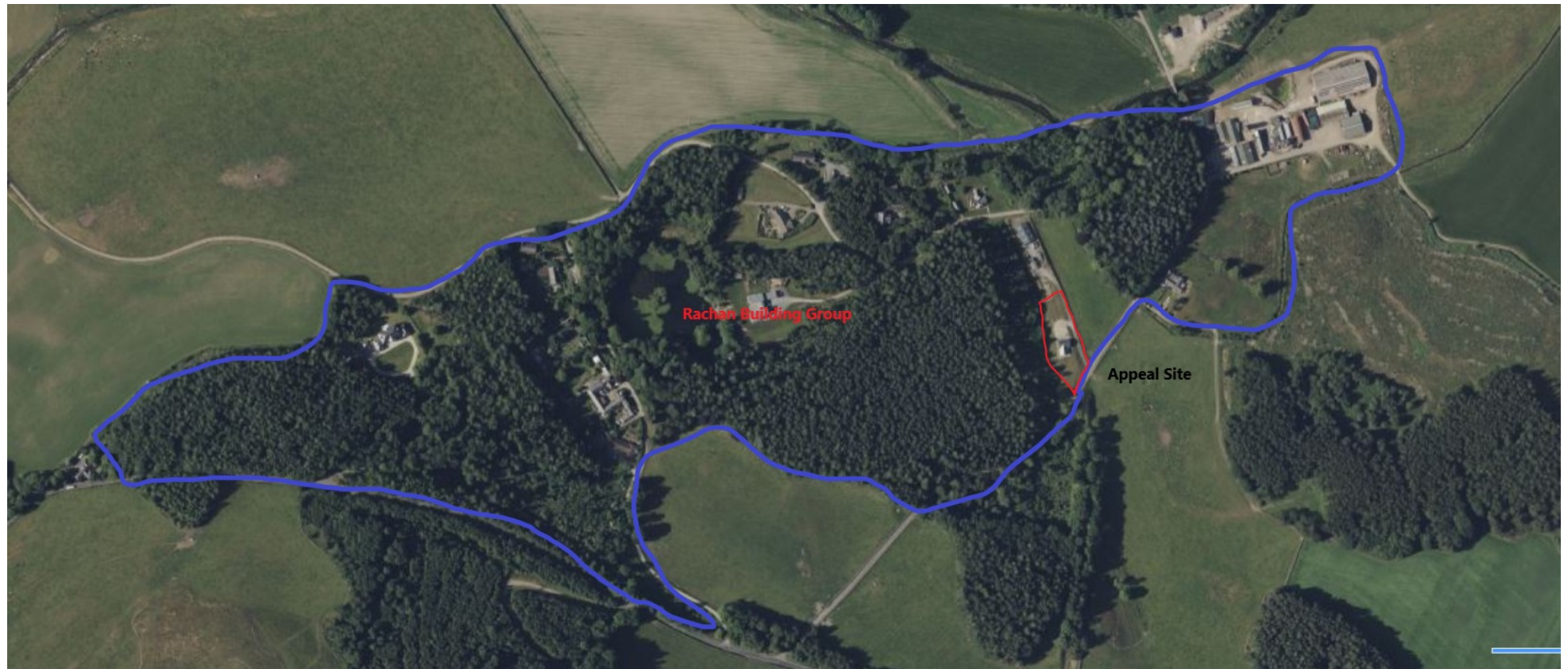


Fig 2: Aerial View of Rachan within natural boundary (in blue) established by woodland.
(Source: Bing Maps)

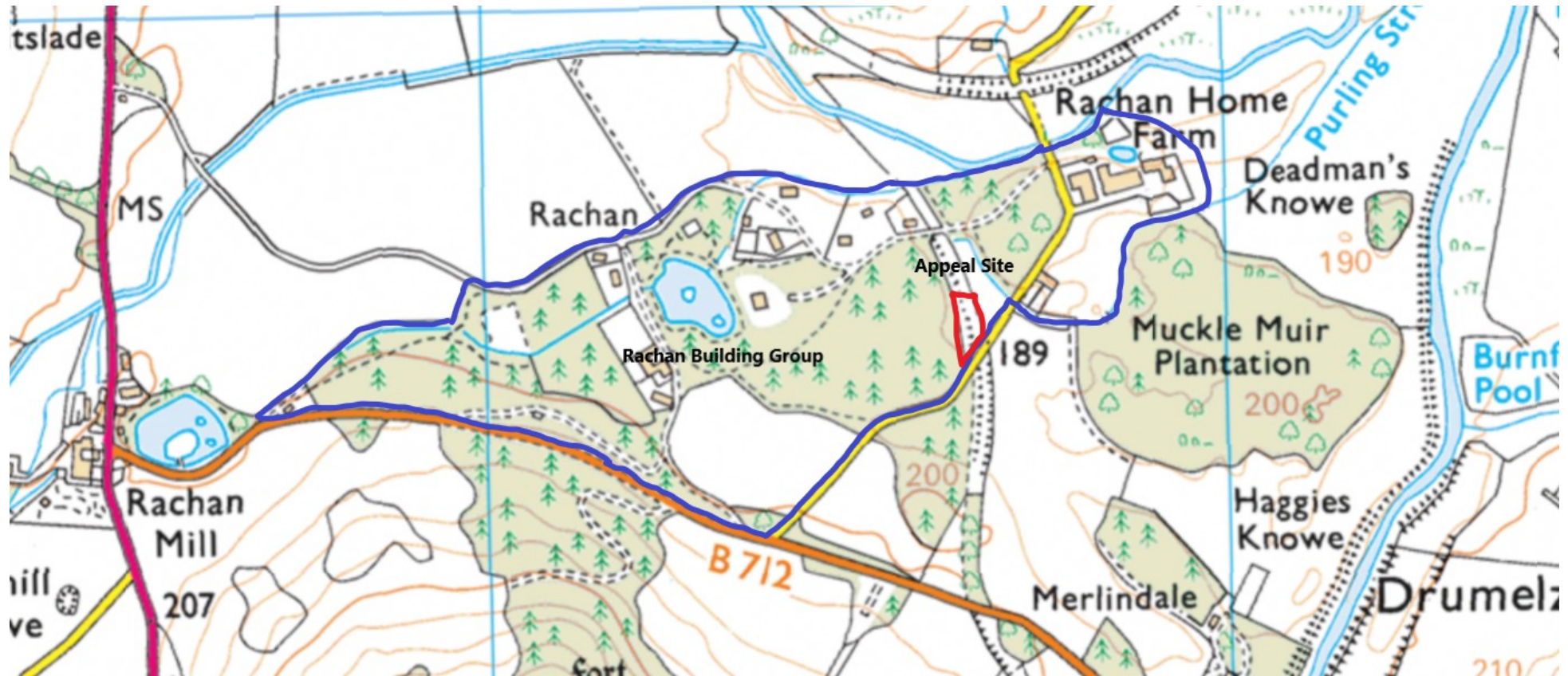


Fig 3: OS Map of Rachan highlighting position of existing building (in red) within the dispersed building group (in blue). (Source: National Library of Scotland)



Fig 4: Aerial photographs of the proposal site within the setting of the Rachan dispersed building group. (Source: Ross Martin Architecture)

GROUND 2: THE SUSTAINABILITY OF THE HOLIDAY LETS BUSINESS IS NOT A MATERIAL CONSIDERATION FOR THE MODIFICATION OF THE CONDITION ONE OF 15/01355/FUL.

- 4.17 The original wording of Condition One for Permission 15/01355/FUL is as follows.
- “The occupation of the chalet and motorhomes shall be restricted to genuine holidaymakers for individual periods not exceeding 4 weeks in total within any consecutive period of 13 weeks. A register of holidaymakers shall be kept and made available for inspection by an authorised officer of the Council at all reasonable times. No more than three motorhomes shall be positioned on the site at any time, and they shall be removed from the site at the end of each occupancy period.”**
- 4.18 Despite the restrictions associated with the condition, such as the number of motorhomes positioned on the site, there is no requirement for information to be submitted pertaining to the potential success or failure of the holiday let business; only that holidaymakers are recorded and registered with the relevant authority. It is extremely difficult to be able to predict the success of the holiday lets business on this basis.
- 4.19 Regardless of this, the potential success or failure of the business is contingent on the appellant’s ability to continue to operate the lets business. With no appropriate permanent residence in the area and the poor health of the appellant, it is unreasonable to suggest that the business can continue in this way.
- 4.20 It is the Appellant’s position that it is inadmissible to require pertinent business information regarding the modification of the planning condition, as this is not a material consideration stated within the original condition. Moreover, the related reasoning is not necessary or required when we consider the proposed property is related to an existing building group, as discussed above. The requirement is not explicitly stated in either Policy PMD1 or Policy HD2, as the appointed Officer’s Report suggests.

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CONCLUSION

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- 5.1 The Notice of Review, supported by this Statement, requests that the Council overturns the decision to refuse Permission to the modification of planning condition 22/01811/FUL and grants consent for the modification of planning condition one at Rachan Chalet.
- 5.2 The proposed development is for the limited alteration of an existing dwelling on a site which is well related to, and within the setting of, the existing Building Group in Rachan. The proposed dwelling reflects the existing pattern of development, respects the local character of Rachan and is enclosed by the nature boundaries of the surrounding forestry. The development is closely aligned with others within the larger building group identified by recent Local Review Body (21/00011/RREF).
- 5.3 The proposal represents no additional cumulative impact on the site amenities and sets no precedence for further development in the area, in accord with both Policy PMD1 and Policy HD2, Section A of the LDP.
- 5.4 The inclusion of the existing building within the Rachan Dispersed Building Group accords with policy and cannot be characterised as “unsustainable development in the countryside” as stated in the Appointed Officer’s Report of Handling. The appellant considers that the proposed development is an example of sustainable development in accord with section PMD1 of the LDP, and thus rejects this as grounds for refusal.
- 5.5 Information requested by the Appointed Planning Officer relating to viability of the holiday accommodation business is not required by any part of policy PMD1 or HD2 or by any of the conditions imposed upon the original planning application (04/02222/FUL).
- 5.6 Regardless, the holiday lets business related to planning condition 1 is no longer viable given the appellant’s poor health and lack of appropriate permanent accommodation on the site. The Appellant considers this not to be a material consideration to the application, and unreasonable grounds for refusal.
- 5.7 The Local Review Body is respectfully requested to allow the appeal for the modification of planning condition one at Rachan Chalet.

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CORE DOCUMENTS

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The following drawings, documents, and plans have been submitted to support the Notice of Review:

- Planning Statement from RM Architecture regarding 22/01811/FUL
- Decision Notice and Officers Statement of Handling for 22/01811/FUL dated January 23rd, 2023.
- Original Planning Approval with Conditions statement and Officers Statement of Handling 15/01355/FUL dated 2015.
- Location Map, as provided by RM Architecture
- Correspondence of RM Architecture and Ferguson Planning
- Aerial Photographs of the Appeal Site and related buildings in the Rachan dispersed building group.

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