

SCOTTISH BORDERS COUNCIL

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

PART III REPORT (INCORPORATING REPORT OF HANDLING)

REF : 22/01811/FUL

APPLICANT : Mr I Maxwell

AGENT : RM Architecture Ltd

DEVELOPMENT : Modification of condition No.1 of planning permission 15/01355/FUL to allow the holiday chalet to be occupied as dwellinghouse

LOCATION: Land At Disused Railway Line Rachan
Broughton
Scottish Borders

TYPE : FUL Application

REASON FOR DELAY:

DRAWING NUMBERS:

Plan Ref	Plan Type	Plan Status
1 of 1	Location Plan	Refused

NUMBER OF REPRESENTATIONS: 14
SUMMARY OF REPRESENTATIONS:

Fourteen representation were submitted. 11 of those were objections from 10 individual addresses and the material grounds can be summarised as follows: development contrary to LDP; building not in a building group; impact on landscape setting; impact on NSA; planning history; never been used as holiday accommodation; no reasoned justification advanced by applicant; undesirable precedent

Three letters of support were submitted. Those noted that: the property was already there and would be in keeping with the area; the property is not visible as it is screened and; it is part of a building group.

Consultation responses were received from:
Roads - concerns raised that the access improvements required by 15/01355/FUL have not been incorporated.

PLANNING CONSIDERATIONS AND POLICIES:

In determining the application, the following policies and guidance were taken into consideration:

Scottish Borders Local Development Plan 2016
PMD1 - Sustainability;
PMD2 - Quality standards;
ED7- Business, tourism and leisure development in the countryside;
HD2 - Housing in the countryside;
HD3 - Protection of residential amenity;
EP4 - National scenic areas [Upper Tweeddale];

EP10 - Gardens and designed landscapes [locally designated Rachan];
IS2 - Developer contributions
IS7 - Parking provision and standards;
IS9 - Waste Water Treatment Standards and Sustainable Urban Drainage.

Supplementary Planning Guidance
Development contributions;
Local landscape designations;
New houses in the Borders countryside;
Placemaking and design;
Waste management.

The applicant has submitted a supporting statement and I have had regard to that.

Recommendation by - Ranald Dods (Planning Officer) on 17th January 2023

Site and proposal

The site is a former railway embankment, some 2.5km south south east of Broughton. It lies within the Upper Tweeddale national scenic area (NSA) and is within the locally designated Rachan designed landscape.

The application is made for the removal of condition 1 of 15/01355/FUL. That condition restricts occupancy of the property to holidaymakers. Removing the condition would permit the use of the property as a dwellinghouse.

Planning history

There is some planning history associated with this site and the adjacent land which is important to the consideration of this application. That can be summarised as follows:

99/00491/FUL, erection of workshop/storage building and formation of access road, granted, 14 Jul 99. This proposal was submitted for a workshop/office/storage building for the applicant's roofing and building business;

02/01247/FUL, erection of a dwellinghouse, refused 23 Sep 02. This proposal was refused as being contrary to policies 7 and 8 of the Tweeddale Local Plan and H5 and H6 of the approved structure plan in that the proposed site was not part of a recognised building group and there was not adequate justification to allow the proposal to be supported;

04/02222/FUL, erection of a dwellinghouse, granted, 28 Mar 05. The proposal was predicated on the keeping and breeding of rare sheep on a portion of land to the south. That proposal was recommended for refusal but was granted permission by committee. The land which was identified for the keeping of the sheep was later the subject of planning application 15/01355/FUL;

06/01423/OUT, erection of a dwellinghouse, refused, 27 Nov 06. The supporting statement stated that the applicant's son had intended to erect a house on the adjacent site [granted under 04/02222/FUL] and operate his business from the then half-built workshop [granted under 99/00491/FUL] but the applicant's son and his construction business had subsequently moved to another part of the Borders. The refusal was appealed to Scottish Ministers and the decision was upheld on 14 Aug 07 (07/00014/REF, DPEA reference P/PPA/140/319);

13/00413/FUL, erection of holiday chalet, withdrawn, 18 Jun 13;

15/01355/FUL, erection of holiday chalet and change of use of land to form 3 holiday pitches for motor homes, granted, 12 Feb 2016. The application was supported by a business plan. Whilst construction of the building began in mid-2019, it has never been used as a holiday let. The motor home pitches have not been constructed;

19/01222/FUL, change of use of existing barn from commercial/agriculture to private domestic, withdrawn, 21 Aug 19.

Principle

The key policies against which this application is assessed are HD2 and PMD1.

Policy HD2 sets out 6 broad criteria. Those are: A) building groups; B) dispersed building groups (related to the southern housing market area); C) conversions; D) restoration; E) replacement dwellings and; F) economic requirement. In relation to those criteria, the proposed development should be considered in terms of A) building groups and C) conversions. The other criteria are not relevant to this proposal.

The site lies outwith a building group. This point is long held by the council and one which has been tested at appeal. Despite this, the applicant attempts to rely on the implementation of planning permission 04/02222/FUL as establishing a building group. That permission has, however, been implemented only to the extent of the formation of foundation trenches and it cannot be said to be substantially complete so as to be capable of being occupied for residential purposes. I also note that the works do not appear to benefit from a building warrant, albeit that is a separate legislative regime. Even were the house to be capable of occupation, it remains the case that two years after granting of that permission, application 06/01423/FUL for a house on the site of the existing workshop building was refused by the council and subsequently appealed to Scottish Ministers. In his decision, the Reporter defined the extent of the building group, stating "I find that the dispersed building group at Rachan is located west of the redundant railway line; that the access road defines its southern boundary; and that the appeal site is unrelated to the 'group'...". Given the application under consideration is even more remote from the building group identified by the Reporter, it follows that the current application site is similarly outwith a building group. As such, removing the occupancy condition would effectively result in permission being granted for an isolated and unjustified dwellinghouse, contrary to the terms of policy HD2 A).

Criterion C) is relevant in that permission was granted for the building to be used as a holiday let and the proposal under consideration is analogous to a conversion. In that regard, the building has some architectural merit in that it was designed to fit in the landscape setting, albeit what has been constructed does not reflect what was granted. The applicant did enquire about proposed non-material variations but was advised that what was being envisaged at that point was straying too far from what had been granted to be considered as non-material. Despite that advice, the revisions to the design were undertaken. The building has been constructed although it would appear not to have been finished internally. As no works are proposed externally, the proposal under consideration here would not affect the physical character of the building. However, the building has never been put to holiday use, so its use as a dwellinghouse would not amount to a 'conversion' in itself.

Even if policy HD2 C) supported a conversion to residential use from a holiday let that had been established, what is at question here is the sustainability of the proposal and the undesirable precedent granting permission would set were permission to be granted.

Policy PMD1 (sustainability) sets out 12 criteria which underpin all policies in the LDP to which the council will have regard and which developers are expected to incorporate into their developments. The first of those is the long term sustainable use and management of land. When permission was granted in 2015, it was on the basis of it being used solely as a holiday let, since the construction of a dwellinghouse would not comply with the council's established policies and supplementary planning guidance on new houses in the countryside. I note that in response to that proposal, the community council objected as "...there is a danger that in future it will be used as a house". Whilst accepting the development as a holiday chalet, the report of handling states clearly that "In terms of use, the chalet will need to be controlled to ensure that the objections of the Community Council are not realised. It is not, generally, felt that the small three-bedroomed nature of the chalet would lead to any inevitability of permanent residential use. As the location is not within a building group, the normal holiday accommodation condition should be imposed".

That condition was imposed and was not challenged by the applicant. As noted above, the building was constructed, although not finished internally, but it has never been operated as a holiday let. I note that the applicant states that they have health issues which, due to covid, prevent him operating the building as a holiday let. This is a situation doubtless faced by others across the Borders and beyond. Although I am sympathetic to any health issues the applicant may have, they cannot be taken into consideration in this instance. In any event, the business plan submitted with the 2015 application stated "Employee engaged close to site in order to maintain chalet and surrounding area to a very high standard, the proprietor would

carry out regular spot checks" and "One part time employee...would be engaged to maintain the site in a habitable condition at all times". The clear intention was that the applicant would be responsible only for carrying out "spot checks" rather than the 'day to day' running and maintenance of the holiday chalet. If that were not to be an acceptable proposition, the applicant could consider selling the building as a holiday let business as a going concern. No evidence has been provided to state that the business has been marketed for a reasonable time, which I would expect to be for a minimum of six months.

It is simply not sustainable that, having obtained permission for a building to be used as a holiday let, an application is submitted, a mere three and a half years after construction works were started, to remove the condition restricting the use of that building, without that use ever having been carried out. Granting permission would permit a building which would otherwise be unacceptable as a dwellinghouse when assessed against policy HD2. As the use of a condition restricting occupancy to genuine holiday makers is common, removing it here would set an undesirable precedent for others in a similar position to consider making applications to remove the restrictive occupancy condition in order to obtain permission for dwellinghouses in the countryside.

Taking all of the above factors into consideration, the proposal does not comply with policies HD2 and PMD1.

Amenity

The proposal, not being within a building group, is remote from housing and would not result in amenity concerns.

Effect on NSA and locally designated designed landscape

I note the comments made regarding the potential impact on the NSA by those submitting representations. Since the building has already been constructed, there would be no impact on either the NSA or the locally designated designed landscape were the condition to be removed.

Developer contributions

Were the proposal to be acceptable, contributions would be required for education provision. Those would need to be secured through a legal agreement.

Roads issues

There appears to be sufficient space within the site for parking of two vehicles and associated turning space. The Roads Planning Service noted in their consultation response that the access improvements required by 15/01355/FUL have not been incorporated into the development as built. I have no reason to question that assessment. Were the proposal to be otherwise acceptable, conditions covering those matters would be recommended.

Services

The application from submitted in respect of the 2015 states that the building would be connected to a private water supply and foul drainage system. Were the proposal to be otherwise acceptable, conditions relating to those matters would be recommended. There would be sufficient space on the site for the storage of waste and recycling containers.

Conclusion

The removal of condition 1 of 15/01355/FUL, which restricts occupancy of the building to genuine holidaymakers, would result in an unjustified house, unrelated to a building group in the countryside and would represent unsustainable development. That would be contrary to policies PMD1 and HD2 of the Local Development Plan and the guidance contained within the New Housing in the Borders Countryside supplementary planning guidance.

REASON FOR DECISION :

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. 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.

Recommendation: Refused

- 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. 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.

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