
From: Alexandrina Lee [REDACTED]
Sent: 21 December 2022 12:25
To: Planning & Regulatory Services
Subject: Objection to Application 22/01811/FUL

CAUTION: External Email

Dear Sirs

My name is Alexandrina Lee, I live at Merlindale Lodge, Broughton, Scottish Borders.

I am a member of the public and am writing to **object** to the following application:
22/01811/FUL: Modification of condition No.1 of planning permission 15/01355/FUL
To allow the holiday chalet to be occupied as a dwellinghouse.

The reason for my objection is that the proposal is contrary to the development plan, detrimental
To the environment because of its impact on landscape character and views within the National Scenic Area.

The substance of my objection is as follows:

The Upper Tweeddale National Scenic Area is a particularly beautiful piece of countryside. My concern if this application were to be granted would be that it would send a green light for others seeking to achieve permission for inappropriate residential development
In our beautiful countryside.

I moved to this area from London seeking a rural community and stunning countryside. I am fortunate to have found both, I
feel strongly that we should maintain our surroundings and allow our many tourists to enjoy the countryside. To that end, we need to have tourist accommodation.

I sincerely hope that you will take my objection to this application into account when making your decision.

Thank you for your attention.

Alexandrina Lee

Comments for Planning Application 22/01811/FUL

Application Summary

Application Number: 22/01811/FUL

Address: Land At Disused Railway Line Rachan Broughton Scottish Borders

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

Case Officer: Ranald Dods

Customer Details

Name: Mr Andrew Jenkins

Address: Rachan Hus Rachan, Broughton, Scottish Borders ML12 6HH

Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

- Contrary to Local Plan

Comment: Modification of condition no. 1 of planning permission 15/01355/FUL to allow the holiday chalet to be occupied as a dwellinghouse is contrary to the development plan. The original planning permission would never have been granted for a dwellinghouse because there is not an existing group of houses at this location.

This site is unsuited for permanent residential use, and associated development that will become attached to it, because this chalet is extremely visible from the surrounding countryside and roads and hills. Modifying condition no 1 will therefore create further negative impact to the amenity of the surrounding countryside.

Thank-you.

From: [REDACTED]
Sent: Thu, 22 Dec 2022 10:07:37 +0000
To: Planning & Regulatory Services
Subject: objection to planning application 22/01811/FUL

CAUTION: External Email

Mr David Holmes
4 The Harrow Cottages
Stobo
Peebles EH458NX

I am a member of the public

Dear sir/madam

I am writing to object to the application 22/01811/FUL modification of condition no1 of planning permission 15/01355/FUL to allow the holiday chalet to be occupied as an ordinary dwelling house.

It seems that the proposal is contrary to the original development plan. It will have a negative effect on the character of Tweeddale which is a national scenic area and also a detrimental impact on the surrounding environment

Having looked at the original application it is clear from Mr. Craig Miller's assessment that the only reason the application was granted was that it should only be used as a holiday rental

Yours faithfully
David Holmes

From: David Lintott
Sent: 22 December 2022 10:25
To: Planning & Regulatory Services
Cc: Dods, Ranald
Subject: OBJECTION by David Lintott to application 22/01811/FUL: Modification of condition No.1 of planning permission 15/01355/FUL to allow the holiday chalet to be occupied as dwellinghouse.
Attachments: Rachan chalet Objection letter from Steve Jupp of planning solutions.pdf; Rachan Chalet LVA of Ian Dudley.pdf

CAUTION: External Email

Dear Mr Dods,

My name is David Lintott, I live at Merlindale (Merlindale House and Coach house), by Drumelzier, ML12 6JD. I am a member of the public.

I am writing to **object** to application 22/01811/FUL: Modification of condition No.1 of planning permission 15/01355/FUL to allow the holiday chalet to be occupied as dwellinghouse.

I am objecting because (using the subject criteria on the planning portal) the proposal is contrary to the development plan, detrimental to the environment because of its impact on landscape character and views, and in particular it will have a harmful effect on the character and views within the Upper Tweeddale National Scenic Area.

I understand from the entry on the portal that it is Mr Dods who is determining this application and I have seen that he is the author of correspondence on the earlier application 15/01355/FUL, with that in mind I have addressed this email to him and copied him into it for ease of reference.

Attached to this email are:

- (1) The report of Mr Stephen Jupp BA(Hons), LL.M., MRTPI, Chartered Town Planner who addresses the planning merits of the application; and
- (2) The Landscape and Visual Appraisal of Mr Ian Dudley BSc(Hons) MICFor CEnv CMLI Associate Professional Services Manager and Landscape Architect at Nicholsons who addresses the landscape and visual harm permitting it would cause.

When I saw the notification of this application in the Peeblesshire News, I recognised that it was made in respect of the existing chalet on the disused railway line at Rachan. I have been aware of the applicant constructing the chalet but missed the notification of the original application which granted permission for its construction in 2015. When construction of the chalet commenced, I had checked the detail of application 15/01355/FUL and noted that it had been granted pursuant to the previous Local Plan as accommodation for genuine holidaymakers, including what had been described by officers as the standard condition to ensure that it complied with the strategic policies in the Plan. I had seen that Mr Dods discharged the conditions on the chalet. Furthermore, he had expressed concern in a letter dated 16 November 2020 to the suggestion that he should approve what had been described by the applicant as a Non Material Amendment to that permission, which he noted entailed changes giving the building more of the appearance of a house rather than a holiday chalet. This reassured me that the Council through Mr Dods were sensible of the need to protect the character and visual qualities of the Upper Tweeddale National Scenic Area and ensure that development such as the chalet was only permitted in this sensitive location because it complied with the requirements of policy and that its appearance was carefully scrutinised so as to respect the rural qualities of its countryside location.

When I read the application statement for application 22/ 0811/FUL and accompanying documents on the planning portal it seemed to me that they presented no justification for the removal of Condition 1. It seemed to me that the

condition was necessary in 2015 when imposed and it was equally necessary now for the reason there stated: “A permanent residential site in this location would conflict with the established planning policy for this area.” It also seemed to me that having a permanent residential use of the chalet would create a different more residential character, exactly what Mr Dods (and the Community Council in their objection to the original application) had been concerned to avoid. It is for that reason that I sought the advice of Mr Jupp and Mr Dudley to obtain a professional view of the planning and landscape consequences of removing the condition.

As can be seen from the Reports, they bear out my initial concerns. In respect of the planning consequences Mr Jupp explains:

- The application would enable the applicant to use the holiday chalet for unrestricted residential use
- The site lies within the Upper Tweeddale National Scenic Area - and is controlled by Policy EP4 of the 2016 Local Development Plan (formerly EP1 of the 2011 Plan)) and is not within a building group – accordingly an unrestricted dwelling would be contrary to policy HD2 (formerly D1). The sole justification for the building when the 2015 permission was granted was through Policy D1 of the 2011 Plan ‘Business, Tourism and Leisure Development in the Countryside
- The condition was imposed because the officer felt it necessary to ensure that unrestricted residential use was not permitted (as the community council had feared in their objection). The condition notes that it is necessary because a permanent residential use would conflict with planning policy for the area.
- Policy provides that development should be within established settlements and building groups. This is to protect the countryside and in particular the national scenic area. The building has never been used for holiday accommodation and the Applicant has provided no relevant justification for its removal. There is no evidence provided that the condition is not necessary. Although the Applicant refers to Covid, planning permission runs with the land and the property could be sold with the condition in place. Should the condition be removed, there would be nothing to stop the current applicant selling the property which would then benefit from unrestricted residential use.
- The “clearly defined residential use pattern” described by the Applicant as being an advantage in his planning statement would be a factor causing particular harm in this rural location. A holiday chalet is a form of development more in keeping with a countryside location precisely because it lacks a residential use pattern.
- The applicant’s own planning statement demonstrates that the tests requiring the imposition of the condition in the first place continue to be met - to allow the application would fundamentally undermine the Development Plan policies to safeguard the countryside and would therefore be contrary to the Council’s spatial strategy. Without the condition there is no tourism justification for the development in the countryside especially in the National Scenic Area

In respect of the landscape and visual consequences Mr Dudley explains in relation to landscape character effects:

- The Site is located within one of Scotland’s finest and most valued landscapes and therefore any change within these landscapes must be carefully considered. It is notable that no consideration of landscape effects has been presented within the planning application.
- The change of use from a holiday chalet to a permanent residential dwelling as a result of the removal of Condition 1 is likely to have a notable effect upon the interaction of the chalet with its landscape setting. Whilst holiday chalets tend to be largely self-contained and focussed on the property itself, residential dwellings are naturally more personal to the occupants and become surrounded by domestic paraphernalia and ancillary structures, as well as potentially further external modifications to the building.
- Given the highly sensitive nature of this landscape to change, it is therefore likely that the proposed change of use would represent an unacceptable landscape impact in comparison to the current impact of the chalet used as holiday accommodation based upon the existing permission and approved architectural details.

And in respect of visual effects:

- The Site is located in an area of countryside in which the 'right to roam' applies, and given its location within a nationally designated landscape, the expectation of those using the surrounding countryside is that of a high quality and relatively undisturbed area. Walkers within this area, which includes the celebrated Tweeddale, the nationally promoted Merlin's Trail including the remains of Tinnis Castle, and the other surrounding elevated land, are therefore considered to be of very high sensitivity to change.
- In Mr Dudley's opinion, the cladding of the chalet that has already been undertaken and the changes to the approved fenestration have already resulted in a degradation of its appearance in the countryside. The proposal to change its use to a residential dwelling will further add to this effect creating a more domestic character within this area of countryside and disrupting the visual tranquillity of users. It is therefore anticipated that the visual effect of the proposals upon walkers within this nationally sensitive landscape will be adverse and unacceptable.
- Although the application asserts that the proposals will be beneficial, this is incorrect and the creation of a "clearly defined residential use pattern" would further harm the landscape.

It is apparent to me that the Council's development plan represents a strategic and plan led approach to ensure that development comes forward in what have been determined to be appropriate locations in a plan led manner which respects the need to respect public goods such as the countryside. In particular, the framework described by Mr Jupp ensures that the countryside, and in particular the Upper Tweeddale National Scenic Area, is respected and preserved by ensuring that development is concentrated on existing villages and building groups. This is to protect the intrinsic beauty of the countryside and the particular special qualities of the NSA as identified by Mr Dudley. Use for tourism is the policy exception which provided the sole justification for the chalet. To permit the application, unjustified as it is, and remove the condition, would result in development which conflicts with policy and causes substantial in principle harm to the Council's strategic policies. There is no justification to remove the condition and every indication that it is needed. For that reason, I respectfully suggest that the application should be dismissed.

I also wish to add however, three further points. The first is that since moving here almost 20 years ago, I have sought to establish Merlindale as somewhere that has a particular and special rural quality in keeping with the NSA. At the Merlindale Nature Festival in September this year we welcomed over 300 people to participate in nature and ecology related activities and see the meadow, created with the help of NatureScot and the Tweed Forum, cut by a traditional horse and mower. We organised a scything event at which more than 40 people participated and a bio blitz which, among the many species recorded included several species of moth new to the Scottish Borders. The Dawyck Botanic Gardens and Borders Forest Trust attended as did the Borders Organic Gardeners, Wildlife Trusts and Red Squirrel network. Since the festival we have had the children of Broughton primary school attending on 5 occasions through a collaboration with Connecting Threads to experience the natural world at Merlindale. There will be a display at the school on the afternoon / evening of the 25th January, when parents and the wider community will be invited to come and take a look at what the children have created. The Festival is an annual event taking place in late summer each year. The rachan chalet is part of the setting of the Merlindale meadows. It is important that that setting is rural and in keeping with the NSA.

Secondly, the Rachan chalet is prominent in the surrounding countryside. In particular, I regularly walk the countryside surrounding Merlindale. The chalet is visible from much of the countryside to the south and east and has a strong influence because of its elevated position. I go walking up to Tinnis castle hill, Logan Head and on to Drumelzier Law. I often walk the horseshoe walk climbing Logan Head and returning down Pykestone Hill to Drumelzier. I have seen this walk become more popular, particularly with the notice boards being erected for the Merlin's Trail which encourages tourists to climb Tinnis castle hill. From Tinnis and the walk up to Logan Head the chalet is widely visible. I feel any further urbanising features would be keenly felt. This is particularly so as the Rachan settlement itself is not visible in these views from the south and east, whereas the chalet is.

Finally, the applicant has obtained permission to carry out works on the disused railway embankment and felled many trees there over the course of the last year. The permission is to create a field by lowering the embankment. In addition to the above, I am concerned at the applicant's admission in his planning statement that the application would result in a "clearly defined residential use pattern". Both Mr Jupp and Mr Dudley note that removing the condition to create this residential use pattern would have a significant and harmful effect both in policy terms and on the existing rural character. Given the policy in the Plan focussing development in villages and groups of houses, I am concerned that the Applicant is attempting to create a residential character as a stepping stone to pave the way for more development on the other side of the road, claiming that the countryside character

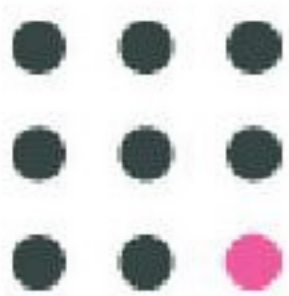
has been lost. If so, allowing this application could create a harmful precedent by changing the baseline and facilitating more, and more harmful, development in the NSA. Allowing the application would also undermine the Council's policies in that the chalet has never even been used for its permitted purpose, and to permit the removal of the condition in those circumstances would encourage others to adopt this mechanism as a means to obtain inappropriate development in the countryside.

For all the above reasons I **object** to the application and urge you to reject it. Thank you for your attention.

Yours Sincerely,

David Lintott

[David Lintott](#) • Barrister



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STEPHEN JUPP

BA(Hons), LLM, MRTPI

CHARTERED TOWN PLANNER

Mr R Dods
Development Management
Scottish Borders Council
Newtown St Boswells
TD6 0SA

Tuesday 13th December 2022

Dear Ranald Dods:

Planning Application - 22/01811/FUL

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

Land At Disused Railway Line, Rachan, Broughton, Scottish Borders

I have been instructed by Mr D Lintott of Merlindale Coach House, Broughton, ML12 6JD, to object to the aforementioned application.

Procedural Point

Based on the matters contained within the application, this is not an application to modify condition 1 [holiday occupancy] but to remove it so that permission is granted for an unrestricted dwellinghouse. It should be determined on this basis. The onus is on the applicant to demonstrate why condition 1 no longer meets the relevant tests.

The Imposition and Removal of Conditions

Planning Circular 4/1998 '*The Use of Conditions in Planning Permissions*' makes clear at paragraph 2 that planning conditions should only be imposed where they are:

- necessary
- relevant to planning

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- relevant to the development to be permitted
- enforceable
- precise
- reasonable in all other respects.

Of particular relevance, because of the applicant's reliance on COVID is paragraph 91:

"91. Since planning controls are concerned with the use of land rather than the identity of the user, the question of who is to occupy premises for which permission is to be granted will normally be irrelevant. Conditions restricting occupancy to a particular occupier or class of occupier should only be used when special planning grounds can be demonstrated and where the alternative would normally be refusal of permission."

With regard to the imposition of holiday occupancy conditions, paragraphs 112 and 113 are relevant –

"Holiday occupancy conditions

112. In recent years there has been an increased demand for self-catering holiday accommodation- whether new buildings (including mobile homes) or converted properties- which may be constructed to a standard that would equally support permanent residence in some comfort. But this accommodation may also be located in areas in which the provision of permanent housing would be contrary to national policies on development in the countryside or not in accordance with development plan policies, or both. The Secretary of State considers that the planning system should respond to these changes without compromising policies to safeguard the countryside.

113. There may be circumstances where it will be reasonable for the planning authority to grant planning permission for holiday accommodation as an exception to these policies, with a condition specifying its use as holiday accommodation only. For example, conversions of redundant buildings into holiday accommodation where conversion to residential dwellings would not be permitted may reduce the pressure on other housing in rural areas. A holiday occupancy condition would seem more appropriate in those circumstances than a seasonal occupancy condition. But authorities should continue to use seasonal occupancy conditions to prevent the permanent residential use of accommodation which by the character of its construction or design is unsuitable for continuous occupation, particularly in the winter months."

Why was the Condition Originally Imposed?

The site lies within the Upper Tweeddale National Scenic Area - and is controlled by Policy EP4 of the 2016 Local Development Plan (formerly EP1 of the 2011 Plan)) and is not within a building group – accordingly an unrestricted dwelling would be contrary to policy HD2 (formerly D1). The sole justification for the building when the 2015 permission was granted was through Policy D1 of the 2011 Plan 'Business, Tourism and Leisure Development in the Countryside'.

In terms of the imposition of the condition, the officer report makes clear at the top of page 4:

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.

It is therefore clear that the justification for the relevant condition satisfied the relevant tests as set out in PC 4/1998.

The relevant condition states:

"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."

The reasons for the imposition of the condition are stated to be:

"A permanent residential site in this location would conflict with the established planning policy for this area."

Is there a Justification for its Removal?

In respect of this issue, it is to be expected that a condition will remain unless there has been a convincing argument to demonstrate that it has outlived its usefulness.

The background to this issue is the fact that the application site lies within a national scenic area and does not fall within the definition of an existing village or building group. As a result there is a clear and overwhelming presumption against new housing development in this location, through Policy HD2, except for very specific exceptions, one of which is the provision of holiday accommodation, through Policy ED7.

It is noted from the outset that the Planning Statement indicates that the building has not even been fitted out yet so it is clear that to date it has not been used for holiday accommodation.

It is of note that the Applicant has provided no relevant justification for why the condition no longer fulfils the tests which resulted in the original grant of permission in accordance with Local Plan Policy D2 – now Policies PMD4, HD2 and ED7.

Although it is asserted that the applicant suffers from a respiratory condition and is at high risk of developing serious symptoms in the event of contracting Covid-19, PC 4/98 makes it clear that personal circumstances are not a material planning consideration. The property could simply be sold with the condition in place. The property has not been actively marketed at a price which reflects the condition so it is clear that the condition has not outlived its relevance. Indeed, should the condition be removed, there would be nothing to stop the applicant selling the unencumbered property to a third party.

In any event, no evidence of his illness is provided. No evidence has been

provided as to why cleaners could not be employed to clean the property between change in visitors. The Government's "We're good to go" scheme was brought in to address COVID related letting difficulties, there is no evidence provided as to whether this scheme has even been considered by the Applicant.

In fact, I am drawn to the conclusion that there was never an intention to use the building for holiday purposes in the first instance – this is clear by virtue of the fact that it has never been so occupied.

The Applicant refers to a reduction in vehicle movements should the condition be removed, but had there been any genuine issue relating to vehicle movements this would have been considered at the time of the grant of permission in 2015 when no such issue was identified.

Finally, the Applicant refers to the creation of a clearly defined residential use pattern as being an advantage of removing the condition. However, this betrays a substantive misunderstanding of the spatial strategy within the Development Plan. The establishing of a residential use pattern would be a factor causing particular harm in this rural location. A holiday chalet is a form of development more in keeping with a countryside location precisely because it lacks a residential use pattern. This issue is explored more fully in the landscape impact appraisal submitted by Mr Ian Dudley BSc (Hons) MICFor CEnv CMLI Associate Professional Services Manager at Nicholsons Lockhart Garratt.

Although the Applicant claims within his statement that the external appearance of the chalet has been "enhanced" with natural stone and that this was done "with the approval of the local authority", in fact in the only entry on the planning file relating to this matter dated 16 November 2020 Mr Dods states:

"There are quite a few changes from what was approved. The fenestration is different, the flue position is different, there is a protrusion on the north elevation, the decking area has moved from the south to the north. This is more than simply putting some stone on the building. I am concerned that it would be taking on more of the appearance of a house rather than a holiday chalet."

The reality is that the treatment with stone along with associated changes are further evidence that the Applicant never intended to use the property for its permitted purpose. To permit the removal of the condition would further harm the countryside, undermine the Council's spatial strategy and set a harmful precedent for development of an urban nature within the National Scenic Area.

Conclusions on the Policy Tests.

Based upon the analysis that I have undertaken above, I am drawn to the conclusion that there is a complete absence of any justification for the proposed removal of the condition when considered in the light of the relevant test.

Indeed, the planning statement in fact demonstrates that the tests requiring the imposition of the condition in the first place continue to be met - to allow the application would fundamentally undermine the Development Plan policies to safeguard the countryside and would therefore be contrary to the Council's spatial strategy. Without the condition there is no tourism justification for the development in the countryside especially in the National Scenic Area.

The relevant policy framework is largely unchanged since the dwelling was first permitted, there would be substantial conflict with that policy framework should the application be granted and therefore on policy reasons alone this application

should be REFUSED.

Yours sincerely,



STEPHEN JUPP
BA(Hons), LL.M, MRTPI
Chartered Town Planner

**APPLICATION TO REMOVE PLANNING CONDITION ON LAND AT DISUSED RAILWAY LINE, RACHAN,
BROUGHTON**

LANDSCAPE AND VISUAL APPRAISAL

Introduction

I have been instructed by Mr David Lintott to undertake a brief landscape and visual appraisal of the likely implications of the proposed removal of Condition 1 of Planning Consent Reference 15/01355/FUL, the result of which would be to change the use of the building in question from a holiday chalet to a permanent residential dwelling.

Description of the Site and its Setting

The Site represents part of a dismantled railway line, to the east of Rachan. It is located in a discrete and intimate pocket of pastoral land contained by coniferous woodland to the west and mixed woodland to the east, and following the alignment of the dismantled railway. Long views are available southwards along this corridor to a range of hills including Logan Head, whilst views to the north are contained by broadleaved woodland and existing structures.

The Site is currently occupied by a holiday chalet, which was originally timber constructed with the intention of looking like a congruous structure in this location, but which has subsequently been clad in stone and subject to other unauthorised alterations, resulting in the building possessing a more domestic and incongruous appearance.

The chalet is located in an exposed position within its setting, on a slightly elevated level platform with no surrounding vegetation. This emphasises the extent to which it exerts a character influence upon its setting, as illustrated by the photograph on the following page.

A minor unnamed public highway passes within approximately 20m of the chalet, running in a north-east to south-west direction and connecting with the B712 to the south-west. A set of traditional single-storey stone-built cottages (White Rigg Cottages) are located on the eastern side of the highway, approximately 100m from the Site.



In terms of the wider landscape character, Scottish Natural Heritage's National Landscape Character Assessment places the Site within the Upland Valley with Woodland Landscape Character Type (116). The key characteristics of this Landscape Character Type are listed as follows:

- Meandering river valley, strongly enclosed by uplands.
- Flat valley floor, broad and open in places, narrow and more intimate in others.
- Prominent terraces (haughlands) caused by fluvial and glacial action.
- Strong influence of woodland, with extensive coniferous forest prominent on valley sides, and mature hedgerow tree lines, broadleaf, and mixed policy woodlands on valley floor.
- Traditional dwellings, farmsteads and hamlets clustered at the foot of valley side slopes.
- Mill towns prominent on valley floor and sides.
- Tower houses and mansions common along river banks.
- Prehistoric hillforts common on gently rounded hill tops.
- Designed policies and parklands significantly contribute to woodland cover and character.

The Site represents a number of these characteristics, being located within a small tributary valley to the River Tweed that possesses an intimate character, and with the strong influence of woodland.

In terms of the overall value of the landscape in which the Site is located, it falls within the nationally significant Upper Tweeddale National Scenic Area, one of Scotland's finest landscapes. The Special Qualities of this area are:

- Diverse scenery of great charm and soft beauty.
- The historical continuity of settlement.
- Green, intimate pastoral valleys.
- Expansive, open hills with panoramic views.
- The variety of woodlands and trees.
- The large, geometric fields.
- The distinctive vernacular buildings.
- Tranquil riverine landscapes.

Appraisal of Landscape Effects

The Site is located within one of Scotland's finest and most valued landscapes and therefore any change within these landscapes must be carefully considered. It is notable that no consideration of landscape effects has been presented within the planning application.

The change of use from a holiday chalet to a permanent residential dwelling as a result of the removal of Condition 1 is likely to have a notable effect upon the interaction of the chalet with its landscape setting. Whilst holiday chalets tend to be largely self-contained and focussed on the property itself, residential dwellings are naturally more personal to the occupants and become surrounded by domestic paraphernalia and ancillary structures, as well as potentially further external modifications to the building.

This harm is partially evident in the unauthorised changes that have been made to the building since the original permission was granted, all of which have lent it a more residential character and detracted from its relationship with its setting.

Given the highly sensitive nature of this landscape to change, it is therefore likely that the proposed change of use would represent an unacceptable landscape impact in comparison to the current impact of the chalet used as holiday accommodation based upon the existing permission and approved architectural details.

Appraisal of Visual Effects

The Site is located in an area of countryside in which the 'right to roam' applies, and given its location within a nationally designated landscape, the expectation of those using the surrounding countryside is that of a high quality and relatively undisturbed area. Walkers within this area, which includes the celebrated Tweeddale, the nationally promoted Merlin's Trail including the remains of Tinnis Castle, and the other surrounding elevated land, are therefore considered to be of very high sensitivity to change.

In my opinion, the cladding of the chalet that has already been undertaken and the changes to the approved fenestration have already resulted in a degradation of its appearance in the countryside.

The proposal to change its use to a residential dwelling will further add to this effect for the reasons stated above, creating a more domestic character within this area of countryside and disrupting the visual tranquillity of users. It is therefore anticipated that the visual effect of the proposals upon walkers within this nationally sensitive landscape will be adverse and unacceptable.

Conclusion

It is the conclusion of this Landscape and Visual Appraisal that the Site is located within a nationally sensitive landscape and that the proposed change of use from holiday accommodation to a permanent residential dwelling would result in unacceptable effects upon the character of the Site's landscape setting, and the visual experience of users of the local countryside.

The application asserts that the proposals will be beneficial in that they will replace tourism related activity with a "*clearly defined residential use pattern*". Based upon my appraisal, I do not agree with this assertion, and it is clear in my opinion that the conversion of the chalet to residential use will be harmful, as is evidenced by the unauthorised activity that has taken place to date.

Ian Dudley BSc(Hons) MICFor CEnv CMLI
15th December 2022

[REDACTED]

From: [REDACTED]
Sent: 20 December 2022 16:05
To: Planning & Regulatory Services
Cc: [REDACTED]
Subject: OBJECTION to 22/01811/FUL modification to condition No 1 of planning condition 15/01355/FUL

CAUTION: External Email

Dear Sir or Madam,

Our names are Mr. James & Mrs. Denise Lintott and we live at Merlindale House, Broughton, ML12 6JD. We wish to **object** to the above application which is to allow a modification of condition No. 1 of planning permission 15/01355/FUL to allow the holiday chalet to be occupied as a dwelling house.

We are objecting because the proposal is in conflict with The Scottish Borders Development Plan and is also in conflict with the character of the surrounding area. The chalet is clearly visible from the meadow and woodland at Merlindale as well as the surrounding countryside. Although not part of an existing settlement or group of buildings, we understand that the development was granted permission as an exception to the usual rules on such development in the countryside because it must be used for holiday let purposes.

The stated purpose of the building in the original application 15/01355/FUL is for a holiday chalet. The area is popular with tourists because of the landscape which includes Tinnis Castle (recently excavated) and the walking trails, such as the John Buchan Way. Indeed, we have tourists staying with us at the Merlindale Holiday Apartment throughout the year, including for the purpose of attending the Merlindale Nature Festival in August next year. Without the condition there is no justification for the chalet which would become a permanent residential dwelling. To remove the condition would therefore be harmful to the Council's policies aiming to protect the countryside and the National Scenic Area, it would also deprive tourists who visit the area of the additional accommodation which the council intends that the accommodation should provide - it would deprive the area of the prosperity those tourists would bring.

Furthermore, it appears there has been no attempt to use the chalet for its stated purpose. The application cites covid as making it difficult for the applicant to operate the chalet as a holiday let. We can categorically state that Covid has not had this effect because we have a holiday let at our address, and with the support of Visit Scotland and their 'Good to Go' initiative we have enjoyed a near record couple of seasons. People from the UK wanted to stay in the UK. If the applicant does not wish to use the property for its permitted purpose the answer to that is not to remove the condition. The application provides no justification for doing so. There is nothing to stop someone else from using the chalet as a holiday let.

The applicant has sited [REDACTED] for not using the property as a holiday let. We are in a vulnerable age group and have also suffered from slipped discs over the past two years but have been able to manage our holiday let by using local people working to the Visit Scotland check-list. We have also been able to instigate contactless entry and communication with guests via texts and emails. If the applicant had intended to use the property as a holiday let he could have followed the some procedures.

The existing chalet has caused harm to the landscape in this part of the Upper Tweeddale National Scenic Area, however that harm is limited by the nature of the permitted use as a holiday let. We feel that the removal of the condition (which the Applicant states will create a "clearly defined residential use pattern") will operate to urbanise the area in a way in which the current chalet does not. We are also concerned about the Applicant's future intentions. We understand that he has obtained permission for the works he has been carrying out this year to create a field by lowering the disused railway embankment on the other side of the road from the chalet. We have

witnessed the applicant taking out many trees from this location during the bird nesting season. This conflicts with actions we have taken, with the help of NatureScot, to increase native woodland cover and create meadow habitat at Merlindale with the aim of restoring biodiversity and increasing the numbers of birds and other species. We have seen increased numbers of red squirrels, rare moths and many varieties of bird. All of which is in keeping with and enhances the rural character of the area. We are concerned that if this application is allowed, the applicant may argue that he has changed the character of the area with the aim of seeking permission for more such buildings further harming the character of the area.

We hope the council will reject this application as it runs contrary to its own policy document, would cause harm to the amenities of the area, deprive the area of holiday accommodation and encourage further inappropriate development.

We thank you for the ability to express our concerns.

Yours faithfully,

Denise and Jim Lintott

Comments for Planning Application 22/01811/FUL

Application Summary

Application Number: 22/01811/FUL

Address: Land At Disused Railway Line Rachan Broughton Scottish Borders

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

Case Officer: Ranald Dods

Customer Details

Name: Mr John McLennan

Address: Oakleigh, Douglas Road, Melrose, Scottish Borders TD6 9QT

Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

- Contrary to Local Plan
- Detrimental to environment
- Land affected
- Legal issues
- Loss of view
- Trees/landscape affected

Comment: Dear Sir,

My name is John McLennan. I am a member of the public. I live at Oakleigh, Douglas Road, Melrose. TD6 9QT

I am writing to object to application 22/01811/FUL: Modification of condition No.1 of planning permission 15/01355/FUL to allow the holiday chalet to be occupied as dwelling house.

I am objecting because the proposal is contrary to the development plan. I understand the site is within the Upper Tweeddale National Scenic Area and is controlled by Policy EP4 of the 2016 Local Development Plan (formerly EP1 of the 2011 Plan). An unrestricted dwelling would be contrary to policy HD2 (formerly D1) because it is not within a building group; allowing the application would harm the environment because of its impact on landscape character and views. I feel this is of particular importance in the national scenic area.

I am a frequent visitor to Merlindale and the area, and I am familiar with the chalet which is visible from the meadow where the Merlindale Nature Festival was held in September this year. I was involved, in organising both the Festival this year and the scything festival in 2021. The purpose of

the Merlindale Nature Festival is to celebrate the natural world and encourage others to do likewise with a particular focus on the creation of wildflower meadows to boost biodiversity. This year we were fortunate to be able to welcome the Tweed Forum, the Dawyck Botanic Gardens, the Borders Forest Trust, the Peebles Bee Group, the Tweed Foundation, the Wildlife Trusts, A Greener Melrose, the Scottish Borders Fungi Group and the Red Squirrel Network to the festival. More than 300 members of the public attended. The festival is to be an annual event and will be taking place on 19 August 2023.

The character of the landscape at Merlindale is deeply rural and this is something which contributes to the character of the Festival and its attraction to members of the public. The Upper Tweeddale National Scenic Area is a particularly beautiful piece of countryside. Permanent residential use with a clearly defined residential use pattern would harm the rural character of this important landscape. I had wondered how it was possible for a building such as the Rachan Chalet to have been built here in the first place. It is elevated on the old railway embankment and as a result can be seen from the surrounding countryside. I have looked at the application documents on the planning portal and the officer's report on the 2015 application for the chalet and I can see that the original consent in 2015 relied upon the justification of tourism provided by the restriction in condition 1 (through Policy D1 of the 2011 Plan 'Business, Tourism and Leisure Development in the Countryside). This makes sense to me as I know that many tourists visit the National Scenic Area, indeed tourists are staying in the Merlindale Holiday Apartment to attend the Merlindale Nature Festival next year. I also note that the community council had objected to the original application over concerns about unrestricted residential use.

The current application to remove the condition and allow permanent residential use should not be permitted. The application offers no grounds to remove the condition which states that the condition is necessary because "A permanent residential site in this location would conflict with the established planning policy for this area". This remains the case. If the Applicant no longer wishes to use the property for the purpose for which the permission was granted it is open to him to sell it to someone who will. But if the condition is removed anybody could buy the property and live in it as a permanent residence. Allowing the chalet to be used as a residential house is inappropriate within the national scenic area, unlike the current holiday chalet use which is more appropriate in this location. I note that the existing settlement of Rachan is not visible from the surrounding countryside at Merlindale, but the chalet is. It is of paramount importance that nothing more is done or allowed to be done which will further impact on the rural character of the environs.

I have also seen on my visits to Merlindale over the summer that the Applicant has been felling trees and removing soil from the railway embankment on the other side of the road to the chalet. I see from the portal that he was granted permission to create a field at that location. It seems to me that this is a further reason why the Council should be careful not to create any sort of precedent for permanent residential use of the chalet. There is a real risk that the Applicant may attempt to suggest, should condition 1 be removed, that he has created an area with a residential character - indeed his application describes as a benefit the creation of a "clearly defined residential use

pattern"- and that at a later stage he will seek to justify further development on that basis. Perhaps suggesting that he has created a new "group" of dwellings.

I ask that the Council refuses this application. The removal of condition 1 is wholly unjustified. Should it be permitted, its removal would cause harm to the Council's policies within the Plan, as well as harming the countryside and national scenic area. It would undermine the spatial strategy in the development plan which determines where development should go. It would set a precedent for further development both in this location and elsewhere in the countryside. I, and those attending the Merlindale Nature Festival, value the national scenic area in this location with its rural character. The Development Plan seeks to ensure that this character is protected. Condition 1 limits harm and restricts the use to a holiday chalet. Please don't remove it.

Yours sincerely,
John Mclennan

Comments for Planning Application 22/01811/FUL

Application Summary

Application Number: 22/01811/FUL

Address: Land At Disused Railway Line Rachan Broughton Scottish Borders

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

Case Officer: Ranald Dods

Customer Details

Name: Mr Peter Douglas

Address: Over Tweed Ford, Broughton, Scottish Borders ML12 6QH

Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

- Contrary to Local Plan
- Detrimental to environment

Comment: I am writing to object to application 22//01811/FUL. Modification of condition 1 of planning permission 15/01355/FUL to allow the holiday chalet to be occupied as a dwelling house.

I am a local resident and am familiar with the location of the disused railway line at Rachan and the development there. This is an area of natural countryside within the Upper Tweeddale National Scenic Area and is rightly protected by the Local Development Plan (formerly EP1 of the 2011 Plan). An unrestricted dwelling would be contrary to policy HD2 (formerly D1) because it is not within a building group. The Plan provides that development should be within established settlements and building groups to protect the countryside and to prevent unjustified development.

This property is in an elevated position on the disused railway line and is clearly visible from local vantage points and causes visual harm to the area. It is not part of an existing building group. Planning permission was granted to complement the tourism market.

The Community Council objected to this proposed development in 2015 in the terms 'We consider that the proposed dwelling is too large to be considered as a holiday chalet and there is a danger that in future it will be used as a house. The location is not part of an existing building group.'

The Planning Officers report points out '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.'

SBC approved the planning application, however Condition 1 requires that '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. Reason. A permanent residential site in this location would conflict with the established planning policy for this rural area.'

With reference to the original planning application, 15/01355/FUL, the last recorded note from the planning officer to the agent dated 16th November 2020 questions the deviations from the agreed specifications of the chalet in the terms 'There are quite a few changes from what was approved. The fenestration is different, the flue position is different, there is a protrusion on the north elevation, the decking area has moved from the south to the north. This is more than simply putting some stone on the building. I am concerned that it would be taking on more of the appearance of a house rather than a holiday chalet. I am not convinced that these are minor changes.' Clearly there is doubt within SBC of the intentions of the owner of this property.

I note that this application has been submitted 'partly due to the health risk to the applicant following the Covid-19 pandemic.' Planning Statement dated 24.10.22 under the heading Planning Proposal. What is/are the other reasons? Whilst I have sympathy for the applicant with regards to health issues exacerbated by Covid-19, there appears to be no medical evidence provided to support this (I accept that such a report if in existence should not be available for public view but should be available to the Planning Committee). As a frequent user of holiday accommodation I can't remember the last time I had any physical contact with the owners of the property I stayed in, including pre the Covid-19 pandemic. There is no necessity for guests and hosts to come into contact with each other. Entry to holiday lets can be by way of a keysafe with clear instructions as to its location and code given in advance of arrival. There does not appear to have been any consideration given to hiring a cleaner which would in turn help to create a job locally.

A further supposed benefit to be gained from this proposed modification of the planning permission is the creation of a 'clearly defined residential use pattern in the area....' This would only be of benefit to the owner of the property who could in the future argue for further development. This is exactly the type of development the policy was designed to restrict.

This building has not yet been completed so has never been used for the purpose for which it has been built. Should this application be successful the property would benefit from unrestricted residential use and there is nothing to stop the applicant either living in the property or selling it making a mockery of the Local Development Plan and creating a precedent for similar applications.

The cynical view could be that the applicant never intended to use the building for tourism purposes and that Covid -19 has presented an opportunity to satisfy an intention to self occupy.

In all the circumstances I ask that SBC refuse this application. Planning Permission was originally granted to satisfy the tourism market. This building is unfinished, the grounds for the application are questionable and if approved would seriously devalue the Development Plan policies and give others a green light to abuse the planning process and to build inappropriate residential developments in the countryside.



5 Frankscroft – Peebles – EH45 9DX

Head of Development Control
Planning and Regulatory Services
Council Headquarters
Newtown St Boswells
Melrose
TD6 0SA

17th December 2022

Dear Sir/Madam

22/01811/FUL

**MODIFICATION OF CONDITION NO. 1 OF PLANNING PERMISSION 15/01355/FUL TO ALLOW THE HOLIDAY CHALET TO BE OCCUPIED AS A DWELLINGHOUSE
LAND AT DISUSED RAILWAY LINE, RACHAN, BROUGHTON, SCOTTISH BORDERS**

I am writing as a member of the public in order to **object** to the abovementioned proposed modification of planning permission. I have over 30 years of experience in assessing the environmental impact of development proposals in the Upper Tweeddale National Scenic Area (NSA) dating back to 1992 when I worked as an Area Officer for Scottish Natural Heritage (SNH), now NatureScot.

My objection is that the proposal is contrary to the development plan, detrimental to the environment because of its impact on landscape character and views, and in particular it will have a harmful effect on the character and views within the National Scenic Area.

Any development within the NSA is controlled by **Policy EP4 National Scenic Areas** of the 2016 Local Development Plan (LDP), formerly EP1 of the 2011 Plan). NSAs are designated as they are particularly beautiful areas of countryside. The chalet is raised up on a railway embankment and as a result is prominent within the surrounding countryside including from Tinnis Castle (part of the Merlin's Trail) and the Tweedsmuir Hills to the east which are features tourists actively come into the area to visit. These same tourists would benefit from the chalet. The "clearly defined residential use pattern" described by the Applicant as being an advantage in his planning statement would harm the rural character of the NSA and is not a benefit.

This application would enable the applicant to use the holiday chalet for unrestricted residential use which as it is outside a building group would be contrary to **Policy HD2 Housing in the Countryside** of the 2016 LDP (D1 of the 2011 Plan). This policy provides that development should be within established settlements and building groups.

The sole justification for the building when the 2015 permission was granted was through **Policy D1 of the 2011 Plan 'Business, Tourism and Leisure Development in the Countryside'**. Condition 1 of the planning consent was imposed because the Scottish Borders Council Planning Officer felt it necessary to ensure that unrestricted residential use was not permitted. The justification for the planning condition

notes that it is necessary because a permanent residential use would conflict with planning policy for the area.

The building has never been used for holiday accommodation and the Applicant has provided no relevant justification for the removal of Condition 1. There is no evidence provided that the condition is not necessary. Although the Applicant refers to Covid, planning permission runs with the land and the property could be sold with the condition in place. Should the condition be removed, there would be nothing to stop the current applicant selling the property which would then benefit from unrestricted residential use.

There is a clear and overwhelming presumption against new housing development in the NSA outwith building groups, and this should be respected without the provision of loopholes. The removal of the planning condition presents a high risk of creating a precedent for inappropriate piecemeal development within the NSA. If this application is successful the planning authority have created a blueprint for future development of single dwellinghouses throughout the NSA. The message to speculative developers will be henceforth:

a. gain planning permission for a small tourist development (chalet in this case); b. leave it unused for a couple of years; and then c. apply for a change of use to a dwellinghouse.

I strongly urge the Council to **reject** this application to modify an existing planning permission and by doing so continue to protect the nationally important landscape qualities of the National Scenic Area. Not to do so risks killing the goose which lays the golden egg for tourism in Upper Tweeddale.

Yours faithfully



Reuben Singleton CEnv, MCIEEM
Director – Tweed Ecology

From:Roland Bonney
Sent:Fri, 23 Dec 2022 14:55:02 +0000
To:Planning & Regulatory Services
Subject:RE: Planning Application 22/01811/FUL

CAUTION: External Email

Dear Sir,

My name is Roland Bonney, I am a member of the public and my address is Stobo Farm House, Stobo, Scottish Borders EH45.

I am writing to object to application 22/01811/FUL: Modification of condition No.1 of planning permission 15/01355/FUL to allow the holiday chalet to be occupied as dwellinghouse. I am objecting because the proposal is contrary to the development plan, it would also harm landscape character and views within the Upper Tweeddale National Scenic Area.

I recently moved into this area in part because of the beautiful countryside. I understand that the justification for the chalet in its countryside location was that it was to be used for tourism purposes. Condition 1 enables development which is an exception to the general presumption against development in the countryside. The current application provides no justification for removing the condition, quite the opposite. The reference within the planning statement to creating a “clearly defined residential use pattern” only serves to emphasise that allowing the application to remove the condition would harm the countryside character of this part of the National Scenic Area.

I trust that the Council will refuse this application as being contrary to the Plan, and continue to protect the character of the countryside in this location in accordance with relevant policies..

Yours sincerely,

Roland Bonney

Roland Bonney

Stobo Farm

Stobo Farm, Peebles, EH45 8NX



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From: Stewart Hennessey
Sent: Thu, 22 Dec 2022 13:37:45 +0000
To: Planning & Regulatory Services
Subject: planning objection

CAUTION: External Email

Kilbucho Mains

Broughton

Peebleshire

ML12 6JH

Dear Sir/Madam,

I am a member of the public writing to **object** to application 22/01811/FUL: Modification of condition No.1 of planning permission 15/01355/FUL to allow the holiday chalet to be occupied as dwellinghouse.

I am objecting because of the harm allowing the application would do to the countryside and the Council's own Plan for Development.

This stretch of land should not be developed at all as it currently works very well as a scenic spot and tourist attraction. The original purpose of the chalet testifies to this and an occupied house invites more development. I am not generally inclined to object to developments but this one strikes me as folly.

I was brought up in the area and walked the nearby disused railway when I was a kid. I now walk along it with my own sons. Upon checking the planning portal along with relevant policies of the Development Plan, which are referred to in the officer's report, I am reassured that the officer granting the original consent in 2015 did so for tourism reasons. It seems to me that this shows that officers understand the balance which the Plan strikes between protecting the countryside, especially the National Scenic Area, and the need for tourism. I know for example that tourists come to travel along the Merlin Trail and the John Buchan Way.

I also note that Mr Ranald Dods in correspondence also lodged on the portal (letter of 16 November 2020) recognises the harm which would be done by introducing a permanent residential use on this site. I fully support the points he makes in that letter and feel that removing the condition would be harmful.

I have been moved to write this objection primarily because of the harm allowing the application would cause to the approach laid down in the Plan and to the countryside. I saw, when looking up the application on the planning portal, that permission has been granted on the other side of the road to create a "field" by lowering the embankment. I have seen the extensive work done here and cannot help suspecting that if the chalet becomes a dwelling then a residential character will be assumed and that in turn will justify further development on the "field". It strikes me as a dreadful shame to blemish this splendid stretch with any development, and I think it is a contradiction of Council policy.

Many thanks for your attention.

Kind regards,

Stewart Hennessey

From:Trevor Owen
Sent:Thu, 22 Dec 2022 11:22:33 +0100
To:Planning & Regulatory Services
Subject:Planning application 22/01811/FUL
Importance:Normal

CAUTION: External Email

Mr R Dods
Development Manager
Scottish Borders Council
Newton St Boswells
TD6 0SA

Thursday 22nd December 2022

Dear Mr Dods,

**Planning Application - 22/01811/FUL
Modification of condition No.1 of planning permission 15/01355FUL to allow
the holiday chalet to be occupied as dwelling house.**

Land at disused railway line, Rachan, Broughton, Scottish Borders.

My name is Mr Trevor Owen of Merlindale Cottage, By Broughton, ML12 6JD and I
Object to the above application.

I purchased Merlindale Cottage some thirty plus years ago. The cottage required
considerable work over the years to make it habitable. This was undertaken due
to the outstanding, beautiful and unspoilt landscape which surrounded the cottage
and extols the Upper Tweeddale National Scenic Area in which it sat.

This however changed when a large stand-alone wooden structure was erected in
an elevated and prominent position. I am informed that this holiday chalet, which
is an eyesore and mars the landscape was built via a loop-hole in the planning
regulations referred to as Tourism and Leisure Development Policy ED7.

The above application to change the usage of this holiday chalet to one of residential
is in direct conflict to the original building/planning policy, and the sole reason of the
build, that is tourism. It also conflicts with the local planning policy for the area (HD2).

There are two reasons that have been put forward to support the application; one of
illness and one of traffic.

Whilst one is sympathetic of individual illness this is not a legitimate reason to change
the use of the building. The planning regulation does not encompass illness of an
individual.

And as the road net work has not altered since the build there can be no transport issues or the build would not have been granted.
I understand that this building has never been used for the purpose of tourism, and one can only suggest that there should be a clause in the Tourism and Leisure Policy for the removal of such unused and invasive buildings.

There are no justifications for the removal of the holiday chalet status. And it would be of great concern to all if the above proposal was accepted as it would be a green light for all who wish to use the Tourist and Leisure Policy (ED7) as a back door to the ruination of Scotlands greatest asset - her landscape.

Sincerely Yours

T.Owen

Please forward an official receipt for this email.