

**SCOTTISH BORDERS COUNCIL**

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

**PART III REPORT (INCORPORATING REPORT OF HANDLING)**

**REF :** 22/00576/FUL

**APPLICANT :** Mr Robert Gaston

**AGENT :** Edwin Thompson & Co (Berwick)

**DEVELOPMENT :** Erection of agricultural building (retrospective)

**LOCATION:** Ravelaw Farm  
Duns  
Scottish Borders

**TYPE :** FUL Application

**REASON FOR DELAY:**

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**DRAWING NUMBERS:**

<b>Plan Ref</b>	<b>Plan Type</b>	<b>Plan Status</b>
BG4755-001(PL)002	Location Plan	Refused
BG4755-001(PL)002	Existing Site Plan	Refused
BG4755-001(PL)003	Existing Plans & Elevations	Refused

**NUMBER OF REPRESENTATIONS:** 20

**SUMMARY OF REPRESENTATIONS:**

A total of 18 letters of representation, 1 objection, 8 general comments and 9 support comments, have been received by the Planning Authority. This does not include multiple representations from the same household which equates to 29 letters in total. All issues raised have been considered. The key issues raised in the representations have been summarised below as follows:

**Objections:**

- o Odour and noise generated by livestock;
- o Traffic movements generated by the transportation of livestock.

**General comments:**

- o The farming operations at the farm have impacted upon the amenity of nearby residential properties;
- o Noise and odour is expected from the farm but measures should be put in place to mitigate against the impact upon nearby residential properties;
- o The applicant and local residents have entered into a Memorandum of Understanding in the hope that conditions will improve at the farm;
- o No more than 2000 pigs should be house at the farm at any given time;
- o The applicant should take reasonable steps to mitigate against the issues that local residents currently face;
- o Communication between the farm and local residents must improve;

- o Livestock should be distributed across the available buildings within the farm, and where possible, the number of livestock in buildings close to nearby residential properties should be minimised.

Support comments:

- o The noise and odour generated by the farm is not significant enough to impact upon nearby residential properties;
- o Noise and odour is to be expected from working farms in rural locations;
- o The farm does not have an impact on human health;
- o The use of the general purpose agricultural building to house livestock improves animal welfare;
- o Due to Covid-19 processing plants were unavailable which meant that animals could not be transferred to processing plants, resulting in an increase in livestock numbers at the farm. The applicant had no alternative but to use the agricultural building to house livestock;
- o It is expected that livestock numbers will fall on the farm;
- o The traffic movements associated with the farm do not impact upon road safety.

Consultations

Community Council: They are unable to give unanimous support for this application as this is likely to cause further adverse environmental effects on the closest residents without specific enforceable agreed conditions regarding pig numbers, noise, odour and vehicle movements.

Environmental Health: They consider the proposed development to be contrary to Policy HD3 of the Scottish Borders Local Development Plan 2016 in terms of its fit with the adjacent group of residential properties. The type of development, livestock rearing, by its nature has odour and noise impacts that adversely affect residential amenity. These impacts are recognised by the Scottish Government. The Code of Good Practice on the Prevention of Environmental Pollution from Agricultural Activity from the Scottish Executive states that to minimise odour from livestock buildings:

"When designing new buildings, consider their siting in relation to residential accommodation, and avoid sites within 400m of such developments."

They understand that these amenity concerns were raised when the land was sold by the owner of Ravelaw Farm at that time for the adjacent housing group to be developed.

Environmental Health are currently investigating nuisance complaints from a number of nearby residences due to noise, odour, dust and insect issues from the pig rearing activities at Ravelaw Farm. Due to the seasonal nature of these issues it is anticipated that this investigation will not conclude until the summer.

There are limited means of mitigating the impacts of odour and noise from pig rearing due to their natural behaviour to squeal, smell and excrete. The best means of managing the impacts is by ensuring there is sufficient distance from nearby sensitive receptors (dwellings) so that odour is dispersed and that noise is attenuated over distance. If distance cannot be altered as means of mitigation, then the number of pigs can be considered.

Although Environmental Health have legislative powers to investigate and abate matters relating to nuisance from commercial activities such as noise, odours, dust, insects, etc., the powers are limited to minimising the nuisance. There are no powers to cease commercial activities once established even if nuisance is determined. Hence, if this building is permitted to contain livestock, the powers available to Environmental Health will not be able to cease pig rearing in this building if a statutory nuisance is determined.

It is noted that there are agricultural buildings used for pig rearing closer to the group of dwellings. However, the number of current and previous occupants of the adjacent housing group who have complained about noise and odour issues from pig rearing at Ravelaw Farm to Environmental Health strongly indicates that amenity is being adversely impacted by the proximity of the livestock buildings to the dwellings.

This application will increase the area for pig rearing and will likely increase the number of pigs kept at the Farm. An increase in the number of pigs will highly likely increase the noise and odour emanating from Ravelaw Farm impacting the adjacent group of dwellings. As such, they cannot support this application and recommend it is refused.

They do not believe a noise impact assessment or odour assessment are appropriate for this application.

SEPA: They do not object to the application. They provide the applicant with some regulatory advice in their response.

#### **PLANNING CONSIDERATIONS AND POLICIES:**

Scottish Borders Local Development Plan 2016

PMD2: Quality Standards

ED7: Business, Tourism and Leisure Development in the Countryside

ED10: Protection of Prime Quality Agricultural Land and Carbon Rich Soils

HD3: Protection of Residential Amenity

**Recommendation by** - Cameron Kirk (Assistant Planning Officer) on 26th October 2022

#### Site description and development

The application site relates to an existing agricultural building, which is located within Ravelaw Farm, some 0.8 miles north west of the settlement of Whitsome. The agricultural building adjoins the west elevation of a larger L-shaped agricultural building which is located to the east and south. The agricultural building is currently use to house livestock, specifically pigs.

There is one residential property to the north west and eight residential properties to the south of the application site. The farm complex and residential properties are surrounded by agricultural fields. The application site is identified as being an area of prime quality agricultural land.

Planning permission is sought, retrospectively, for the erection of an agricultural building that could be used to house livestock, including pigs. This planning application relates solely to the agricultural building contained within the application site. It does not relate to any other farm buildings that form part of the farm complex.

#### Relevant planning history

06/01979/OUT Erection of four dwellinghouses. Refused 27 February 2007.

19/01415/AGN Erection of general purpose agricultural building. Objection 30 October 2019.

19/01568/AGN Erection of general purpose agricultural building. No objection. 06 November 2019.

21/00220/UNUSE - Enforcement case.

#### Assessment

##### Principle

A Prior Notification application was submitted in 2019 for the erection of a general purpose agricultural building, which the Planning Authority had no objection to. Class 18 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended) (GPDO) grants permission for certain classes of development subject to various conditions. In this particular case, a condition found in sub-section (3)(a) of Class 18 of the GPDO does not permit the use of the building to house pigs if the building is within 400 metres of the curtilage of a protected building, which includes a dwelling.

The general purpose agricultural building erected under the Prior Notification process is currently being used to house pigs. The use of the building was brought to the Council's attention and the Enforcement department investigated the matter accordingly. As the agricultural building lies within 400 metres of the curtilage of dwellings it cannot be used to house pigs. As the current use of the agricultural building fails to comply with the condition attached to Class 18 of the GPDO then the current use of the building must either cease or planning permission must be sought to regularise the use.

This planning application has been submitted to regularise the use of the building and allow the building to be used for livestock. Therefore, the principle of the development must be established against Policy ED7: Business, Tourism and Leisure Development in the Countryside.

Policy ED7 supports development in the countryside if it is to be used directly for agricultural purposes. As previously mentioned, the agricultural building is used to house pigs. Some of the other agricultural buildings within the farm complex are also used to house pigs. The agricultural building is directly related to the farming operations of Ravelaw Farm. The general principle of erecting an agricultural building in this location is considered to be acceptable, subject to further policy consideration below.

#### Layout, siting and design

Policy PMD2 aims to ensure that all new development is of a high quality and respects the environment in which it is contained. The agricultural building is in keeping with the scale, character and appearance of neighbouring agricultural buildings found within the farm complex.

The agricultural building is viewed in context with the other agricultural buildings within the farm complex. The addition of this agricultural building to the existing group of agricultural buildings does not have a significant adverse impact to the composition or quality of the landscape character.

#### Residential amenity

Policy HD3 aims to protect residential properties against inappropriate development that would result in the loss of amenity or privacy. There are nine residential properties within the locality of the application site. The primary concern is the impact the use of the agricultural building, to house pigs, has on nearby residential properties.

The Council's Environmental Health department was consulted as part of the application process. They advise that there have been complaints from a number of nearby residents regarding noise, odour, dust and insects from the pig rearing activities at Ravelaw Farm. The agricultural building contained within the application site, along with neighbouring agricultural buildings, are used to house pigs. This has resulted in an investigation being opened by Environmental Health which is understood to still be ongoing.

Initially, a number of nearby residents objected to the planning application as they were concerned that the use of the agricultural building to house pigs would exacerbate existing known issues relating to the farming operations at Ravelaw Farm. During the assessment of the planning application nearby residents met with the applicant to discuss a potential way forward to mitigate against the current issues they face and to improve their amenity.

After discussions between the applicant and local residents, they agreed to enter into a Memorandum of Understanding. The Memorandum of Understanding has a number of stipulations attached to it that have been agreed by both sides. The applicant has agreed to ensure that no more than 2000 pigs or 750 sows are housed within the farm at any given time. The applicant has also agreed that the pigs will be housed in the agricultural buildings spread across the farm and that they will never be concentrated, or located solely or mainly, in the building located nearby residential properties. As part of the agreement, local residents have agreed to withdraw their objections and move to a neutral stance for this planning application.

Whilst the Memorandum of Understanding may give some comfort to nearby residents that conditions may improve at the farm, the document is a statement of intent but it is not legally binding contract and the applicant or local residents could renege on the stipulations specified in document at any given time. In light of this, the Planning Authority cannot place any weight on the Memorandum of Understanding when

assessing the planning application. The planning application must be assessed purely on material planning considerations.

Environmental Health advises that there are limited means of mitigating the impacts of odour and noise from pig rearing due to their natural behaviour to squeal, smell and excrete. The best means of managing the impacts is by ensuring there is sufficient distance from nearby sensitive receptors, such as dwellinghouses, so that odour is dispersed and that noise is attenuated over distance. If distance cannot be altered as means of mitigation, then the number of pigs can be considered.

Environmental Health also advises that they have legislative powers to investigate and abate matters relating to nuisance from commercial activities such as noise, odours, dust, insects, etc; the powers are limited to minimising the nuisance. There are no powers to cease commercial activities once established even if nuisance is determined. Hence, if the agricultural building is permitted to contain livestock, the powers available to Environmental Health will not be able to cease pig rearing in this building if a statutory nuisance is determined.

Local residents now argue that it would give the applicant greater flexibility over where the pigs are housed within the farm which would allow them to house the pigs in agricultural buildings located furthest from their properties. In turn, this would allow the applicant to increase the overall capacity of livestock that could be housed at the farm, should they wish to do so. The Planning Authority is not able to exercise any control over the existing agricultural buildings through the planning process other than the one contained within the application site. This has the potential to exacerbate issues relating to noise, odour, dust and insects as a consequence of additional pigs being housed at Ravelaw Farm. This would then be to the detriment of nearby residents. Environmental Health has confirmed that they have no powers to cease commercial activities once established, even if complaints are received and a statutory nuisance is determined. Therefore, it would be irresponsible for the Planning Authority to support the planning application.

In light of this, the development fails to comply with Policy HD3 as it could have a greater adverse impact upon the amenity of neighbouring residents.

#### Roads

It is not expected that the development gives to rise to any adverse impact on road safety. The use of the building to house pigs may potentially result in an increase in traffic movements, if overall numbers at the farm increase, although it is understood that the existing accesses are used that serve the farm.

#### Prime quality agricultural land

The application site has been identified as an area of prime quality agricultural land. Therefore, it must be assessed against Policy ED10. Policy ED10 states development, except proposal for renewable energy development, which results in the permanent loss of prime quality agricultural land or significant carbon rich soil reserves, particularly peat, will not be permitted unless:

- a) the site is otherwise allocated within this local plan
- b) the development meets an established need and no other site is available
- c) the development is small scale and directly related to a rural business.

As aforementioned, the agricultural building is used to house pigs and the building is sited within a working farm. The development is small in scale and it is directly related to a rural business.

#### **REASON FOR DECISION :**

In consideration of the above, the development fails to comply with Policy HD3 of the Scottish Borders Local Development Plan 2016, in that the addition of a further agricultural building to house livestock at the farm could potentially exacerbate existing issues, which would negatively impact upon the amenity of nearby residential properties.

**Recommendation:** Refused

- 1 The development fails to comply with Policy HD3 of the Scottish Borders Local Development Plan 2016, in that the addition of a further agricultural building to house livestock at the farm could potentially exacerbate existing issues, which would negatively impact upon the amenity of nearby residential properties.

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