

SCOTTISH BORDERS COUNCIL

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

PART III REPORT (INCORPORATING REPORT OF HANDLING)

REF : 22/01937/MOD75

APPLICANT : Mrs Elaine McKinney

AGENT : Ferguson Planning

DEVELOPMENT : Modification of planning obligation pursuant to planning permission B290/91
and E389/91

LOCATION: Sites At Whiteburn Farm
Lauder
Scottish Borders

TYPE : MOD75 Application

REASON FOR DELAY:

DRAWING NUMBERS:

Plan Ref	Plan Type	Plan Status
	Location Plan	Approved

NUMBER OF REPRESENTATIONS: 5
SUMMARY OF REPRESENTATIONS:

There was no statutory requirement to advertise the application or notify neighbours. However, five representations have been received objecting to the application and raising the following planning issues:

- o The Section 50 planning obligation was specifically designed to retain the rural aspect of the area, limiting the number and type of developments. The application is at odds with that principle.
- o The agreement protects the current residents of 8 dwellings from having their rural views and location under threat of further new build elsewhere at Whiteburn.
- o The application, if agreed, could set a precedence for future new development. Only conversions and extensions have been approved at Whiteburn and the legal agreement has always prohibited new residential developments after 1991.
- o If land is sold later to a developer and Section 50 is no longer securing the landscape, there will be nothing to protect the landscape from multiple houses being built, littering the landscape with houses and ruining the rural character.
- o The erection of a residential building will increase light and noise pollution, having a direct impact on the wildlife in the adjacent woodland and surrounding area. The agreement is intended to protect the land and should be upheld in order to serve its purpose.

CONSULTATIONS:

Legal: Clause 4 of the Section 50 Agreement prevents further residential development unless any dwellinghouse to be erected is restricted to the occupation of a person employed or last employed in agriculture as defined in Section 275 of the Town and Country Planning (Scotland) Act 1997. The application seeks to modify the Section 50 Agreement to remove that restriction from the land owned by the applicant.

At Para 3.2 of the Planning Statement, reference is made to Circular 3/2012 as revised in November 2020 regarding Planning Obligations and Good Neighbour Agreements. In particular, the agent specifically refers to the five tests that require to be met in order for planning obligations to be sought setting out such restrictions. If these tests cannot be met then it seem appropriate in line with Circular 3/2012 as revised that the application be approved.

In addition, at para 3.5 of the agent's statement, reference is made to several residential developments having occurred at the location which appear to be contrary to Clause 4 of the Section 50 Agreement. The paragraph appears to suggest that the Section 50 Agreement has been previously modified over one parcel to the north of the subject site and therefore perhaps further information with regard to the suggested previous modification of the Section 50 Agreement and the several residential developments referred to would assist.

I agree with Para 3.6 of the Planning Statement that any future proposals for residential development on the subject site will still require to go through the planning process even in the event that this application to modify the Section 50 Agreement is approved.

APPLICANT'S SUPPORTING STATEMENT

o Planning Statement

PLANNING CONSIDERATIONS AND POLICIES:

Local Development Plan 2016

HD2: Housing in the Countryside

Supplementary Planning Guidance:

New Housing in the Borders Countryside 2008

Other:

National Planning Framework 4

Scottish Government Chief Planner's letter to Planning Authorities, November 2011, "Use of conditions or obligations to restrict the occupancy of new rural housing".

Circular 3/2012 Planning Obligations and Good Neighbour Agreements (revised November 2020)

Recommendation by - Julie Hayward (Lead Planning Officer) on 15th February 2023

Site and Proposal

Whiteburn Farm is situated to the east of Lauder at the junction of the A697 and A6089.

Planning Permission was granted for three houses on the combined farms of Whiteburn, Dods and Pyatshaw in 1992 subject to a Section 50 Agreement which contains the following clauses:

Second Clause: the approval of a reserved matters application for the development;

Third Clause: that the development is built in accordance with the plan and that the conditions are complied with;

Fourth Clause: restricts any further residential development on the land except for any dwellinghouse granted approval by the Planning Authority subject to an occupancy condition.

The applicant owns 9.06 hectares of land at Whiteburn Farm and wishes to modify the legal agreement to remove 1,000 square metres from the Section 50 agreement in respect of Clause 4.

The agent argues in the Supporting Statement that the terms of the legal agreement are unreasonable and no longer comply with planning policy.

Planning History

91/01023/OUT (E389/91): Erection of dwellinghouse and garage. Approved 15th June 1992.

91/01624/OUT (B290/91): Sites for 2 dwellinghouses and garages. Approved 21st May 1992.

94/01204/OUT: Erection of dwellinghouse and garage. Approved 16th January 1995.

95/01089/FUL: Erection of dwellinghouse. Approved 5th October 1995.

97/05564/REM: Erection of dwellinghouse. Approved 10th September 1997.

19/00047/MOD75: Discharge of planning obligation pursuant to planning permission B290/91 & E389/91. Approved 11th March 2019.

Consent was granted to a different applicant to modify the legal agreement and remove 9.06 hectares of land at Whiteburn Farm in relation to the above clauses.

22/01905/FUL: Demolition of stable and erection of dwellinghouse. Site Adjacent the Steading Whiteburn Farm Lauder. Pending Consideration.

Planning Policy

Policy HD2 (Section F) no longer contains a requirement for applicant to enter into a Section 75 Agreement to tie proposed houses to the business for which they are justified and to restrict the occupancy of the house to a person solely or mainly employed or last employed in that specific business. The requirement in the Council's Supplementary Planning Guidance New Housing in the Borders Countryside 2008 for such an agreement is now seen as being out of date, as it pre-dates and is inconsistent with subsequent national policy.

In November 2011 the Scottish Government Chief Planner wrote to all Planning Authorities to clarify the Scottish Government's view on obligations that restrict the occupancy of new rural housing. It may be necessary to assess the justification for a proposed rural dwelling but it should not be necessary to restrict the occupancy of that dwelling. Such restrictions should be avoided due to the difficulty they can cause for those seeking to obtain finance.

Circular 3/2012: Planning Obligations and Good Neighbour Agreements (as amended) reinforces this, stating that such restrictions have been historically used, particularly in respect of rural housing, and imposing restrictions on use are rarely appropriate and should be avoided.

This advice is reflected in recent Scottish Government planning appeals.

Policy 17 of National Planning Framework 4 states that development proposals for new homes in rural areas will be supported where the development is suitably scaled, sited and designed to be in keeping with the character of the area and provided certain criteria are met.

Scottish Government advice is clear that occupancy restrictions secured by a legal agreement should be avoided and that the development plan should be relied upon to assess appropriate rural development.

Assessment

This current application seeks to remove further land from the agreement. The land is situated to the north west of the Whiteburn building group (outlined in red on Figure 2 of the Planning Statement) and is currently the subject of a planning application for the erection of a dwellinghouse (22/01905/FUL).

The determination of applications to modify legal agreements is delegated to officers and so there is no requirement for determination by the Planning and Building Standards Committee, despite the number of representations received. In addition, there is no statutory requirement to notify neighbours of the application or advertise it in the local press.

It is accepted that the Second and Third Clauses of the legal agreement are no longer relevant as the houses have been built.

In respect of the clause preventing any new dwellinghouses being erected on the land, and the main cause for concern of local residents, this can adequately be controlled through the planning application process and each application would be assessed against the relevant development plan policies and on its own merits and justification.

Therefore, the Section 50 Agreement is considered to be inconsistent with recent national guidance and there are no material planning considerations that would prevent its modification.

REASON FOR DECISION :

The proposal to modify this Section 50 Agreement is accepted as it no longer satisfies the advice contained within Circular 3/2012 (as amended). Any proposal for future development of housing in this location would be assessed against prevailing development plan policies.

Recommendation: Approved with informatives

Informatives

It should be noted that:

- 1 The area of land to be removed from the Section 50 legal agreement is shown outlined in red on Figure 2 of the agent's Planning Statement and comprises of 1,000 square metres.

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