

SCOTTISH BORDERS COUNCIL

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

PART III REPORT (INCORPORATING REPORT OF HANDLING)

REF : 21/00402/MOD75

APPLICANT : George D R And Fiona R C Megahy

AGENT : Cullen Kilshaw Solicitors

DEVELOPMENT : Discharge of planning obligation pursuant to planning permission
15/00193/PPP and 20/01076/FUL

LOCATION: Land South East Of Applecross Pyatshaw
Lauder
Scottish Borders

TYPE : MOD75 Application

REASON FOR DELAY:

DRAWING NUMBERS:

Plan Ref	Plan Type	Plan Status
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NUMBER OF REPRESENTATIONS: 0
SUMMARY OF REPRESENTATIONS:

There are no representations.

CONSULTATIONS:

Legal: No response.

PLANNING CONSIDERATIONS AND POLICIES:

Local Development Plan 2016

HD2: Housing in the Countryside

Supplementary Planning Guidance: New Housing in the Borders Countryside 2008

Other:

Scottish Planning Policy 2014.

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

Recommendation by - Julie Hayward (Lead Planning Officer) on 6th May 2021

Site and Proposal

The site is located to the east of Lauder and to the north east of the A697 Carfraemill to Greenlaw road. There are agricultural buildings on the site and an access onto the public road. The site is surrounded by fields.

Planning Permission in Principle (15/00193/PPP) was approved on 14th December 2016 subject to a Section 75 Agreement that requires:

- o The whole of the land including the new dwellinghouse and buildings to be held as a single property and farmed as a single agricultural unit and no part to be sold or disposed of;
- o Occupation of the new dwellinghouse to be limited to a person employed or last employed in the full time management of the farm for the purpose of agriculture or their dependants;
- o No further dwellinghouses to be erected on the land without the consent of the Planning Authority;
- o The developer to pay the required developer contributions.

The justification for the dwellinghouse was that the applicant needed to be closer to the farm steading to manage the farm. A business case showed that there was evidence of a sustained and continuing business and the level of farming activity reflected the standard man day requirement of more than one worker on the unit.

The Approval of Matters Specified in Conditions application (18/00622/AMC) was approved on 16th November 2018.

In 2019 an application (19/00513/MOD75) was submitted that sought to remove the requirement of the Section 75 Agreement that the whole of the land shall be held as a single property and no part sold from it. The justification is that VAT would be charged on the construction costs at 20% due to this requirement and the requirement goes against current planning policy.

The application was approved on 28th May 2019 as it was accepted that the clause of the Section 75 Agreement was inconsistent with recent national guidance and current local planning policy.

Planning permission (20/01076/FUL) was granted on 20th April 2021 for the erection of dwellinghouse on this site, revising the design of the house approved under 18/00622/AMC. The developer contributions were secured by a Section 69 Agreement.

This current application seeks to discharge the Section 75 agreement.

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 Supplementary Planning Guidance requirement 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. This letter mainly focussed on restrictions on occupancy but also referred to restrictions on ownership; there is considerable overlap between the two.

Scottish Planning Policy (SPP) of 2014 provides the policy framework for rural development and states explicitly that occupancy restrictions should be avoided. Circular 3/2012: Planning Obligations and Good

Neighbour Agreements 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.

Scottish Government advice is clear that restrictions, such as those on occupancy, secured by a legal agreement should be avoided and Local Development Plan 2016 should be relied upon to assess appropriate rural development.

The five tests set out in Circular 3/2012 dictate that Planning Authorities are required to ensure Planning Obligations meet tests of being necessary; serve a planning purpose, be related to the development; fairly and reasonably relate in scale and kind; and be reasonable.

Assessment

Following the approved modification in 2019, the Section 75 agreement contained the following clauses:

- o Occupation of the new dwellinghouse to be limited to a person employed or last employed in the full time management of the farm for the purpose of agriculture or their dependants;
- o No further dwellinghouses to be erected on the land without the consent of the Planning Authority;
- o The developer to pay the required developer contributions.

The Section 69 agreement concluded as part of planning permission 20/01076/FUL and payment of the developer contributions renders the clause regarding the developer contributions unnecessary.

The clause that no further dwellinghouses to be erected on the land without the consent of the Planning Authority can be dealt with via the submission of planning applications and assessment against the relevant planning policies at that time.

The letter issued by the Scottish Government Chief Planner set out the Scottish Government's view on obligations that restrict the occupancy of new rural housing advising that it should not be necessary to restrict the occupancy of new dwellings and this has been incorporated into SPP. Therefore, this clause of the legal agreement no longer complies with government planning policy and so it would be unreasonable to retain it.

REASON FOR DECISION :

The development will accord with the relevant provisions of the Local Development Plan 2016 and there are no material considerations that would justify a departure from these provisions.

Recommendation: Approved

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