

SCOTTISH BORDERS COUNCIL

PLANNING AND BUILDING STANDARDS COMMITTEE

4 MARCH 2024

APPLICATION FOR PLANNING PERMISSION

ITEM: **REFERENCE NUMBER:** 23/01782/FUL

OFFICER: Julie Hayward
WARD: Leaderdale And Melrose
PROPOSAL: Removal Condition no. 24 of planning permission 18/01385/FUL pertaining to a scheme of woodland management

SITE: Land At The Croft Dingleton Road Melrose
APPLICANT: Rural Renaissance Ltd
AGENT: Hypostyle Architects

PLANNING PROCESSING AGREEMENT:

A Planning Processing Agreement is in place until 4th March 2024.

SITE DESCRIPTION:

The site is located on the south eastern edge of Melrose adjoining the lower slopes of the Eildon Hills and consists of 2.56 hectares of grazing land (top soil has been stripped) with the Croft at its centre, accommodating the Cherrytrees Children's Nursery.

The site includes part of Dingleton Road, which borders the north western edge of the site, partly delineated with stone walling. An existing access road and bridge cross the Malthouse Burn and currently connects the nursery with Dingleton Road. Existing housing lies along Dingleton Road to the north west/west and to the southern boundary of the site along Dingleton Loan.

The Malthouse Burn with associated riparian vegetation lies between Dingleton Road and the main part of the site, being part of the River Tweed Special Area of Conservation. The site is bordered to the north east and south west by rights of way, tree belts and agricultural land. The site is within the Eildon and Leaderfoot National Scenic Area.

PROPOSED DEVELOPMENT

Planning permission (18/01385/FUL) for the erection of 28 dwellinghouses with associated parking, roads and landscaping was granted by the Planning and Building Standards Committee on 1st July 2019 and the decision was issued on 4th May 2023 following completion of a Section 75 legal agreement. This was a major application under the Hierarchy of Developments (Scotland) Regulations 2009.

Condition 24 states:

No development shall be commenced until a Scheme of Woodland Management is submitted to, and approved in writing by, the Planning Authority. The Scheme shall identify an area of woodland outwith the site to its south eastern edge and proposals for the retention, maintenance, regeneration and management of the woodland. Once approved, the Scheme then to be operated in perpetuity in accordance with the agreed details.

Reason: To safeguard the visual amenity of the area.

This application is submitted under Section 42 of the Town and Country Planning (Scotland) Act 1997 As Amended seeking removal of the above condition.

PLANNING HISTORY:

18/00016/PAN: Residential development with associated roads, car parking, landscaping and new access.

18/01385/FUL: Erection of 28 dwellinghouses with associated parking, roads and landscaping. Approved 4th May 2023.

REPRESENTATION SUMMARY:

Five representations (from 3 households) have been received objecting to the application and are available to view in full on Public Access, raising the following planning issues:

- The Council has stipulated that the development cannot go ahead without a scheme of woodland management being submitted. The woodland is critical to the mitigation of the development's visual impact on an area of local importance and natural beauty. The Planning Committee assured objectors that the development would only proceed with appropriate screening provided by the existing woodland.
- The removal of the condition can only be agreed by the Planning Committee.
- The owner of the land must comply with the condition.
- The condition ensures that the loss of habitat and environmental assets within the Croft is balanced by well-managed woodland, habitat and environment outwith the boundaries, particularly during construction to ensure it is not damaged.
- The applicant could enter into an agreement with JS Farming, owners of the land in question, to develop a management plan.
- Residents and visitors who use the paths surrounding the Croft and access to the Eildons, including the General's Walk, to the south, would benefit from this condition, which guarantees that the development does not detract from the character, accessibility and environmental richness of the locality.

- The application (18/01385/FUL) was contentious and the condition was attached to lessen the impact of the development. Without the trees the development would be intrusive.
- The site is sensitive within the National Scenic Area and visible from the higher parts of the Eildons, though currently the trees obscure most of the site. Condition 24 seeks to protect the trees to safeguard visual amenities. Without the woodland, the visual impact would be significant.
- In the document contained in 18/01385/FUL, entitled approved Location Plan, the entire block of land, including the development site, the belt of trees and the fields above it, is labelled as being owned by JS Farming Partnership. Both Rural Renaissance Ltd and JS Farming Partnership are understood to be part of the greater "Crawford's" business empire. If ownership of the development site has been transferred internally to Rural Renaissance from JS Farming Partnership, both "Crawford's" businesses, then presumably the conditions for site development were inherited along with it.
- There is no justification for the removal of trees around the site, other than road access, and this may result in an application to increase the site.

APPLICANTS' SUPPORTING INFORMATION:

Supporting Statement

DEVELOPMENT PLAN POLICIES:

National Planning Framework 4

Policy 1: Tackling the Climate and Nature Crises

Policy 2: Climate Mitigation and Adaptation

Policy 3: Biodiversity

Policy 4: Natural Places

Policy 6: Forestry, Woodland and Trees

Policy 7: Historic Assets and Places

Policy 14: Design, Quality and Place

Policy 15: Local Living and 20 Minute Neighbourhoods

Policy 16: Quality Homes

Policy 18: Infrastructure First

Policy 22: Flood Risk and Water Management

Scottish Borders Council Local Development Plan 2016

Policy PMD1: Sustainability

Policy PMD2: Quality Standards

Policy PMD3: Land Use Allocations

Policy HD1: Affordable and Special Needs Housing

Policy HD3: Protection of Residential Amenity

Policy EP1: International Nature Conservation Sites and Protected Species

Policy EP2: National Nature Conservation Sites and Protected Species

Policy EP3: Local Biodiversity

Policy EP4: National Scenic Areas

Policy EP8: Archaeology

Policy EP13: Trees, Woodlands and Hedgerows

Policy EP15: Development Affecting the Water Environment
Policy IS2: Developer Contributions
Policy IS3: Developer Contributions Related to the Borders Railway
Policy IS4: Transport Development and Infrastructure
Policy IS6: Road Adoption Standards
Policy IS7: Parking Provision and Standards
Policy IS8: Flooding
Policy IS9: Wastewater Treatment Standards and Sustainable Urban Drainage
Policy IS13: Contaminated Land

OTHER PLANNING CONSIDERATIONS:

- Town and Country Planning (Scotland) Act 1997 As Amended
- Circular 4/1998: The Use of Conditions in Planning Permissions
- Designing Streets 2010

Supplementary Planning Guidance

- Affordable Housing 2015
- Developer Contributions 2016 (Amended 2023)
- Trees and Development Updated 2020
- Landscape and Development 2008
- Green Space 2009
- Placemaking and Design 2010
- Guidance on Householder Development 2006
- Waste Management 2015
- Biodiversity 2005

"The Croft" Planning Brief 2006

CONSULTATION RESPONSES:

Scottish Borders Council Consultees

Landscape Architect: No response.

Statutory Consultees

None

Other Consultees

None

KEY PLANNING ISSUES:

- Whether the principle of removing the condition would be acceptable, having particular regard to the six tests of planning conditions set out in Policy 18 of National Planning Framework 4 and in Planning Circular 4/1998: The Use of Conditions in Planning Permissions.

ASSESSMENT OF APPLICATION:

Planning Policy

Policy 18 of National Planning Framework 4 lists the six tests all planning conditions should meet. These are set out in greater detail within Planning Circular 4/1998: The Use of Conditions in Planning Permissions. The existing condition is considered against the six tests below:

1) necessity, 2) relevant to planning, 3) relevance to the proposed development, 4) enforceability, 5) precision, 6) reasonableness in all other respects.

Should a condition not meet one of the six tests it would not be appropriate to impose the requirement or obligation sought by the condition.

Existing Consent

The site is allocated for housing development in the Local Development Plan as EM4B with an indicative site capacity of 25 units. There is also an approved Planning Brief for the site; this advises that there is an established framework of mature trees and woodland within the site and around its perimeter, which is an important landscape resource that should be conserved and positively managed. An appropriate management scheme for the woodland is recommended in the Brief between SBC and the developer.

The protection and augmentation of the landscape framework surrounding the site is identified in the Planning Brief as being of fundamental importance to the design and success of a development on the site, respecting the rural edge of Melrose and the setting and qualities of the Eildon and Leaderfoot National Scenic Area. The requirements of the Brief are reinforced by Local Development Plan Policies PMD2, EP4 and EP13 of the Local Development Plan 2016, together with Supplementary Planning Guidance on Trees and Development and Landscape and Development. There should also be consideration of the proximity of the site to the Tweed, Ettrick and Yarrow Confluences Special Landscape Area and Melrose Conservation Area.

Significant concern was expressed by objectors over the felling of trees along the south eastern boundary of the site before application 18/01385/FUL was submitted. However, the trees were not protected in any way, either by designation or planning condition, and would be replaced with new planting to comply with the terms of the felling licence.

Planning application 18/01385/FUL was submitted for the site in October 2018 for the erection of 28 dwellinghouses with associated parking, roads and landscaping.

During the consideration of that application, the Council's Landscape Architect provided extensive comments, including the requirement for a management scheme to be agreed with the developer for the surrounding woodland.

The committee report stated that the site retains strong landscape and topographical containment despite recent felling. This would be replaced and there is sufficient strong woodland cover behind the site to continue to screen the development from the rear and provide a backdrop from Dingleton Road. Continuation of this screen can be controlled within a Woodland Management Scheme, which is a requirement of the Planning Brief. As the applicant owns this woodland, securing a Scheme can be achieved through a planning condition. At that time, when the 2018 application was

assessed and determined by members, it was considered that the application was in compliance with the Planning Brief, Local Development Plan Policies and Supplementary Planning Guidance.

Condition 24

Planning permission for this site was granted in May 2023. Condition 24 sought to secure a Scheme of Woodland Management for the area of woodland outwith the site (but importantly, on land within the control of the applicant) to its south eastern edge and proposals for the retention, maintenance, regeneration and management of the woodland.

This current application seeks the removal of this condition. The applicant's Supporting Statement advises that the area referred to in the condition is outside the original application site boundary and outwith the ownership of the applicant, therefore, Rural Renaissance Ltd (the applicant) has no control over the land to which the condition relates.

Application 18/01385/FUL was submitted by Rural Renaissance Ltd in October 2018. The location plan (AL_0_100 B) states that both the site (within the red line boundary) and the surrounding land, including the woodland, (land identified by a blue line) are owned by JS Farming Partnership. The Land Ownership Certificate on the application form also states the land belongs to JS Crawford Farming Partnership (Cert B).

Therefore, at the time the application was determined, the application site and adjoining woodland were within the same ownership and condition 24 met the 6 tests for conditions; the condition was considered to be the most appropriate way to secure the long-term protection and management of the woodland.

The current application has also been submitted by Rural Renaissance Ltd. The same location plan (AL_0_100 B) has been submitted with the current application, but this appears inaccurate due to a change in land ownership (a revised site plan has been requested from the applicant to regularise the discrepancy). The Land Ownership Certificate on the application form states that Rural Renaissance Ltd now own the application site (Certificate A), whereas the surrounding land is still owned by JS Crawford Farming Partnership, including the woodland.

Based on the information provided by the applicant, the site and adjoining woodland are in separate ownership and the applicant/owner of the site benefiting from planning permission has no control over the woodland.

Circular 4/1998 makes clear that the Planning Authority may impose conditions regulating the development or use of land under the control of the applicant even if it is outside the site which is the subject of the application. It is only necessary to have such control over the land as is required to enable the developer to comply with the condition. If the land is outside the site, a condition requiring works to be carried out on the land cannot be imposed unless the Planning Authority is satisfied that the applicant has sufficient control over the land to enable those works to be carried out. A condition may raise doubt about whether the person carrying out the development to which it relates can reasonably be expected to comply with it. If not, subsequent enforcement action is likely to fail on the grounds that what is required cannot reasonably be enforced.

Applying the tests outlined in National Planning Framework 4 policy 18 and Circular 4/1998, the condition is no longer judged to meet all six tests for a planning condition,

as the developer does not own or have control over the neighbouring land and adjoining woodland. Therefore, it would not be appropriate to retain this condition.

Material Changes Since Decision

National Planning Framework 4 has replaced both NPF3 and Scottish Planning Policy and now forms part of the Council's statutory development plan and directly influences planning decisions. The proposed removal of condition 24 is therefore required to be considered against the relevant policies contained within NPF4.

Key to establishing whether the principle of the development is suitable against National Planning Framework 4 is its compatibility with policy 16: Quality Homes, which seeks to encourage, promote and facilitate the delivery of more high quality, affordable and sustainable homes in the right locations, providing choice across tenures that meet the diverse housing needs of people and communities across Scotland. The proposed development would see the development of a site allocated in the Local Development Plan 2016 for housing.

The merits of the proposals have also been considered against other relevant NPF4 policies, including those covering design quality, biodiversity, historic assets and residential amenity, and there are no areas of conflict that cannot reasonably be covered by the remaining conditions, where relevant.

The proposal was also considered against the Local Development Plan 2016, which remains the Council's prevailing Local Development Plan. There has not been any change to this document and there is no requirement under the current proposals to re-examine the earlier decision to approve the residential development.

CONCLUSION:

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

RECOMMENDATION BY CHIEF PLANNING AND HOUSING OFFICER:

I recommend the application is approved subject to the following condition:

1. With the exception of Condition 24 of consent 18/01385/FUL, hereby removed, the development shall be implemented in accordance with the plans, drawings, supporting information and schedule of conditions approved under application 18/01385/FUL and in accordance with all agreements/approvals under the terms of those conditions.

Reason: To ensure the development is implemented in accordance with the approved schedule of conditions under the original planning consent, to ensure compliance the Development Plan and relevant planning policy guidance.

DRAWING NUMBERS

AL_0_100 B

Location Plan

Approved by

Name	Designation	Signature
Ian Aikman	Chief Planning and Housing Officer	

The original version of this report has been signed by the Chief Planning and Housing Officer and the signed copy has been retained by the Council.

Author(s)

Name	Designation
Julie Hayward	Team Leader Development Management



23/01782/FUL
Land At The Croft
Dingleton Road
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