

SCOTTISH BORDERS COUNCIL

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

PART III REPORT (INCORPORATING REPORT OF HANDLING)

REF : 15/01323/FUL
APPLICANT : Angela Fairbairn
AGENT : Andrew McCafferty Associates
DEVELOPMENT : Erection of dwellinghouse
LOCATION: Land North East Of The Cottage
Lauder Barns
Lauder
Scottish Borders

TYPE : FUL Application

REASON FOR DELAY:

DRAWING NUMBERS:

Plan Ref	Plan Type	Plan Status
A4	Location Plan	Refused
LOC-01	Location Plan	Refused
PL-01	Site Plan	Refused
	Elevations	Refused
EX-01	Other	Refused

NUMBER OF REPRESENTATIONS: 6

SUMMARY OF REPRESENTATIONS:

Five representations have been received: four objecting or expressing concerns and one supporting.

The four representations in objection or raising concerns, identify the following concerns:

- Contrary to Local Plan: in that any further permission for a dwellinghouse within the building group at Lauder Barns would breach the 2 houses, or 30% increase, as per Scottish Borders Council Consolidated Local Plan Policy D2 Housing in the Countryside; no account should be had to previous planning approval of a house on the site, since this permission has now expired; reuse of a brownfield site is not an overriding concern within the determination of this application; approval in these circumstances may set a precedent for other proposals contrary to planning policy; it is not considered SPP supports development of housing where this is otherwise contrary to the statutory development plan;
- Detrimental to environment: a new dwellinghouse in this location would in culmination with other development have an unacceptably adverse impact upon the character, landscape and amenity of the surrounding area, including the building group; there are concerns that potential issues with land contamination remediation and/or difficulties in providing a water supply, may lead to a partially developed site becoming a long-term eyesore;
- Poor design;
- Detrimental to Residential Amenity; Privacy of neighbouring properties affected; Overlooking; upstairs window ('bedroom 3') of proposed dwellinghouse would be overlooking private areas,

including living room and garden, of neighbouring dwelling at 'The Cottage'; advised that the proximity of a 1.8m high fence would be detrimental to the outlook ("view") from 'The Cottage';

- Noise nuisance; including from development works affecting 'night shift' workers occupying a neighbouring residential property. These neighbours request that prior notification be given to them ahead of any works being carried out and wish a condition restricting development (including any further contamination land investigation or remediation works) to a particular period be imposed to limit the impact upon their lives;

- Health Issues: land is contaminated by previous uses; development of site raise concerns with respect to potential health risks to neighbouring residential properties

- Inadequate access; Increased traffic; Insufficient parking space available: conditions requiring provision of parking within the site and that the shared private access road be kept clear at all times, are requested by neighbouring owners.

- Water supply: no access to water supply

- Lack of drainage

- Over Provision of facility in area: it is considered that there are a wide variety of housing opportunities within the surrounding area, especially Lauder, which would be more appropriately investigated ahead of the development of this site;

- Legal issues: neighbouring land owners advise that they own the private access road, which the Applicants wish to use to gain access to the site, and seek evidence of Applicant's legal right to use the access road. Further, these neighbours maintain concerns with respect to potential damage to the access road and wish a condition to be imposed to require the Applicant to upgrade or repair the access road and evidence of a legal requirement on the part of the Applicants to do so.

- Mr and Mrs Damerell (who do not formally include their home address) consider that they should have been notified of this application as neighbours and request advice from the Council on this point, and advise that statements made by the Applicant with respect to the progress of Planning Consent 07/02397/OUT within their control are not factually accurate. They maintain their concern to progress these same developments.

The representation in support, advises that positive regard should be had to the reuse of a brownfield site, and particularly to the environmental benefits that would result from the remediation of any potential land contamination issues and the reuse of waste ground.

Lauder Community Council: has studied a planning application on this site previously and realises that there are contamination issues but does not consider itself qualified to comment. It has received a negative comment on this application from a neighbour.

Transport Scotland: seeks the imposition of two conditions and an informative upon any consent released. The conditions are to require that the width of the access road be at least 5.5 metres wide for a distance of 5 metres from the nearest edge of the trunk road carriageway, and to ensure that the access is wide enough to allow vehicles to enter and exit the access at the same time without conflict. The informative is advisory with respect to works required to the Trunk Road.

Roads Planning Section: no objections and concurs with the views of Transport Scotland regarding the junction onto the A68. Within the site there is ample provision for parking and turning.

Environmental Health (Amenity and Pollution): notes proposed installation of air source heat pump and advises consideration needs to be given to the location of the pump to avoid noise issues at neighbouring properties. However, the proposed conditions to regulate the pump include standard noise conditions and a requirement that the pump be maintained appropriately.

Environmental Health (Contaminated Land): the application proposes the redevelopment of land which previously operated as mill pond which is understood to have been infilled. This land use is potentially contaminative, and it is the responsibility of the developer to demonstrate that the land is suitable for the use they propose. It is therefore recommended that planning permission should be granted on the condition that development is not permitted to start until a site investigation and risk assessment has been carried out, submitted and agreed upon by the Planning Authority. Any requirement arising from this assessment for a remediation strategy and verification plan would become a condition of the planning consent, again to be submitted and agreed upon by the Planning Authority prior to development commencing. A standard condition is recommended to regulate this matter.

Education and Lifelong Learning: has been consulted but has not responded to the public consultation.

PLANNING CONSIDERATIONS AND POLICIES:

Scottish Borders Consolidated Local Plan Adopted 2011

D2: Housing in the Countryside
G1: Quality Standards for New Development
G5: Developer Contributions
G6: Developer Contributions related to Railway reinstatement
H2: Protection of Residential Amenity
Inf4: Parking Provisions and Standards
Inf5: Waste Water Treatment Standards
Inf6: Sustainable Urban Drainage
NE4: Trees, Woodlands and Hedgerows

Scottish Borders Council Proposed Local Development Plan (2013)

SPG: New Housing in the Borders Countryside (December 2008)
SPG: Place-Making and Design (January 2010)

SPP (2014)

Recommendation by - Stuart Herkes (Planning Officer) on 12th January 2016

SITE DESCRIPTION

The site is land at Lauder Barns, to the south of Lauder.

The site more particularly, is a wedge-shaped plot of land, the western and eastern boundaries of which are defined by existing farm access roads and the southern boundary by the shared junction of the latter roads with the A68 Trunk Road. The trunk road itself lies only a few metres to the south. The site's northern boundary is with an open field.

Excepting overhead power lines along its eastern, western and southern boundaries, the site is largely open, if gently sloping, land. The Applicant's supporting statement advises that it was historically a mill pond, which was subsequently in-filled. The latter may account, in whole or in part, for the notable change in level between the surface of the site and that of the field to the immediate north, which is notably lower. The northern boundary of the site is retained by a stone wall similar to that which might be employed within a 'ha ha' (albeit that this appearance seems to be purely a concomitant of the concern to build up pre-existing ground levels within the site).

There is an existing dwellinghouse, 'The Cottage', to the immediate south and west of the access road that runs to the west of the site. The latter in turn, provides access to another residential property, 'Riverside', which lies at a greater distance from, and to the northwest of, the site.

The access to the east of the site currently serves the farmyard at Lauder Barns, but is to be closed off, if ever two new dwellings approved by Planning Consent 07/02397/OUT are implemented. These two consented houses would be sited on land to the immediate northeast of the application site, but would be served by an upgraded version of the existing access that currently serves 'Lauder Barns Farmhouse'. The latter is the remaining existing dwelling at Lauder Barns, which lies even further to the east.

PLANNING HISTORY

Until 2009, the site was a housing plot with full planning permission for a single dwellinghouse; the aforementioned permission consisting of Planning Consents 04/02254/OUT and 06/01641/REM. The former was approved by the Eildon Area Committee, contrary to officer recommendation.

The Planning Authority has historically accepted - in fact within the Eildon Committee's determination of Planning Application 04/02254/OUT - that there is an existing building group of three dwellings at Lauder Barns; consisting more specifically, of 'Lauder Barns Farmhouse', 'The Cottage' and 'Riverside'.

The site is not contiguous with the boundaries of any of these other residential properties. However, again at the time of the determination of Planning Application 04/02254/OUT, it was accepted that the application site was sufficiently well-related to the building group at Lauder Barns as to be capable of accommodating an acceptable addition to this group.

The planning permission for the development of one dwellinghouse (04/02254/OUT and 06/01641/REM) has now lapsed unimplemented. More recently, the Applicant herself has sought planning consent for a new dwellinghouse on the site, but this application (15/00094/FUL) was subsequently withdrawn.

Planning approval has been given for the principle of two new-build dwellings on land to the immediate northeast of the site (07/02397/OUT). The decision was taken at a time when planning policy allowed for the potential for building groups to expand by up to 100% within any one statutory development plan period. Accordingly, and taking account even of the then live permission constituted by planning consents 04/02254/OUT and 06/01641/REM, there was then capacity for three new dwellings to be brought forward within the statutory development plan period. (The Council's Housing in the Countryside Policy has since been revised, and now only allows for the addition of two new dwellings within the statutory development plan period). It is a requirement by condition imposed on Planning Consent 07/02397/OUT that the access track to the east of the current application site be closed off.

PROPOSED DEVELOPMENT

The application proposes a new dwellinghouse providing accommodation over two floors. The design approach would be relatively traditional in its elements and finishes (employing dormers, eaves flush to the wallheads, wet dash rendered walls and slated roofs), albeit that its scale and massing would not be commensurate with the design of any traditional rural cottage or farmhouse.

The main building would be one-and-three-quarter storeys. There would however additionally be offshoots to the South, West and North. The latter would be full height, while the other two would be single storey elements.

The South Elevation - described as the 'front' elevation on the proposal drawings - would feature a lounge accommodated in the aforementioned offshoot, without any front door. By contrast, the North Elevation - described as the 'rear' elevation on the proposal drawings - would feature the main entrance.

Parking would be to the northwest, directly off the private access road which currently serves both 'The Cottage' and 'Riverside'.

Excepting the driveway serving the vehicular access to the property, the residence would be defined by timber fencing which would rise to 1.8m to the south (front) of the property, while receding to 1.1m to the north (rear).

A supporting planning statement has also been provided. There is also a contaminated land investigation report.

PLANNING PRINCIPLE

Notwithstanding that the site is not contiguous with any existing or consented residential properties, and taking account of the previous assessments of the Planning Authority with respect to the site's relationship to the building group at Lauder Barns, there are no concerns in principle that the site is both well-related to the building group at Lauder Barns, and is capable of accommodating an appropriate addition to that same building group. However, as the objectors note, the building group at Lauder Barns is only capable of augmentation by up to two dwellings within the current statutory development plan period and since there is currently a live but unimplemented planning permission for two new dwellings on another site within the same building group, there is therefore currently no capacity for the building group to be expanded by any additional dwelling. Accordingly, the proposal does not comply with the requirements of Adopted Local Plan Policy D2, and should therefore be refused as being contrary in principle to Adopted Local Plan Policy D2.

Until the two dwellings consented by Planning Consent 07/02397/OUT are either built, or this planning consent expires in November 2016, these two dwellings will remain unimplemented additions to the building group, whether within the current or next statutory development plan period. However, there is no certainty that circumstances will change before, at, or after November 2016, such as to make support for the principle of the current proposal inevitable, even in the long-term. It is not in fact necessarily the case that refusal of the current application would only be deferring approval of a proposal that will shortly be acceptable in principle. (There would be longer-term implications, for example, in the event that an AMC approval were to extend the period of the current permission for the adjacent site into the period beyond November 2016; or in the event that the development consented by Planning Consent 07/02397/OUT were now implemented but without the dwellinghouses themselves then being commenced in the short-term; or in the event that permission for the same development were extended by the approval of a new outline application before any new planning application were then made for the current proposal). The actions (or inactions) of the Applicant and the developers of the adjacent site, as well as the outcome(s) of any future planning application(s) which either party might make, cannot be anticipated, let alone prejudged, at this stage. The current proposal is therefore not reasonably characterised as one that would inevitably be supported at a subsequent and not-too-distant future point in time. In light of this, there are no grounds for any exceptional approval of the current proposal on the basis that refusal at this stage, would somehow only serve to delay by a few months, approval of a proposal that would ultimately be capable of support at a later point in 2016. While this might in time transpire to be the case, there is no inevitability or certainty with respect to any outcome at this stage, and an exceptional approval in the current circumstances would not be justified.

Further, and while any proposal requires to be assessed on its own planning merits, it is not considered that this proposal is in any way exceptional when considered within the wider context of proposals to augment existing rural building groups in the Scottish Borders. Similar positions prevail with respect to other building groups, and the potential for any proposal to be supported on the basis that it might subsequently be acceptable in principle, if or when particular circumstances come into alignment, is not an acceptable basis or justification for any planning decision. Support for the current proposal would also be liable to encourage other proposals in equivalent circumstances, with potential to undermine the operation of the wider Housing in the Countryside Policy, were it to provide a ready and widely applicable 'precedent' for the promotion of exceptional approvals to the Policy.

MATERIAL CONSIDERATIONS

In the supporting statement, the Applicant's agent identifies several considerations, which are indicated or considered to be material to the determination of the current planning application. These are considered in turn, below:

a) The Site has Previously and Recently had Planning Approval for a New Dwellinghouse

In support of the principle of the proposal, the Applicant notes that the site was previously, and recently, the subject of a full planning permission for one dwellinghouse. However, the latter has now lapsed (in 2009) and the current proposal must be assessed on its planning merits and in relation to the currently prevailing planning policy context.

There is no requirement to take any direct account of the fact of an historic planning consent or of any previous planning decision reached with respect to an expired permission. These were, in any case, informed by a previous, and now superseded, planning policy context.

Contrary to the Applicant's assertion (e.g. Paragraphs 4.15 and 5.2 of the supporting planning statement) there will be no direct return now, or even within the forthcoming new statutory development plan period, to the exact same conditions and circumstances that prevailed within 2007 at the time of the earlier approvals. There are therefore no reasonable grounds for reverting to assessment in relation to any superseded planning policy context.

b) The Assessment at the time of the Determination of Planning Application 07/02397/OUT

The Applicant specifically references the assessment of the Report of Handling which informed the approval of Planning Consent 07/02397/OUT, and the approval of the principle of two dwellings being located on land to the east.

The aforementioned Report was written in September 2008 and was able to have regard to the potential for any building group at that time, to be expanded by up to 100% of the existing number of dwellings. Since there were three existing dwellings within the building group at Lauder Barns, there was accordingly capacity at that time for the building group to be expanded within the statutory development plan period, by up to three new dwellings (that is, beyond the current prevailing limit of two). Accordingly, the addition of two more dwellings on the site that was the subject of Planning Consent 07/02397/OUT, on top of that one which had been consented by Planning Consents 04/02254/OUT and 06/01641/REM, was in line with planning policy and guidance prevailing at the time of the determination of Planning Consent 07/02397/OUT.

However, the '100% threshold' is not now applicable to the assessment of proposals to expand rural building groups, and the permission constituted by Planning Consents 04/02254/OUT and 06/01641/REM has now expired. Accordingly, the position described in the Report of Handling for Planning Consent 07/02397/OUT is no longer relevant to the determination of the present application. The current planning policy context does not support the addition of a third new dwelling within the current and present statutory development plan period.

c) Development Consented by Planning Consent 07/02397/OUT has not been implemented

The Applicant's agent rightly identifies in the supporting statement, that the non-implementation of the development approved in principle by Planning Consent 07/02397/OUT is potentially obstructing the release of any other planning consents for new dwellings at Lauder Barns. However, no positive regard can be had to this point, per se, within the current determination. Planning Consent 07/02397/OUT is already subject to conditions and an expiry date, and this consent is only reasonably regulated in accordance with these direct requirements and not in accordance with any 'external factors' such as the wishes or intentions of any third party applicant or developer.

The supporting statement goes on to opine that the holders of Planning Consent 07/02397/OUT are not making sufficient effort to implement their proposal within the time allowed. Notwithstanding that no regard can be had within any planning decision to speculations or opinions about the motives of any party, the situation is (as already noted above in the previous section) not reasonably reduced to the position that the current proposal will certainly be approved in the period beyond 11 November 2016. This is not the case, and any view taken at this time, would simply be 'jumping the gun' before all relevant considerations have been properly considered and appropriately assessed.

The holders of Planning Consent 07/02397/OUT have, moreover, responded to the public consultation and have advised of their continued interest in the development consented by Planning Consent 07/02397/OUT. While they themselves would need to make a new planning application if this interest extends into the period beyond the end of this year, it is relevant to the current assessment, that they have not withdrawn the current consent, and therefore there is no reason to set this aside as something that would not, or will not, now certainly occur (however unlikely this now might seem, in light of the limited time available for this to occur). (Any subsequent application that this other party might now make for the 07/02397/OUT site would of course, still have to be assessed on its own merits and in relation to the planning policy context prevailing at the time of its submission). However, at present it cannot reasonably be discounted that the proposal consented by Planning Consent 07/02397/OUT could be progressed within 2016, which in tandem with any approval of the current proposal, would deliver a position that would be contrary to the Council's Housing in the Countryside Policy within this statutory development plan period.

All in all, there are no reasonable grounds for disregarding or otherwise setting aside Planning Consent 07/02397/OUT within the current assessment. It is not safely or reasonably characterised as a 'dead head' consent to be cleared, to make way for the current proposal. It is live and is only reasonably treated as such.

d) The SPP

The Applicant in her supporting statement, identifies support for the principle of the proposal within Scottish Planning Policy (June 2014) and specifically in the latter document's support for development in rural areas, where this can promote prosperous and sustainable communities, and its support for housing where this can support population retention.

This advice however, is general, and acknowledges the need for the specific circumstances of any proposal to be considered. Therefore, while it is material, the general advice of the SPP does not outweigh the need for the application to be determined first and foremost in accordance with the policies and proposals of the statutory development plan.

e) Potential to Use a Brownfield Site and Address Potential Land Contamination Concern

Contrary to the advice of the supporting statement and representation in support of the application, the reuse of a brownfield site and/or the potential to remediate a potential land contamination hazard, while positive features of the proposal, are not in themselves overriding concerns. These would not in isolation or culmination, justify support for the principle of the proposal contrary to planning policy.

Again, this is not at all an exceptional circumstance, and any account or weight given to these factors within an exceptional approval in this specific case, would be liable to encourage other applications elsewhere, where similar benefits might be deliverable through development. Since the Housing in the Countryside Policy does not acknowledge that such foreseeable and recurring considerations might justify exceptional approvals in general terms, there is no requirement in this specific case to give these matters any significant weight within the context of this planning decision.

The proposal does not comply in principle with the Council's Housing in the Countryside Policy, and on balance, it is not considered that there are any reasonable grounds for the proposal to be made the subject of an exceptional approval. It is not considered that any or all of the above material considerations identified by the Applicant do outweigh the direct conflict of the proposal with the requirements of Policy D2. Nor for the reasons set out above, is it considered that there would be no effect, or no significant effect, on the Council's housing in the countryside policy were the proposal to be made the subject of an exceptional approval. On the contrary, it is considered that the position of the current proposal is readily paralleled on other sites throughout the region, and any exceptional approval would be liable to be cited in future applications where similar or equivalent circumstances prevail. It is therefore entirely reasonable for the Planning Authority to ensure that its decision-making in this unexceptional case, does take place in strict accordance with its housing in the countryside policy.

The Applicant might reasonably be advised by informative note that the principle of the proposal may be liable to be assessed differently, even at a later point within 2016, were circumstances to change, but that the proposal would only appropriately be re-assessed at that stage and in relation to the circumstances that actually prevail at that time.

DESIGN, LAYOUT AND LANDSCAPING

Although reasonably a product of a traditional architectural design approach, the proposed dwellinghouse is of a scale and massing that would not be commensurate with the design of any traditional rural cottage or farmhouse. As a one-and-three-quarters storey building, in its scale, it lies somewhere between the two. A more cottage-like design would be preferable in this location, firstly to be more sympathetic to the setting of the existing cottage at the nearby 'The Cottage', and secondly, to be less competitive with the existing farmhouse at Lauder Barns. However, the site is sufficiently detached from neighbouring buildings (including both of the aforementioned), as to allow a building of the scale proposed, to be acceptably accommodated. That it would not readily accord in its scale with any expected dwelling-type within a traditional and established farm or estate building hierarchy is therefore in the circumstances, not unacceptable. Subject to the building being finished as proposed (wet dash render and slated roof), there would be no concerns in principle with respect to the potential for the building per se, to have an acceptable finished appearance. Timber framed windows and doors would be sought instead of uPVC, but this matter is capable of being appropriately regulated by planning condition.

It is additionally considered that the overall design of the dwellinghouse would benefit from a deeper gable, and the roof pitch being dropped to 45 degrees to ensure a more comfortably traditional appearance. Again, had there not been concerns in principle, it would have been appropriate to seek appropriate revisions from the Applicant.

Beyond design, and even siting, however, consideration also needs to be given to the proposed orientation of the dwellinghouse relative to the existing building group, and the extent to which this is compatible with

the sense of place of the building group at Lauder Barns and wider landscape setting of the site. A particular concern in this respect - and notwithstanding the overt identification on the proposals drawings of the South Elevation as the 'front elevation' and the North Elevation as the 'rear elevation' - is that the South Elevation which fronts the farm access road, and which would therefore most logically be the 'principal elevation', has the character of a secondary or rear elevation. It features a large, centrally located glazed offshoot accommodating a lounge as would normally occur within a 'back garden' area. Further, there is no front door or front porch, and what appears to be the main entrance to the property would instead, be accommodated on the North Elevation, and therefore rear elevation, of the property; that is, facing towards open countryside. Notwithstanding the Applicant's understandable desire to maximise sunlight received in the lounge area, the dwelling would be liable to appear 'back-to-front' relative to the established setting of the site and surrounding building group, if orientated as proposed. Had this been the only concern, it would have been appropriate to have explored with the Applicant the potential to 'reverse' this arrangement to introduce a stronger, clearer sense of the dwelling fronting the existing access track, with any obviously subservient offshoot for a lounge, or conservatory, being accommodated on another elevation besides the principal one. However, given the concern in principle already noted above with regard to the planning principle of this proposal, it would not have been reasonable to have explored this potential with the Applicant within the context of the current application. An informative might reasonably advise why the current design is not considered to be acceptable, but this aspect of the design is considered to be objectionable in itself, and therefore needs to be included amongst the reasons for refusal.

The sense of the plot being 'back-to-front' is also reinforced by the proposed fencing, which would be higher and continuous along the boundary with the access track (1.8m) but reduced in height (1.1m) to the north, and rear, to accommodate views over the landscape to the north. This would underscore the visual impression of the South Elevation as the 'rear elevation', and reinforce the sense of the layout of the residential property being unresponsive to the site, its setting, and the sense of place of the building group. The immediacy and dominance of the proposed high 'rear garden' fence in views from the access road would also contribute an unsympathetically urban or suburban character to the site. This area of the property would more appropriately be reconfigured as a 'cottage garden' defined by low hedging or fencing, perhaps reinforced by small shrubs or trees rather than so obviously and evenly enclosed by a high and hard boundary feature, as might be expected in relation to a rear garden area in a suburban street. Again, the matter would otherwise have been capable of being referred to the Applicant for revision had this been the only concern, and even then, could even have been regulated by planning condition. However, and since the matter remains outstanding, it is again necessarily included within the reasons for refusal. An informative would however again, note the potential for this particular concern to be appropriately resolved within a revised version of the proposal.

A finished floor level for the dwellinghouse is indicated on the Proposal Drawings, but it is otherwise unclear whether the other levels given on the same drawing, represent existing or proposed finished levels (or a combination of the two). Accordingly while the description given does not suggest any proposal to significantly raise ground or floor levels, let alone to any unacceptable heights, it would nonetheless for purposes of regulation, be appropriate to require that the finished site and floor levels should be the subject of prior approval, described by details which are themselves both directly related to the actual levels of the access roads and informed by the existing levels across the site and within the surrounding area.

All other concerns with respect to landscaping would otherwise have been capable of regulation through the imposition of standard planning conditions. Within that context, screening for both the car parking area and any above ground apparatus relating to the sewage treatment plant, would be reasonably sought through, and regulated by, condition. Given the presence of a 'ha ha' type feature to the north, it is questionable whether any particular boundary feature is actually required in landscaping terms along this boundary, albeit that the Applicant might wish to install some form of barrier to guard the top of this feature for safety and security reasons.

Precise details of the design, operation and appearance of the high level overflow soakaway would be reasonably sought for prior agreement.

ROAD SAFETY ACCESS AND PARKING

The advice of the Roads Authorities indicates that subject to the imposition of conditions to address the specific matters which Transport Scotland highlights, there would be no concerns in road safety terms with respect to the potential for a dwelling to be acceptably sited and accessed as proposed. Again, had there

been no concerns in principle, it would otherwise have been reasonable to seek to control the design and construction of any required upgrade to the access through a suspensively-worded planning condition.

However, there are two additional points of note with respect to Transport Scotland's concerns.

Firstly, as described on the proposal drawing, the access, as it exists, already appears to meet Transport Scotland's explicit requirement that the access be a minimum of 5.5m wide for a distance of 5m back from the edge of the Trunk Road. Accordingly, it is not clear that the Applicant would actually need to carry out any works at all to meet Transport Scotland's concern in this instance. In the unlikely event that any upgrade would be required to achieve Transport Scotland's requirements, any works would therefore appear to be minimal.

As a second point of note, there may be a concern as to whether or not, or to what extent, the Applicant would have any legal right to carry out any works to the access in accordance with Transport Scotland's requirements out with the verge of the Trunk Road.

Had the application otherwise been capable of support, it would have been appropriate to have asked the Applicant to investigate these matters, to clarify what the precise position would be in both cases. It is not actually anticipated that any upgrade would be required, but this matter would reasonably be referred to the Applicant in the form of an informative for consideration within any revised application that the Applicant might subsequently make.

Given that the development consented in principle by Planning Consent 07/02397/OUT would be served by another access (that serving Lauder Barns Farm), there would be no conflict between the current proposal and this other proposal.

RESIDENTIAL AMENITY

Environmental Health is concerned that the operation of the air source heat pump has potential to impact upon the amenity of neighbouring properties, but, notwithstanding some concern with respect to the precise location of the pump, it recommends conditions to regulate the noise outputs from the pump. While the condition identified would reasonably be imposed, there would still be a concern with respect to the pump's precise location and the noise output of the specific pump that would be installed. Accordingly, and while it is reasonable that there are no concerns in principle subject to operation within the identified noise limit, it would nonetheless be necessary to require that the Applicant additionally provide details for prior approval, with respect to the precise details (specification) of the air source heat pump to be used, and its location, and that in so doing, she is also able to demonstrate that its operation would be fully capable of meeting and complying with the noise levels required by Environmental Health.

The occupants of one neighbouring property advise that their household includes 'night shift' workers and maintain concerns that the noise of development would be liable to disturb their sleep throughout the day. While it would be reasonable in the event of approval, to impose an informative advising that these neighbours would appreciate being notified as a courtesy ahead of the commencement of any on-site works (or indeed further contamination land investigations or remedial works) so that they can, if necessary, make alternative arrangements, there would be no planning requirement to regulate noise outputs from the development works themselves and no account can be taken of the neighbours' personal circumstances.

Sited as proposed, and at this remove from all other existing and proposed residential properties in the surrounding area, the proposed dwellinghouse does not raise any other concerns with respect to its impacts upon residential amenity. The most sensitive relationship is with 'The Cottage', which lies to the west, across the access track. Given that the latter property, including its North Elevation, lies adjacent to an existing shared access, and taking account of the actual distance of setback and angles involved, the proposal would not have any unacceptably adverse impacts upon the residential amenity of this or upon that of any other surrounding dwellinghouse, or for that matter, upon the amenity of the garden ground at this or any other surrounding residential property.

The occupants of 'The Cottage' have raised concerns with respect to their outlook were a 1.8m high fence to be erected on the boundary immediately opposite them. While the erection of such a fence is considered objectionable in terms of its impacts upon the character of the building group and wider landscape, it is not

considered that it would have any unacceptable impacts upon the outlook or residential amenity of this neighbouring property.

OTHER PLANNING CONCERNS

Both the Applicant and Planning Authority are readily aware that the site is at risk of land contamination, and that this matter requires to be investigated, and any concerns fully remediated, if indeed any actions are required. In line with the advice of the Contaminated Land Officer, this matter would be appropriately regulated by the standard contaminated land investigation planning condition.

Details given with respect to both surface water drainage and foul drainage are vague. Contrary to the Applicant's advice, the site should be served by an appropriate SUDS arrangement, and details of the precise arrangement, would be appropriately required for prior approval. However, the details provided do at least indicate that the installation of appropriate surface water management would be readily feasible, and the matter would therefore be capable of being addressed by a suspensively-worded planning condition. Similarly, there are no concerns in principle that a private foul drainage system be employed, but details would be appropriately provided and approved in advance of the commencement of development.

Environmental Health has not raised any concerns with respect to water supply, which the Applicant advises would be serviced from the public mains, given the level of concern amongst objectors with respect to the ability or capacity for the site to be serviced, it would be reasonable to require by suspensive condition that Scottish Water's written acceptance of the principle of a public water supply be provided before development is actually commenced. The condition might allow that a private water supply be employed as an alternative, subject to the Planning Authority's prior agreement. However, and in any case, it would reasonably be required that the site be serviced as agreed with the Planning Authority (public or private supply) and that the water supply be functional prior to the dwelling's habitation.

An informative would in the event of approval, usefully advise the Applicant to consult the overhead power lines operator ahead of the commencement of development in case the development would be liable to raise any concerns with respect to its impacts upon the power lines.

In the event of approval, development contributions towards both the upgrade of local education provision and the reinstatement of the Waverley rail link would be required. A legal agreement would be required to secure the collection of these contributions.

Objectors maintain concerns with respect to the availability of housing, or housing opportunities, elsewhere within the surrounding area, but there is no direct requirement to take account of the availability of housing opportunities elsewhere. The proposal can, and must, be assessed on its own planning merits.

The owners of the farmhouse advise of their concern that they were not formally notified, but given that the house lies at a distance of over 20m from the site, there was no statutory requirement for the dwelling's owners to be formally notified. An advertisement was placed in the local press to address the need for adjacent land owners, including the adjacent field, to be notified. Accordingly, the farmhouse and farm owners are considered to have been notified in accordance with statutory requirements.

In the event of approval, it would be reasonable to require that the agricultural use of the land should cease.

LEGAL CONCERNS

Neighbouring land owners have advised that they own the private access road which the Applicant wishes to use to gain direct access to the site. They seek evidence of the Applicant's legal right to use the same. Beyond this, they seek the imposition of a requirement that the Applicant repair any damage to the access road in the event any were sustained during the course of development.

From a planning perspective, the critical concern is whether or not the Applicant has the legal right to access the site as proposed, and can implement any works required to the access to accommodate their proposal acceptably.

With respect to the former, the Applicant has provided a copy of a deed which confirms her legal right to take access over the farm's existing roads and ways; as well as a right to make use of the water supply, drainage and sewerage, albeit subject to the "payment of any surface damages thereby occasioned".

With respect to the Applicant's ability to upgrade the access, it would require a legal opinion to establish whether or not the specific scope and extent of any works required by Transport Scotland would be in strict accordance with the rights allowed to the Applicant within the deed. While this may or may not be a 'grey area' out with the verge of the Trunk Road, it seems unlikely that any works would in any case actually be required in this area. Even if they were however, these works would be minimal and to the direct benefit of the other property owners who use the access. Accordingly, were any upgrading works required, these would in these circumstances, reasonably be made the subject of a suspensively-worded planning condition, requiring that the access upgrade works be completed ahead of the commencement of development on-site. In this way, the matter would be appropriately controlled from a planning perspective. However, in the current circumstances, the Applicant would still be reasonably advised as to the potential for there to be legal implications relating to this particular aspect of the proposal.

It would not be reasonable in planning terms, to impose any direct requirement by condition that the access be repaired further to any damage sustained during the period of development. Beyond all inherent difficulties in seeking to regulate something that might or might not occur, there would be no clear definition of what would constitute 'damage' for condition monitoring purposes, and how it might reasonably be established how any damage caused solely by vehicles involved in the development might be distinguished from more general and cumulative wear-and-tear resulting from use of the access by all vehicles. The matter with respect to potential damage is therefore ultimately only appropriately regulated legally and not by planning condition. (As noted above, the deed does include an overt requirement that any surface damage be repaired. However, as far as other parties are concerned, a legal opinion would likely be required to establish when, and how, precisely this requirement might be applied and addressed within the context of the use of the road by vehicles accessing the site to carry out the development).

REASON FOR DECISION :

The proposed development is contrary to planning policy in two key respects:

1) Notwithstanding that the site is well-related to the existing building group at Lauder Barns, and taking account of a live outline planning consent (07/02397/OUT) for two dwellings within the same building group, the proposal is contrary in principle to Adopted Local Plan Policy D2 in that approval would increase the number of new dwellings capable of being developed within the current Local Plan period in association with the existing building group at Lauder Barns, above two, which is the maximum number of additional dwellings that are explicitly allowed by Policy D2 in relation to a building group of three existing dwellings. Furthermore, there is no operational need for a new dwellinghouse to be located at the site to serve any agricultural business, or other business with a justifiable requirement for a full-time worker to be accommodated on-site, on a permanent basis; and there are no other considerations material to this planning decision that outweigh the need to determine this application in strict accordance with planning policy.

2) The design and layout of the proposal are contrary to Adopted Local Plan Policies D2 and G1, and the advice of the approved 'Place-Making and Design' Supplementary Planning Guidance Note, in that these are unsympathetic to the prevailing sense of place within, and setting of, the building group at Lauder Barns and to the character and appearance of the surrounding landscape. This is because the elevation facing the access road (the South Elevation) would not have the appearance, or setting, of a principal elevation, but instead, would have a notably secondary, even 'rear elevation', character. The visual impact of this would be further exaggerated by the erection of a 1.8m high boundary fence along the boundary with the access road, which would convey a very strong visual impression of the land to the south of the dwellinghouse being a rear garden area when this would more sympathetically be a front garden area.

Recommendation: Refused with informatives

- 1 Notwithstanding that the site is well-related to the existing building group at Lauder Barns, and taking account of a live outline planning consent (07/02397/OUT) for two dwellings within the same building group, the proposal is contrary in principle to Adopted Local Plan Policy D2 in that approval would increase the number of new dwellings capable of being developed within the current Local Plan period in association with the existing building group at Lauder Barns, above two, which is the maximum number of additional dwellings that are explicitly allowed by Policy D2 in relation to a building group of three existing dwellings. Furthermore, there is no operational need for a new dwellinghouse to be located at the site to serve any agricultural business, or other business with a justifiable requirement for a full-time worker to be accommodated on-site, on a permanent basis; and there are no other considerations material to this planning decision that outweigh the need to determine this application in strict accordance with planning policy.
- 2 The design and layout of the proposal are contrary to Adopted Local Plan Policies D2 and G1, and the advice of the approved 'Place-Making and Design' Supplementary Planning Guidance Note, in that these are unsympathetic to the prevailing sense of place within, and setting of, the building group at Lauder Barns and to the character and appearance of the surrounding landscape. This is because the elevation facing the access road (the South Elevation) would not have the appearance, or setting, of a principal elevation, but instead, would have a notably secondary, even 'rear elevation', character. The visual impact of this would be further exaggerated by the erection of a 1.8m high boundary fence along the boundary with the access road, which would convey a very strong visual impression of the land to the south of the dwellinghouse being a rear garden area when this would more sympathetically be a front garden area.

Informatives

It should be noted that:

1 INFORMATIVE NOTE 1:

Notwithstanding that the site is considered to be both well-related to the residential building group at Lauder Barns and to be capable of accommodating an appropriate addition to that same building group, the latter is only capable of augmentation by up to two dwellings within the current statutory development plan period. Since there is currently a live but unimplemented planning permission (07/02397/OUT) for two new dwellings on another site within the same building group that is not due to expire until 11 November 2016, there is currently no capacity in principle for the building group to be expanded by any additional dwelling, until, or unless, one or other of the following scenarios occurs:

- (i) Construction is commenced on at least one of the dwellings within the development consented by Planning Consent 07/02397/OUT AND the new statutory development plan period is commenced with the adoption of the Scottish Borders Council Local Development Plan; or
- (ii) Planning Consent 07/02397/OUT expires unimplemented on 11 November 2016.

However, and as noted in the Report of Handling informing this planning decision, any future planning application for the proposal that was the subject of Planning Application 15/01323/FUL, would still require to be assessed on its own planning merits at the time of this application's submission, and no matters can be pre-judged in advance of the determination of any such future planning application, including whether or not there would be support for the principle of such a proposal. (For the avoidance of doubt, and due to the potential for other variables, there is in fact no certainty, let alone any inevitability, that the principle of the current proposal would be capable of support at some point later in 2016).

2 INFORMATIVE NOTE 2:

The dwellinghouse described by the current Proposal Drawings, is not orientated sympathetically to the existing building group, in that what appears to be its principal elevation would face away from the access road, to the north, and towards open countryside.

In the event of a new planning application being made for this proposal, the South Elevation of the dwellinghouse would more appropriately be given the character of a principal elevation, primarily by removing the proposed conservatory to another elevation, and by including a front door, ideally within a front porch on the South Elevation. In this way, an acceptable relationship to the building group should be established, and there would be some potential for the development to contribute positively towards the sense of place of the existing building group, which is ultimately one centred around the farmyard at Lauder Barns. This relationship should be inherent and appropriately reflected within the design and orientation of the dwellinghouse.

It is additionally considered that the overall design of the dwellinghouse would benefit from a deeper gable, and the roof pitch being dropped to 45 degrees to ensure a more comfortably traditional appearance.

Further, the southern boundary of the property should have a more open 'front garden' character, with a low fence or hedge in proximity to the access, in the manner of a farm cottage garden, rather than a 1.8m high timber fence along the boundary. The latter is considered to contribute to an incongruous urban or suburban appearance in this rural locality. Any more private 'rear garden area' would be more appropriately accommodated to the north of the dwellinghouse with no overly high boundary feature being erected to the front (south).

3 INFORMATIVE NOTE 3:

Notwithstanding that any works required to the junction with the A68 and out with the verge of the same, if required at all, would be both minimal and in the wider interests of all users of the same access, it is not clear whether or not, or to what extent, the Applicant would have any legal right to carry out such works.

For her own reassurance, and in advance of making a new planning application for this proposal, the Applicant is strongly advised to establish whether or not there would be any legal obstacle to her carrying out the works that Transport Scotland had identified.

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

