

## Appeal Decision Notice

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Decision by Trevor A Croft, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-140-2048
- Site address: Land south of 10 Springwell Brae, Broughton, Scottish Borders
- Appeal by Mrs Emma Lamb against the decision by Scottish Borders Council
- Application for planning permission in principle 12/01068/PPP dated 24 August 2012 refused by notice dated 5 August 2013
- The development proposed: residential development including affordable housing and associated infrastructure
- Application drawings: site location and boundaries
- Date of site visit by Reporter: 12 December 2013

Date of appeal decision: 29 April 2014

### Decision

I allow the appeal and grant planning permission in principle subject to the 17 conditions listed at the end of this decision notice. Attention is also drawn to the three advisory notes at the end of the conditions. A claim for expenses by the appellant against the council is the subject of a separate decision notice.

### Reasoning

1. By notice of intention dated 23 January 2014, attached as annex A to this notice, I stated my intention to allow the appeal and grant planning permission in principle subject to conditions and to evidence of a satisfactory planning obligation between the council and the appellant to secure the payment of an appropriate developer contribution regarding a number of matters covered by development plan policies on such contributions. These include improving education infrastructure, affordable housing, and enhanced play facilities in Broughton.
2. The council has confirmed by e-mail dated 22 April 2014 that the obligation has been agreed and signed by parties and received by the Keeper of the Registers. I have seen a copy of the receipt and the council is content that the appeal can now be finally determined and planning permission in principle granted.

*Trevor A Croft*

Reporter



## Conditions

### Submission of details and time limits

1. The subsequent application for the approval of matters specified in conditions shall be accompanied by:
  - i. a site layout plan at a scale of 1:500 showing the position of all buildings, roads, footpaths, parking areas (distinguishing, where appropriate, between private and public spaces), walls and fences and landscaping;
  - ii. plans and elevations of each house and garage type showing their dimensions and type and colour of external materials;
  - iii. a landscaping plan at a scale of 1:200 showing the location, species and ground spread of existing and proposed trees, shrubs and hedges;
  - iv. details of the phasing of development; and
  - v. details of existing and finished ground levels, and finished floor levels, in relation to a fixed datum, preferably ordnance datum.

*Reason: to ensure a satisfactory form of development.*

2. An application for approval of matters specified in the conditions set out in this decision shall be made to the planning authority before whichever is the latest of the following:
  - (a) the expiration of three years from the date of this permission, or
  - (b) the expiration of six months from the date on which an earlier application for approval of matters specified in the conditions set out in this decision notice was refused or dismissed following an appeal.

Only one application may be submitted under paragraph (b) of this condition, where such an application is made later than three years after the date of this consent.

*Reason: to achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.*

3. No development shall commence on site until all matters specified in conditions have, where required, been submitted to and approved in writing by the planning authority. Thereafter the development shall only take place except in strict accordance with the details so approved.

*Reason: to achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.*

4. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the matters specified in the conditions set out in this decision.

*Reason: to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.*

## Flooding

5. No development shall take place in the 1 in 200 year plus climate change floodplain as detailed in the flood design levels submitted on 9th January 2013.

*Reason: to ensure that the development does not impact on the effective flood plain.*

6. Finished floor levels should be set above the 1 in 200 year plus climate change flood levels with a freeboard of 600mm.

*Reason: to protect future properties residents from any flooding.*

7. Any proposed footbridge or road bridges proposed shall be so designed as to convey a 1:200 year flow and not increase the risk of flooding to existing properties. Any approach embankments should not encroach into the 1:200 year floodplain. If the bridge can not be designed to show it will not increase the risk of flooding to existing properties it should be omitted from detailed planning application.

*Reason: to ensure that the development does not increase the risk of flooding to existing properties.*

8. The detailed layout of the housing within the site shall include appropriately sized overland flow relief channels to mitigate against water spilling over Dreva Road (including the Ratchill and Unnamed burns) into the site. It is recommended that these channels avoid including garden grounds of the proposed properties.

*Reason: to mitigate the risk of flooding from blocked ditches and culverts in particular the Unnamed Burn at Springwells Brae and the Ratchill Burn.*

9. The development hereby permitted shall not be commenced on site before fully detailed design proposals for foul and surface water drainage, demonstrating that there will be no negative impact to public health, the environment or the quality of watercourses or ground water, have been submitted to and approved by the planning authority. All SUDS information including Greenfield run-off calculations shall be included in the submitted information.

*Reason: to address aspects of these issues not considered in detail in the planning approval in principle.*

## Natural Heritage

10. No building works shall take place within 20 metres from the watercourse edge. The banks the Broughton Burn, a tributary of the River Tweed, should be temporarily fenced off at least 10 metres from the edge of the watercourse prior to the commencement of any development operations, separating the river and its banks

from building operations etc, and providing an undeveloped buffer strip that retains the existing natural vegetation. Any plantings should be with appropriate native species on the river bank. No intervention work should be carried out on the watercourse itself.

*Reason: to avoid encroachment onto the Special Area of Conservation, which could lead to the loss of the 'natural' riparian corridor with associated impacts on wildlife, particularly on otters*

11. Intervention work shall not be carried out on the watercourse, for example through the use of hard engineering.  
*Reason: any intervention work may result in the loss of the 'natural' riparian corridor and associated cumulative impacts. This would reduce in-stream habitat diversity with associated adverse impact on future passage through the river by otter, salmon, lamprey species and water-crowfoot habitat.*
12. Contamination of the Broughton Burn with silt, building material or debris must be prevented during construction works and after the completion of the development. No storage of materials or equipment shall take place on any areas which have been identified as liable to flooding.  
*Reason: there is the potential for adverse impact on the River Tweed Special Area of Conservation through siltation and other pollution, particularly on juvenile fish and eggs (salmon and lamprey species).*
13. No development should occur in the functional flood plain of the Broughton Burn (River Tweed Special Area of Conservation).  
*Reason: this can put pressure on the watercourse and lead to the loss of supporting habitat for the qualifying features of the Special Area of Conservation. The storage capacity of the floodplain and the through flow of water should be safeguarded.*
14. Prior to the commencement of works on site a Species Mitigation and Management Plan (notably checking surveys for protected species (otter) and bats (if mature trees are to be felled) and mitigation for breeding birds and amphibia) must be submitted to and approved in writing by the planning authority. Any works shall thereafter be carried out in accordance with the approved scheme.  
*Reason: to ensure that any protected species living within or passing through the site are not adversely affected by the development*
15. Prior to the commencement of works on site a Habitat Management and Enhancement Plan, including native woodland creation (FCS Native seed zone 204), native thorn species rich extended hedgerows, wetland and grassland management and enhancements is to be submitted for the approval in writing of the planning authority. Any works shall thereafter be carried out in accordance with the approved scheme.  
*Reason: to improve the habitat of the site for wildlife*

## Roads and Access

16. The subsequent application for the approval of reserved matters shall be accompanied by details of:
- i. the proposed pedestrian routes from the site to Smithy Croft and the playing fields/ primary school
  - ii. the required upgrades to Dreva Road, in terms of width, pedestrian facilities, and lighting.
  - iii. the proposed improvements to the junction of Dreva Road with the A701

*Reason: to achieve a satisfactory form of development, which makes adequate provision for the safe passage of vehicles and pedestrians.*

## Water supply

17. Details of the proposed water supply shall be submitted to and approved in writing by the local planning authority prior to any development commencing on site.

*Reason: to ensure that the development is adequately serviced with water without a detrimental effect on the water supplies of surrounding properties.*

## Advisory notes

1. **Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action. (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).)
2. **Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position. (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended).)
3. **Display of notice:** A notice must be displayed on or near the site while work is being carried out. The planning authority can provide more information about the form of that notice and where to display it. (See section 27C of the Town and Country Planning (Scotland) Act 1997 Act (as amended) and Schedule 7 to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008)

**ANNEX A**

Directorate for Planning and Environmental Appeals

**Notice of intention**

T: 01324 696 400

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Notice of intention by Trevor A Croft, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-140-2048
- Site address: Land south of 10 Springwell Brae, Broughton, Scottish Borders
- Appeal by Mrs Emma Lamb against the decision by Scottish Borders Council
- Application for planning permission 12/01068/PPP dated 24 August 2012 refused by notice dated 5 August 2013
- The development proposed: residential development including affordable housing and associated infrastructure
- Application drawings: site location and boundaries
- Date of site visit by Reporter: 12 December 2012

Date of notice of intention: 23 January 2014

**Notice of intention**

For the reasons given below I am minded to allow the appeal and grant planning permission in principle subject to the conclusion of a planning obligation between the council and the appellant to secure the payment of an appropriate developer contribution, as referred to in paragraphs 18 and 19 below, and to the conditions listed at the end of this notice. A claim for expenses by the appellant against the council will be dealt with when I have made my final decision.

**Reasoning**

1. Planning permission for 36 houses was granted on 13 March 1962 on the same site as the appeal proposal, together with a small number of houses on adjacent land at Smithy Croft. Amendments to the layout were granted in 1972. A number of houses have been built within the site boundary at Smithy Croft, along Dreva Road, and at Elmsfield, under subsequent detailed permissions. The council accepts that the original permission is extant, and that the site could be developed under this.

2. The appellant notes that the housing land audit has consistently, since 2002, the earliest available, identified the site as Broughton Green (TB1) with a capacity for 19 market dwellings. This relates to the 1972 planning permission. It is noted as being constrained by ownership, which the appellant states will be removed by the granting of planning



permission. The council adds that although the land is part of the established supply it is not effective because of the ownership constraint.

3. The 1996 Tweeddale local plan identified the whole site as within the settlement boundary, with the benefit of an extant planning permission. This position was maintained in the finalised Scottish Borders local plan 2005, but the site was removed during the examination, and the settlement boundary redrawn so that in effect the proposed site was cut in two, with slightly less than half within the boundary and the remainder outwith. The appellant claims this change was not within the remit of the reporter as there had not been any objection about the boundary. This is not challenged by the council.

4. Taking into account the above, the determining issues in this appeal are the extant planning permission for the site, the housing land audit, and the site's status with regard to the provisions of the development plan.

5. The appeal site comprises an approximately triangular shaped field with long sides to the north-east and south-west, along Dreva Road and Broughton Burn respectively. There is housing to the north and west of the site, the latter including Smithy Croft. To the south-east the bungalow 'Elmsfield' is inset into the site on the shorter side of the triangle, which otherwise gives way to open fields. The site itself comprises open ground under very rough grass and slopes very gently from Dreva Road to the south and west. The settlement boundary runs roughly south-west to north-east through the middle of the site.

6. The reason for refusal quotes Scottish Borders local plan policy G8 regarding development outwith settlement boundaries, stating it has not been demonstrated there are exceptional reasons that outweigh the need to protect the development boundary. In addition it states there is no shortfall in the effective five year housing land supply. It adds the development would lead to unacceptable unplanned expansion of the settlement contrary to development plan principles that seek to ensure development is assimilated into the form and nature of the settlement and that it has the capacity to accommodate programmed growth within the lifespan of the local plan.

7. The council has acknowledged there would be no difficulty in developing that part of the site within the settlement boundary. An indicative layout shows 25 houses on the whole site, 12 of which would be outwith the settlement boundary. These would be on the northern section of that part of the site, with the remaining southern part of the site being given over to a SUDS pond and landscaped open ground. This part of the site is stated to liable to flooding so the potential layout represents a pragmatic approach to the use of the site.

8. The council's refusal of permission on the grounds of development outwith the settlement boundary would be logical in normal circumstances. In the case of the appeal proposal, however, it ignores the council's own acceptance that the site can be developed under the extant planning permission. This situation was also acknowledged by the reporter in the examination report when the boundary was changed. The only difference between the appeal application and the original application appears to be the number of houses involved and the access but neither of these appears to be an issue for the council.

9. The current settlement boundary in the local plan, although marked by a small burn, has no great visual distinguishing features. On the other hand the proposed development would extend to Elmsfield, incorporating that house within the overall visual envelope of the site, providing a defensible settlement boundary. It is unlikely that an additional 12 houses or thereby would have a significant impact on the village as a whole. The granting of a new permission would also present the council with a better opportunity of controlling a development than the somewhat uncertain parameters of the existing permission.

10. I do not accept the council's argument that the proposal would lead to an unacceptable extension to the village. I have no landscape concerns as the development would simply extend housing that the council has stated would be permitted within the settlement boundary, and would readily be assimilated into the overall fabric of the village.

11. I accept that continuing housing audits have classified the site as part of the established rather than effective land supply. From the papers before me this appears to relate to land ownership issues concerning the original access, which was to have been across the Broughton Burn. Indeed, the reporter's principal reasoning for redrawing the settlement boundary, quoted in the committee report, was that, for a number of reasons, the prolonged absence of any development on the site meant it was not effective.

12. The development of the site as originally proposed envisaged access being taken from the south-west, in the vicinity of Smithy croft. This was constrained by ownership issues. The access is now proposed from Dreva Road, and is acceptable to the council subject to off-site road improvements. This represents a material change of circumstances from those considered at the local plan examination. Had the present proposals been before the reporter then there is a likelihood the settlement boundary would not have been changed. If so the appeal proposal would have accorded fully with the development plan.

13. Looking at the housing audit, the inclusion of the site within the established, rather than effective, supply rests on the lack of access to the site, because of the ownership issues. As just discussed this can now be resolved so there is no reason why the site should not become effective.

14. Turning to the development plan, the council has not made any reference to the South East Scotland Strategic Development Plan. The strategic plan authority is consulting on supplementary planning guidance regarding housing development across the region and it may be some time before this is finalised. In any event the potential 12 houses being considered here outwith the settlement boundary would not have a significant impact on the overall figures.

15. I have considered above the situation regarding the development plan. Since the council's decision a new draft local development plan has been approved by the council and is subject to consultation prior to examination. This plan maintains the settlement boundary of the current plan. As part of the site lays outwith the settlement boundary the appeal proposal does not accord with the extant development plan or the emerging plan.



16. Turning to other material considerations, a number of local residents made objections on the basis of a range of issues, the most significant of which are flooding, traffic and road safety, and the impact on local services, including education. In its appeal submission the appellant included detailed reports dealing with these issues, and I am satisfied that, subject to conditions, there are none that justify the refusal of planning permission. The council also considered these in its committee report and found nothing that would justify the refusal of planning permission or that could not be dealt with either by condition or legal agreement. I have found no reason to disagree with this assessment.

17. The appeal site is adjacent to the Broughton Burn, which forms part of the catchment of the River Tweed Special Area of Conservation. There is a potential for adverse impact of any development through siltation and other pollution, particularly to juvenile fish and eggs, notably salmon and lamprey species. Scottish Natural Heritage has pointed out that normally an appropriate assessment would be required under the European Habitats Directive.

18. Scottish Natural Heritage adds that if appropriate mitigation is carried out any significant effect can be avoided. Mitigation can be provided for under conditions and I am satisfied, therefore, in line with Scottish Natural Heritage's advice, that an appropriate assessment will not be necessary.

19. The council requests that in the event of planning permission being granted a legal agreement, or planning obligation, should be made with the council in order to meet developer contributions requirements towards improving education infrastructure, affordable housing and enhanced play facilities in Broughton. The appellant has not commented directly on the council's draft heads of terms, but has submitted a letter to the council dated 22 May 2013 agreeing the principles of the proposed 'planning gain'. The heads of terms take this letter into account.

20. Taking into account the advice contained in Scottish Government circular 3/2012 on Planning Obligations, I will accordingly defer determination of this appeal for a period of 13 weeks from the date of this notice to enable the relevant planning obligation (under section 75 of the Town and Country Planning (Scotland) Act 1997 as amended) or such legal instrument as may be agreed by parties, to be completed and registered or recorded as the case may be. If by the end of the 13 week period, a copy of the relevant obligation or agreement with evidence of registration or recording has not been submitted to me, I will consider whether planning permission should be refused or granted without it.

21. The council has proposed a schedule of 17 conditions to be imposed on any permission granted in the event of the appeal being successful. The appellant has not made specific comments on these, but had raised issues to be covered in its statement of appeal. These have been incorporated in the council's draft. Matters relating to improvements to Dreva Road and its junction with the A702 are not within the control of the appellant, and I have replaced this condition with a suspensive one. An extension of the speed limit is a matter for the roads authority. Parties may wish to comment on this within the time allowed for drafting the obligation. Otherwise, subject to minor editing I am

satisfied these meet the requirements of circular 4/1998 regarding the use of conditions in planning permissions.

22. I have considered all the other matters raised, but found nothing to make me change my decision. Although the proposal does not accord with the development plan the extant planning permission for the appeal site is a material consideration that justifies the granting of planning permission.

*Trevor A Croft*

Reporter

**Draft conditions to be imposed in the event of planning permission being granted for the development proposed at land south of Springwell Brae, Broughton.**

#### **Submission of details and time limits**

1. The subsequent application for the approval of matters specified in conditions shall be accompanied by:
  - i. a site layout plan at a scale of 1:500 showing the position of all buildings, roads, footpaths, parking areas (distinguishing, where appropriate, between private and public spaces), walls and fences and landscaping;
  - ii. plans and elevations of each house and garage type showing their dimensions and type and colour of external materials;
  - iii. a landscaping plan at a scale of 1:200 showing the location, species and ground spread of existing and proposed trees, shrubs and hedges;
  - iv. details of the phasing of development; and
  - v. details of existing and finished ground levels, and finished floor levels, in relation to a fixed datum, preferably ordnance datum.

*Reason: to ensure a satisfactory form of development.*

2. Application for approval of matters specified in the conditions set out in this decision shall be made to the planning authority before whichever is the latest of the following:
  - (a) the expiration of three years from the date of this permission, or
  - (b) the expiration of six months from the date on which an earlier application for approval of matters specified in the conditions set out in this decision notice was refused or dismissed following an appeal.
 Only one application may be submitted under paragraph (b) of this condition, where such an application is made later than three years after the date of this consent.

*Reason: to achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.*

3. No development shall commence until all matters specified in conditions have, where required, been submitted to and approved in writing by the planning authority. Thereafter the development shall only take place except in strict accordance with the details so approved.

*Reason: to achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.*

4. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the matters specified in the conditions set out in this decision.

*Reason: to achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.*

## Flooding

5. No development shall take place in the 1 in 200 year plus climate change floodplain as detailed in the flood design levels submitted on 9th January 2013.

*Reason: to ensure that the development does not impact on the effective flood plain.*

6. Finished Floor Levels should be set above the 1 in 200 year plus climate change flood levels with a freeboard of 600mm.

*Reason: to protect future properties residents from any flooding.*

7. Any proposed footbridge or road bridges proposed shall be so designed as to convey a 1:200 year flow and not increase the risk of flooding to existing properties. Any approach embankments should not encroach into the 1:200 year floodplain. If the bridge can not be designed to show it will not increase the risk of flooding to existing properties it should be omitted from detailed planning application.

*Reason: to ensure that the development does not increase the risk of flooding to existing properties.*

8. The detailed layout of the housing within the site shall include appropriately sized overland flow relief channels to mitigate against for water spilling over Dreva Road (including the Ratchill and Unnamed Burn) into the site. It is recommended that these channels avoid including garden grounds of the proposed properties.

*Reason: to mitigate the risk of flooding from blocked ditches and culverts in particular the Unnamed Burn at Springwells Brae and the Ratchill Burn.*

9. The development hereby permitted shall not be commenced before fully detailed design proposals for foul and surface water drainage, demonstrating that there will

be no negative impact to public health, the environment or the quality of watercourses or ground water, have been submitted to and approved by the planning authority. All SUDS information including Greenfield run-off calculations shall be included in the submitted information.

*Reason: to address aspects of these issues not considered in detail in the planning approval in principle.*

## Natural Heritage

10. No building works shall take place within 20m from the watercourse edge. The banks the Broughton Burn, a tributary of the River Tweed, should be temporarily fenced off at least 10m from the edge of the watercourse prior to the commencement of any development operations, separating the river and its banks from building operations etc, and providing an undeveloped buffer strip which retains the existing natural vegetation. Any plantings should be with appropriate native species on the river bank. No intervention work should be carried out on the watercourse itself.  
*Reason: to avoid encroachment onto the SAC, which could lead to the loss of the 'natural' riparian corridor with associated impacts on wildlife, particularly on otters*
11. Intervention work shall not be carried out on the watercourse, for example through the use of hard engineering.  
*Reason: any intervention work may result in the loss of the 'natural' riparian corridor and associated cumulative impacts. This would reduce in-stream habitat diversity with associated adverse impact on future passage through the river by otter, salmon, lamprey species and water-crowfoot habitat*
12. Contamination of the Broughton Burn with silt, building material or debris must be prevented during construction works or after the completion of the development. No storage of materials or equipment shall take place on any areas which have been identified as liable to flooding.  
*Reason: there is the potential for adverse impact on the River Tweed SAC through siltation and other pollution, particularly on juvenile fish and eggs (salmon and lamprey species).*
13. No development should occur in the functional flood plain of the Broughton burn (River Tweed SAC)  
*Reason: this can put pressure on the watercourse and lead to the loss of supporting habitat for the qualifying features of the SAC. The storage capacity of the floodplain and the through flow of water should be safeguarded.*
14. Prior to the commencement of works a Species Mitigation and Management Plan (notably checking surveys for protected species (otter) and bats (if mature trees to be felled) and mitigation for breeding birds and amphibia) to be submitted to for the approval in writing by the planning authority. Any works shall thereafter be carried out in accordance with the approved scheme.

*Reason: to ensure that any protected species living within or passing through the site are not adversely affected by the development*

15. Prior to the commencement of works a Habitat Management and Enhancement Plan, including native woodland creation (FCS Native seed zone 204., native thorn species rich extended hedgerows, wetland and grassland management and enhancements is to be submitted for the approval in writing by the planning authority. Any works shall thereafter be carried out in accordance with the approved scheme.  
*Reason: to improve the habitat of the site for wildlife*

### **Roads and Access**

16. The subsequent application for the approval of reserved matters shall be accompanied by details of:
- i. the proposed pedestrian routes from the site to Smithy Croft and the playing fields/ primary school
  - ii. the required upgrades to Dreva Road, in terms of width, pedestrian facilities, and lighting.
  - iii. the proposed improvements to the junction of Dreva Road with the A701
- Reason: to achieve a satisfactory form of development, which makes adequate provision for the safe passage of vehicles and pedestrians.*

### **Water supply**

17. Details of the proposed water supply shall be submitted to and approved by the local planning authority prior to any development commencing on site.  
*Reason: to ensure that the development is adequately serviced with water without a detrimental effect on the water supplies of surrounding properties.*