

# Public Document Pack



## PLANNING AND BUILDING STANDARDS COMMITTEE MONDAY, 26TH JUNE, 2017

A MEETING of the PLANNING AND BUILDING STANDARDS COMMITTEE will be held in the COUNCIL CHAMBER, COUNCIL HEADQUARTERS, NEWTOWN ST BOSWELLS on MONDAY, 26TH JUNE, 2017 at 10.00 AM

J. J. WILKINSON,  
Clerk to the Council,

19 June 2017

<b>BUSINESS</b>	
1.	<b>Apologies for Absence.</b>
2.	<b>Order of Business.</b>
3.	<b>Declarations of Interest.</b>
4.	<b>Appointment of Vice Chairman</b>
5.	<b>Minute.</b> (Pages 1 - 12)  Minute of Meeting 24 April 2017 to be approved and signed by the Chairman. (Copy attached.)
6.	<b>Applications.</b>  Consider the following application for planning permission:-
	(a) <b>Ravelaw Farm, Whitsome, Duns - 16/012212/FUL</b> (Pages 13 - 22) Installation of biomass boiler and associated cabinet (retrospective) at Ravelaw Farm, Whitsome, Duns. (Copy attached.)
	(b) <b>Land North East of 3 The Old Creamery, Dophinton - 17/00087/FUL</b> (Pages 23 - 44) Erection of Class 6 storage and distribution buildings, associated Class 5 use and erection of ancillary dwellinghouse and associated development and landscaping works. (Copy attached.)
	(c) <b>Land South of Sunnybank, Forebrae Park, Galashiels - 17/00299/FUL</b> (Pages 45 - 56) Erection of dwellinghouse. (Copy attached.)
	(d) <b>Land North of Easter Softlaw Farm, Kelso - 17/00463/MOD75</b> (Pages 57 - 62) Modification of planning application pursuant to planning permission 06/00929/FUL. (Copy attached.)

7.	<b>Appeals and Reviews.</b> (Pages 63 - 72)  Consider report by Service Director Regulatory Services. (Copy attached.)
8.	<b>Any Other Items Previously Circulated.</b>
9.	<b>Any Other Items which the Chairman Decides are Urgent.</b>
10.	<b>Items Likely to be Taken in Private</b>  Before proceeding with the private business, the following motion should be approved:-  'That under Section 50A(4) of the Local Government (Scotland) Act 1973 the public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in the relevant paragraph of Part 1 of Schedule 7A to the aforementioned Act'.
11.	<b>Minute</b> (Pages 73 - 74)  Private Minute of the Meeting held on 24 April 2017 to be approved and signed by the Chairman. (Copy attached.)

#### **NOTE**

**Members are reminded that, if they have a pecuniary or non-pecuniary interest in any item of business coming before the meeting, that interest should be declared prior to commencement of discussion on that item. Such declaration will be recorded in the Minute of the meeting.**

**Members are reminded that any decisions taken by the Planning and Building Standards Committee are quasi judicial in nature. Legislation , case law and the Councillors Code of Conduct require that Members :**

- **Need to ensure a fair proper hearing**
- **Must avoid any impression of bias in relation to the statutory decision making process**
- **Must take no account of irrelevant matters**
- **Must not prejudge an application,**
- **Must not formulate a final view on an application until all available information is to hand and has been duly considered at the relevant meeting**
- **Must avoid any occasion for suspicion and any appearance of improper conduct**
- **Must not come with a pre prepared statement which already has a conclusion**

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**Membership of Committee:-** Councillors T. Miers (Chairman), S. Aitchison, A. Anderson, J. A. Fullarton, S. Hamilton, H. Laing, S. Mountford, C. Ramage and E. Small

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Please direct any enquiries to Fiona Henderson 01835 826502  
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**SCOTTISH BORDERS COUNCIL**  
**PLANNING AND BUILDING STANDARDS COMMITTEE**

MINUTE of MEETING of the PLANNING AND BUILDING STANDARDS COMMITTEE held in the Council Headquarters, Newtown St. Boswells on 24 April 2017 at 10.00 a.m.

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Present: - Councillors R. Smith (Chairman), M. Ballantyne, J. Brown, J. Campbell, J. Fullarton, I. Gillespie, D. Moffat, S. Mountford, B. White.

In Attendance:- Chief Planning Officer, Development Planning Manager, Principal Roads Planning Officer, Principal Officer Enforcement, Democratic Services Team Leader, Democratic Services Officers (F Henderson & F Walling for part of the meeting each).

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1. **MINUTE**

There had been circulated copies of the Minute of the Meeting held on 27 March 2017.

**DECISION**

**APPROVED for signature by the Chairman.**

2. **APPLICATIONS**

There had been circulated copies of reports by the Service Director Regulatory Services on applications for planning permission requiring consideration by the Committee.

**DECISION**

**DEALT with the application as detailed in the Appendix to this Minute.**

**DECLARATIONS OF INTEREST**

Councillors Campbell and Mountford declared an interest in Application 16/01417/FUL and Councillor Gillespie declared an interest in Application 17/00299/FUL in terms of Section 5 of the Councillors Code of Conduct. They left the Chamber during the consideration of the respective applications.

3. **APPEALS AND REVIEWS**

There had been circulated copies of a report by the Chief Planning Officer on Appeals to the Scottish Ministers and Local Reviews.

**DECISION**

**NOTED that:-**

- (a) **an appeal had been received in respect of part change of use of dwellinghouse and garden ground to wedding venue and erection of marquees at Hartree House, Kilbucho – 16/00865/FUL;**
- (b) **an appeal against enforcement had been received in respect of a boundary fence and summerhouse erected in front garden at 1 Borthwick view, Roberton, Hawick – 16/00105/UNDEV;**
- (c) **there remained six appeals outstanding in respect of:-**

• <b>Land North West of Whitmuir Hall, Selkirk</b>
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• <b>Broadmeadows Farm, Hutton</b>
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• Office, 80 High Street, Innerleithen	• 1 Borthwick View, Robertson, Hawick (Murphy-McHugh)
• 12 Merse View, Paxton	• 1 Borthwick View, Robertson, Hawick (Ramsay – 16/00146)

(d) review requests had been received in respect of the following :-

- (i) Erection of vehicle body repair workshop and associated parking on land north west of Dunrig, Spylaw Farm, Lamancha – 16/01174/PPP;
- (ii) Erection of detached garage with first floor studio, alterations and extension to dwellinghouse at Danderhall Cottage, St Boswells – 17/00011/FUL;
- (iii) Erection of agricultural storage building with welfare accommodation on land west of former William Cree Memorial Church Kirkburn, Cardona – 17/00027/FUL;
- (iv) Erection of agricultural storage building with welfare accommodation on land west of former William Cree Memorial Church Kirkburn, Cardona – 17/00028/FUL; and

(e) the decision of the appointed officer had been upheld by the Local Review Body in respect of:-

- (i) erection of cattle building with welfare accommodation at Kirkburn, Cardrona – 16/01422/FUL;
- (ii) erection of dwellinghouse on land east of Keleden, Ednam – 16/01425/PPP;

(f) the decision of the appointed officer had been overturned by the Local Review Body in respect of erection of dwellinghouse on land east of Highland Brae, Lilliesleaf – 16/01536/PPP;

(g) There remained four reviews outstanding relating to sites at:-

• Field No 0328 Kirkburn, Cardrona (16/01464/FUL)	• Field No 0328 Kirkburn, Cardrona (16/01506/FUL)
• Field No 0328 Kirkburn, Cardrona (16/01507/FUL)	• Field No 0328 Kirkburn, Cardrona (16/01513/FUL)

(h) There remained three S36 Public Local Inquiries outstanding in respect of the following:-

• (Whitelaw Brae Wind Farm), Land South East of Glenbreck House, Tweedsmuir	• Fallago Rig 1, Longformacus
• Fallago Rig 2, Longformacus	

#### 4. PRIVATE BUSINESS DECISION

AGREED under Section 50A(4) of the Local Government (Scotland) Act 1973 to exclude the public from the meeting during consideration of the business detailed in

**the Appendix II to this Minute on the grounds that it involved the likely disclosure of exempt information as defined in paragraph 8 of Part 1 of Schedule 7A to the aforementioned Act.**

### **SUMMARY OF PRIVATE BUSINESS**

5. **MINUTE**

The Committee considered the private section of the Minute of 27 March 2017.

6. **PROPER MAINTENANCE OF LAND AT THE FORMER NORTH TRINITY CHURCH, EAST BOWMONT STREET, KELSO**

The Committee considered and approved a report by the Chief Planning Officer.

7. **URGENT BUSINESS**

Under Section 50B(4)(b) of the Local Government (Scotland) Act 1973, the Chairman was of the opinion that the item dealt with in the following paragraph should be considered at the meeting as a matter of urgency, in view of the need to keep Members.

8. **DEFECTIVE ROOF COVERING, RAINWATER GOODS AND DRY ROT AT 2 HIGH STREET AND 12 MARKET PLACE, JEDBURGH**

The Committee received an update by the Principal Officer – Enforcement.

9. **CHAIRMAN**

In noting that the meeting of the Committee was the last before the Local Government Election, the Chairman asked for his thanks to be recorded to all the officers, past and present, who worked within Planning and Building Standards, to the Democratic Services team who supported the Committee and to all the background support staff. He also expressed his thanks to the Vice Chairman Councillor Brown and all the Members of the Committee for their support and co-operation. On behalf of the Committee and the Council, Councillor Ballantyne thanked Councillor Smith for his time as Executive Member for Planning and Environment and complimented him on the quality of his chairmanship of the Planning and Building Standards Committee. The Chief Planning Officer reciprocated thanks to Councillor Smith on behalf Officers.

*The meeting concluded at 4.25 pm*

## APPENDIX I

### APPLICATIONS FOR PLANNING PERMISSION

<u>Reference</u>	<u>Nature of Development</u>	<u>Location</u>
16/00980/FUL	Wind Farm development comprising of 8 no turbines 100m height to tip and Associated works, infrastructure, compounds, buildings and meteorological mast	Land North of Howpark Farmhouse, Grantshouse

Decision: Refused contrary to officer's recommendation for the following reason:

The proposed development is contrary to policy ED9 of the Scottish Borders Local Development Plan 2016, the provisions of the Supplementary Planning Guidance on Windfarms 2011 and the study on Landscape Capacity and Cumulative Impact 2013 (Ironsides Farrar) in that the development would have significant adverse cumulative visual impacts on residential and other receptors and that the landscape is incapable of accommodating the scale of turbines proposed. In addition, the identified economic benefits are not sufficient to outweigh the significant visual and landscape objections to the development.

A covering letter was to accompany the decision stating:

The Planning & Building Standards Committee in considering the application debated the potential noise impact on local residents at some length. Whilst ultimately coming to the conclusion that, on the basis of the evidence before them, a reason for refusal could not be sustained they remained concerned about the cumulative noise impact on the identified residential receptors, particularly those in closest proximity to the application site.

<u>Reference</u>	<u>Nature of Development</u>	<u>Location</u>
17/00236/MOD75	Discharge of planning obligation pursuant to planning permission T199-88	Land South West and South East of Bowbank Cottages, Bellfield Road, Eddleston

Decision: Approved as per recommendation.

<u>Reference</u>	<u>Nature of Development</u>	<u>Location</u>
16/01417/FUL	Formation of waste transfer station and Associated works	Land South of Easter Langlee Recycling Centre

Decision: Refused contrary to officer's recommendation for the following reason:

The proposed development is contrary to policy PMD2 of the Scottish Borders Local Development Plan 2016 in that the C77 road, from the site access to the B6374 Melrose Road, is inadequate and is not able to cope with the traffic generated from the development. In addition, the C77 is not capable of improvement to an acceptable standard to serve the development. The development, if approved, would be detrimental to road safety for pedestrians, residents living in the locality and other road users.

#### NOTE

Mr Young on behalf of Mr and Mrs Scougal, Aislill Cottage, Galashiels and Mr Stisi and Mr John Birnie, Chairman of Cooperknowes Residents Assoc spoke against the application.

## VOTE

*Councillor Smith, seconded by Councillor Moffat moved approval of the application.*

*Councillor White, seconded by Councillor Ballantyne moved as an amendment that the application be refused on the grounds of the inadequacy of the road for the proposed development and road safety.*

*On a show of hands Members voted as follows:-*

*Motion - 2 votes*

*Amendment - 5 votes*

*The amendment was accordingly carried.*

<u>Reference</u>	<u>Nature of Development</u>	<u>Location</u>
17/00187/FUL	Revised design pertaining to planning permission 09/01542/FUL to replace public bar/restaurant/function suite with 3 No. dwellinghouses and 4 No. flats	Land West of and including Golfer's Rest Former Station, Cardrona, Peebles

Decision: Approved subject to the following conditions and a Legal Agreement covering the adjustment to the development proposal and additional play area contributions:

1. Notwithstanding the description of the materials in the application, no development shall be commenced until precise details of the materials to be used in the construction of the external walls and roofs of the buildings have been submitted to and approved in writing by the Planning Authority, and thereafter no development shall take place except in strict accordance with those details.  
Reason: The materials require further consideration to ensure a satisfactory form of development, which contributes appropriately to its setting.
2. The finished floor levels of all the buildings hereby approved shall have a minimum finished floor level of 152.9m AOD.  
Reason: To ensure that there is no impact on the existing floodplain and that the occupants of the buildings are protected from flooding.
3. Prior to the commencement of development a scheme for the integrated provision of suitable motorcycle and bicycle parking and storage and bin storage facilities shall be submitted to and approved by the Planning Authority. The approved scheme shall be fully implemented and made available for use prior to the occupation of the development and thereafter permanently retained.  
Reason: To ensure that an integrated range of storage and on-site vehicle parking facilities are made available to users of the development.
4. In accordance with the agreed Written Scheme of Investigation outlining the Watching Brief, access should be afforded to allow investigation by a contracted archaeologist(s) nominated by the developer and agreed to by the Planning Authority. The developer shall allow the archaeologist(s) to observe relevant below ground excavation during development, investigate and record features of interest and recover finds and samples if necessary. Results will be submitted to the Planning Authority for review in the form of a Data Structure Report. If significant archaeology is discovered below ground excavation should cease pending further consultation with the Planning Authority. The developer will ensure that any significant data and finds undergo post-excavation analysis, the results of which will be submitted to the Planning Authority.  
Reason: The site is within an area where ground works may interfere with, or result in the destruction of, archaeological remains, and it is therefore desirable to afford a reasonable opportunity to record the history of the site.
5. Further details shall be submitted in writing and approved by the local planning authority, following consultation with Historic Scotland for the following:

- an interpretive plan for the Cardrona Standing Stone
- a design for screening, planting and landscaping to preserve the setting of the monument
- measures for the positive management and enhancement of the field containing the scheduled monument

The approved details shall be implemented prior to the occupation of the buildings.

Reason: To safeguard a site of archaeological interest and to enhance its setting.

6. Prior to, and during the construction phase, temporary fencing shall be placed around the Standing Stone, details of which shall to be agreed in advance with the local planning authority in consultation with Historic Scotland.

Reason: To safeguard a site of archaeological interest.

7. No development shall take place except in strict accordance with a revised scheme of hard and soft landscaping works, which has first been submitted to and approved in writing by the Planning Authority. Details of the scheme shall include (as appropriate):

- i. existing and finished ground levels in relation to a fixed datum preferably ordnance
- ii. existing landscaping features, trees and vegetation to be retained and, in the case of damage, restored
- iii. location and design, including materials, of walls, fences and gates
- iv. soft and hard landscaping works
- v. existing and proposed services such as cables, pipelines, sub-stations
- vi. other artefacts and structures such as street furniture, play equipment
- vii. A programme for completion and subsequent maintenance.

Reason: To ensure the satisfactory form, layout and assimilation of the development.

8. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner, and shall be maintained thereafter and replaced as may be necessary for a period of two years from the date of completion of the planting, seeding or turfing.

Reason: To ensure that the proposed landscaping is carried out as approved.

9. None of the trees identified for retention on the agreed Landscaping Plan (as per Condition 7) shall be felled, thinned, lopped, topped, lifted or disturbed without the prior written consent of the Planning Authority.

Reason: To enable the proper effective assimilation of the development into its wider surroundings, and to ensure that those existing tree(s) representing an important visual feature are retained and maintained.

10. Before any part of the permitted development is commenced, the trees to be retained on the site shall be protected by a chestnut paling fence 1.5 metres high, placed at a minimum radius of one metre beyond the crown spread of each tree, and the fencing shall be removed only when the development has been completed. During the period of construction of the development:

- (a) No excavations, site works, trenches or channels shall be cut, or pipes or services laid in such a way as to cause damage or injury to the trees by interference with their root structure;
- (b) No fires shall be lit within the spread of the branches of the trees;
- (c) No materials or equipment shall be stored within the spread of the branches of the trees;
- (d) Any accidental damage to the trees shall be cleared back to undamaged wood and be treated with a preservative if appropriate;
- (e) Ground levels within the spread of the branches of the trees shall not be raised or lowered in relation to the existing ground level, or trenches excavated except in accordance with details shown on the approved plans.

Reason: In the interests of preserving the health and vitality of existing trees on the development site, the loss of which would have an adverse effect on the visual amenity of the area.



11. No work shall be carried out during the bird breeding season (March-August) without the written consent of the local planning authority.  
Reason: to protect any breeding birds on the site.
12. A Species Protection Plan for otter, incorporating a pre-development checking survey and measures to be undertaken for the protection of otter, (including those outlined in the Ecological Assessment of December 2015), shall be submitted to and approved in writing by the Planning Authority. Any works shall, thereafter, be carried out in accordance with the approved Plan.  
Reason: In order to protect any protected species found within the site.
13. Prior to commencement of work, the updated Landscape and Habitat Management Plan shall be submitted to and approved in writing by the Planning Authority. This plan will also include a 10m riparian buffer strip of native woodland (willow, alder) using stock of local provenance or alternatively a planting scheme complimentary to the existing Cardrona designed landscape. Any works shall, thereafter, be carried out in accordance with the approved scheme.  
Reason: In order to protect any protected species found within the site.
14. Directional lighting will be required to ensure that the river and river bank are not significantly illuminated by lighting associated with the development.  
Reason: In order to protect any protected species found within the site.
15. Any development should be kept back from the watercourse edge to a minimum of 20m, to minimise any impact on the site features from the construction and prevent any need for bank protection work, preserve natural bank vegetation etc. The banks of the river Tweed shall be fenced off to a minimum of 10m prior to the commencement of any development operations, separating the river and its banks from the building operations etc and providing an undeveloped buffer strip which retains the existing natural vegetation. For the avoidance of doubt this buffer strip shall also include the area of land between the cart track and the river, with access provided to the 18th tee.  
Reason: In order to protect any protected species found within the site.
16. No intervention works shall be carried out on the water course itself.  
Reason: In order to protect the River Tweed SAC
17. A scheme for a clearly marked cycle way shall be submitted to and agreed in writing by the local authority before the development is commenced (including temporary diversion proposals) and the said scheme shall be implemented prior to the occupation of any of the new buildings on the site. The route must start where the old railway bridge meets the proposed development area then going eastwards on a line to be agreed to meet Cardrona Way  
Reason. To ensure the safe passage of cyclists through the site.
18. The area noted for parking on the submitted plan to the south of the development shall be properly consolidated, surfaced and drained before the buildings are occupied to the engineering details submitted and agreed as per the approval 09/01542/FUL. Parking bays to have minimum dimensions of 2.5 by 5 metres with a 1 metre hard-strip around the outer extremities of the parking area. Parking area to include 2 disabled bays which conform to current Building Regulations. All parking spaces within this area must remain unallocated to any particular property and should be available at all times for use by all users  
Reason: To ensure there is adequate space within the site for the parking of vehicles clear of the highway.
19. The proposed roads, lay-by parking, footpaths and turning spaces indicated on the approved drawing, to an extent agreed with the Planning Authority, shall be constructed to adoptable standards and shall be subject to Roads Construction Consent.

Reason: To ensure that the proposed development is laid out in a proper manner with adequate provision for traffic.

20. Development shall not begin until drainage works have been carried out in accordance with details to be submitted to and approved in writing by the Planning Authority.

Reason: To ensure that satisfactory arrangements are made for the disposal of surface and foul water.

21. None of the dwellings shall be occupied until works for the disposal of sewage have been provided on the site to serve the development hereby permitted in accordance with details to be submitted to and approved in writing by the Planning Authority.

Reason: To ensure that satisfactory arrangements are made for the disposal of surface and foul water.

22. No development to be commenced until details are submitted to, and approved by, the Planning Authority, relating to the roadside crash barrier at the junction of the access road and the public road and how it will be altered to allow for the visibility splays to be formed.

Reason: In the interests of road safety.

23. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(Scotland) Order 1992 (or any subsequent Order amending, revoking or re-enacting that Order), there shall be no further building, structure or enclosure placed on the site unless an application for planning permission in that behalf has first been submitted to and approved in writing by the Planning Authority.

Reason: The Planning Authority considers that any further development would prejudice a satisfactory layout and would have a harmful effect upon the amenity of the area.

24. No development to be commenced until full details are submitted to, and approved by, the Planning Authority relating to compensatory floodplain storage within the site. Once approved, the works to be completed before the development is commenced.

Reason: To safeguard existing and proposed properties from any increase in flood risk as a result of the development.

25. The proposed residential units shall meet the definition of "affordable housing" as set out in the adopted Scottish Borders Local Development Plan 2016 and any accompanying supplementary planning guidance and shall only be occupied in accordance with arrangements (to include details of terms of occupation and period of availability) which shall first have been submitted to and approved in writing by the Planning Authority.

Reason: The permission has been granted for affordable housing, and development of the site for unrestricted market housing would not comply with development plan policies and guidance with respect to contributions to infrastructure and services, including local schools

### Informatives

It should be noted that:

- 1 Roads Planning advise the following:  
It should be borne in mind that all work within the public road boundary, and prospective public road boundary, must be undertaken by a contractor first approved by the Council.

- 2 The Council's Flood Protection Officer recommends that, to receive flood warnings from SEPA, residents sign up to FLOODLINE at [www.sepa.org.uk](http://www.sepa.org.uk) or by telephone on 0845 988 1188. SEPA also advise that the residents' car parking area and road access to it are at a significant risk of flooding from the River Tweed. They would recommend that some signage or information boards are used to display this risk to residents and visitors to the car park area. They would also recommend that residents are encouraged to sign up to receive flood warnings for the River Tweed in this area so that vehicles can be safely moved from the car park area before the onset of flooding.

#### NOTE

Mr Brian McCrow, on behalf of Cardrona Residents spoke against the application.

Mr Justin Lamb, Agent spoke in support of the application.

<u>Reference</u>	<u>Nature of Development</u>	<u>Location</u>
16/01583/FUL	Change of use from offices and alterations and extension to form gym/spa	Office, West Grove Waverley Road, Melrose

Decision: Approved subject to the following conditions and informative notes:

1. The development shall operate only the uses and layout specified on the approved floor plan. There shall be no other uses permitted to operate as part of the approved development, and nor shall any other use within Class 11 of the Use Classes (Scotland) Order 1997 be permitted to operate without a further planning application having first been submitted to and approved by the Planning Authority. In the event that the approved use ceases to operate (whether by the applicant or a different owner/occupier), the lawful use of the property shall revert to a use falling within Class 4 of the Order. This limitation applies notwithstanding the meaning of 'development' within the Town and Country Planning (Scotland) Act 1997 (as amended), or any permitted change of use granted by Development Order.  
Reason: To maintain neighbouring amenity (including limiting noise impacts) and road and pedestrian safety
2. No development shall commence until a management scheme for its operation has been submitted to and approved by the Planning Authority. The development shall only operate in accordance with the approved management scheme  
Reason: In order to manage occupancy of the building to a level commensurate with the parking provision available to it, in the interests of maintaining road and pedestrian safety
3. The development shall not commence operation until the following measures have been implemented, and shall only operate with the approved measures fully maintained in place:
  - a) The junction onto Tweedmount Road has been lowered over the first 1 metre on either side of the access in accordance with a specification first agreed in writing with the Planning Authority
  - b) Directional signage has been provided within the site to maintain the one-way system in accordance with a specification first agreed in writing with the Planning Authority. The use shall only operate in accordance with the one-way system
  - c) All parking spaces within the site and within the land identified within the applicant's ownership on the approved location plan have been lined all in accordance with the approved plans. The parking area to the south of the building (including the application site and land within the ownership of the applicant) shall not be subdivided, notwithstanding the General Permitted Development (Scotland) Order 1992 (as amended) or any revised or replacement Order
  - d) Cycle stands have been provided in accordance with the approved site plan  
Reason: To maintain road and pedestrian safety and ensure adequate parking provision within the site

4. The development shall only operate in accordance with the Noise Impact Assessment RMP Technical Report No R-7707-EP-RGM 8<sup>th</sup> March 2017. All identified mitigation measures shall be fully implemented prior to operation of the use and shall be maintained throughout its operation. The development shall only operate between the hours of 6am and 10pm, with exercise/dance classes run only between 8am and 8pm and ventilation units shall only operate during the approved operating hours. Amplified music or speech shall only be transmitted within the dance studio between the hours of 8am and 8pm and only using a sound system that is in compliance with the noise level setting exercise required by the assessment. There shall be no amplified music or speech anywhere else within the building. Any television or similar device also transmitting sound within the building shall be operated and maintained in accordance with a level setting exercise the specification for which has been approved by the Planning Authority prior to its operation.  
Reason: To limit potential noise impacts on neighbouring property.
5. The external surfaces of the development hereby permitted shall be completed in the materials shown on the approved drawings, and no other materials shall be used without the prior written consent of the Planning Authority. The roofing material shall be dark grey or black in colour and matt surfaced, unless otherwise agreed with the Planning Authority  
Reason: To ensure a satisfactory form of development, which contributes appropriately to its setting.
6. Roof ventilation units shall not be higher than the existing roof parapet level unless otherwise agreed in writing with the Planning Authority  
Reason: To minimise the visual impact of the roof ventilation units.
7. The windows in the northern elevation of the building shall be permanently fixed shut unless otherwise agreed in writing by the Planning Authority.  
Reason: To minimise the potential for disturbance to adjoining residential occupiers

#### Informatives

1. Advertisements specified on the approved drawings do not require Advertisement Consent provided they are non-illuminated. Any changes to the signage will require Advertisement Consent unless exempt under the Control of Advertisements (Scotland) Regulations 1984 (as amended).
2. External lighting is not approved under this consent. Lighting will require Planning Permission where it constitutes development and is not exempt under the General Permitted Development (Scotland) Order 1992 (as amended)
3. The purpose of Condition 2 is to manage activity in a manner which limits the potential for the number of persons within the property at any one time to exceed 40.

#### NOTE

Mrs Katie Hunter spoke against the application.

Mr Michael Crawford, Owner spoke in support of the application.

#### Reference

17/00299/FUL

#### Nature of Development

Erection of Dwellinghouse

#### Location

Land South of Sunnybank,  
Forebrae Park, Galashiels

Decision: Continued to allow further investigation of legal implications of the proposed road link on the private ownership of Forebrae Park and to enable a site visit to be undertaken by the new Committee.

#### NOTE

Mr A H McVitie, spoke in support of the application.

#### VOTE

*Councillor Brown, seconded by Councillor Mountford moved that the application be approved.*

Councillor White, seconded by Councillor Moffat, moved as an amendment that the application be continued to investigate the legal implications of the roads proposal and to allow members to visit the site.

On a show of hands Members voted as follows:-

Motion - 2

Amendment - 6

The Amendment was accordingly carried.

<u>Reference</u>	<u>Nature of Development</u>	<u>Location</u>
17/00163/FUL	Formation of Access	Land West Of Glendouglas Lodge, Jedburgh

Decision: Approved subject to the following conditions;

1. The development hereby permitted shall not be carried out otherwise than in complete accordance with the plans and specifications approved by the Planning Authority.

Reason: To ensure that the development is carried out in accordance with the approved details.

2. Visibility splays shown on the plans hereby approved shall be provided on each side of the new access prior to any vehicular use of the junction. These splays are the triangles of ground bounded on 2 sides by the first 4.5 metres of the centreline of the access driveway (the set back dimension) and the nearside trunk road carriageway measured 215 metres (the y dimension) in both directions from the intersection of the access with the trunk road. In a vertical plane, nothing shall obscure visibility measured from a driver's eye height of between 1.05 metres and 2.00 metres positioned at the set back dimension to an object height of between 0.26 metres and 1.05 metres anywhere along the y dimension.

Thereafter, visibility splays shall be maintained on each side of the new access to this specification in perpetuity, and at the expressed request of Transport Scotland, the Roads Authority.

Reason: To ensure that drivers of vehicles leaving the site are enabled to see and be seen by vehicles on the trunk road carriageway and join the traffic stream safely.

3. The gradient of the access road shall not exceed 1 in 40 metres for a distance of 10 metres from the nearside edge of the trunk road carriageway, and the first 5 metres shall be surfaced in a bituminous surface and measures shall be adopted to ensure that all drainage from the site does not discharge onto the trunk road.

Reason: To ensure that the standard of access layout complies with the current standards and that the safety of the traffic on the trunk road is not diminished

4. No development may commence until plans (which detail design of a suitable turning area provided within the curtilage of the site) have been submitted and approved in writing by the Planning Authority, after consulting Transport Scotland. Thereafter, no development shall take place except in strict accordance with the drawings so approved and the turning area shall be provided before any forestry extraction takes place from the site.

Reason: To ensure that vehicles may enter and leave the site in a forward gear.

#### INFORMATION FOR THE APPLICANT

Transport Scotland Advise:

Granting of planning consent does not carry with it the right to carry out works within the trunk road boundary and that permission must be granted by Transport Scotland Trunk Road and Bus Operations. Where any works are required on the trunk road, contact details are provided on Transport Scotland's response to the planning authority which is available on the Council's planning portal.

Trunk road modification works shall, in all respects, comply with the Design Manual for Roads and Bridges and the Specification for Highway Works published by HMSO. The developer shall issue a

certificate to that effect, signed by the design organisation Trunk road modifications shall, in all respects, be designed and constructed to arrangements that comply with the Disability Discrimination Act: Good Practice Guide for Roads published by Transport Scotland. The developer shall provide written confirmation of this, signed by the design organisation.

The road works which are required due to the above Conditions will require a Road Safety Audit as specified by the Design Manual for Roads and Bridges. Any trunk road works will necessitate a Minute of Agreement with the Trunk Roads Authority prior to commencement.

**NOTE**

Mrs Moira Land, Langlee Park, Jedburgh and Mr Peter Hincks, West Paddock, Langlee, Jedburgh spoke against the application. Mr Huge Garrett, applicant spoke in support of the application.

<b><u>Reference</u></b>	<b><u>Nature of Development</u></b>	<b><u>Location</u></b>
17/00277/FUL	Erection of telecommunications tower and associated equipment within fenced compound	Land West of Ovenshank Farm Cottage, Newcastleton

Decision: Approved subject to the following conditions:

1. Within no more than 6 months of the date at which the development hereby consented ceases to be required for the purpose of telecommunications infrastructure provision:  
(a) the telecommunications mast hereby consented, and all ancillary equipment and installations (including fencing, the cabinets and platform in hard standing) shall all be removed from the site; and  
(b) the land at the site shall be restored to its former condition, unless, an application is first made and consent granted for the development's retention on site to serve an alternative purpose.

Reason: Retention of the mast, and all ancillary installations on site, beyond the point in time at which it has become redundant, would not be sympathetic to the character of the site or the visual amenities of the surrounding area.

**NOTE**

Mr James H T Hibbert-Hingston and Mr Leese, Woodlands, Newcastleton spoke against the application.

**SCOTTISH BORDERS COUNCIL**

**PLANNING AND BUILDING STANDARDS COMMITTEE**

**26 JUNE 2017**

**APPLICATION FOR PLANNING PERMISSION**

**ITEM:** 16/012212/FUL  
**OFFICER:** Lucy Hoad  
**WARD:** East Berwickshire  
**PROPOSAL:** Installation of biomass boiler and associated cabinet (retrospective)  
**SITE:** Ravelaw Farm Whitsome Duns Scottish Borders  
**APPLICANT:** Robert Gaston  
**AGENT:**

**SITE DESCRIPTION**

Ravelaw Farm is located to the north west of Whitsome along a minor C class road which links between the B6437 and the B6460. Open fields surround the farm and residential housing to the south which lie adjacent to a small watercourse The Leet, tributary to River Tweed (SAC). The C Listed Farmhouse sits over 200m to the south of the site. An archaeological trace of a medieval feature known as Reavelaw Farmstead lies over 300m to the north east of the farm.

**DEVELOPMENT**

This application seeks detailed planning permission for the erection of an external boiler house within the farm complex south of the Bungalow. The works are largely complete. The boiler house is constructed of a shipping container sited on the concrete base. The metal container has been painted dark green and the overall structure measures 12.2m x2.5m to height 3.65m. The installed boiler Passat Ho 510 595kw requires a flue (silver) that projects to 7.9m from ground level. The wood pellet storage hopper attached to the east side of the container is metal and coloured silver /green. No new access is proposed in relation to the development. The wood chip to fuel the boiler is sourced from logs delivered to site for chipping by the applicant within the farm complex. Underground trenches located to the north and south of container carries the necessary pipework to allow connection to the heating system. The pipework is connected to heating equipment housed within a rebuilt store (attached to main barn) to the south of the shipping container for the purpose of air drying of grain. The pipework also connects to the Bungalow.

The aim of the development is to provide renewable energy from biomass, a sustainable heat source for heating and drying of stored grain and woodchip.

**PLANNING HISTORY**

There is a history of development at Ravelaw Farm including the erection of modern sheds and new build housing.

01/00991/FUL	Erection of general purpose agricultural building	21.08.2001
05/00833/OUT	Erection of dwellinghouse Plot 1	21.07.2005
05/00834/OUT	Erection of dwellinghouse Plot 2	21.07.2005
05/00835/OUT	Erection of dwellinghouse Plot 3	21.07.2005
05/00836/OUT	Erection of dwellinghouse Plot 4	21.07.2005
06/01148/REM	Erection of dwellinghouse, carport, workshop	11.08.2006
06/02455/REM	Erection of dwellinghouse	08.02.2007
06/01979/OUT	Erection of four dwellinghouses Refused	27.02.2007
07/01184/REM	Erection of dwellinghouse with integral garage	8.08.2007
07/00251/REM	Erection dwellinghouse/ integral garage withdrawn	14.06.2007
09/00893/FUL	Erection of dwellinghouse/detached double garage	20.11.2009
11/00453/FUL	Erection of replacement agricultural building	06.06.2011
12/00549/FUL	Erection of agricultural building	14.06.2012
14/00763/FUL	Installation of AD sustainable energy plant Refused	08.12.2014
14/00296/FUL	Installation of AD sustainable energy plant Withdrawn	03.07.2014
15/00792/FUL	Installation of 125 KW AD plant and associated work Approved	05.10.2015

## REPRESENTATION SUMMARY

Members are reminded that all comments are available for Members to view in full on the Public Access website.

2 letters of support have been received, main points:

- Savings in greenhouse gas emissions compare to fossil fuel
- Savings in fuel cost for drying purposes
- Safeguards against water pollution threats
- Carbon neutral technology
- Reduces carbon footprint in line with policy
- Farmer requires to dry grain every season
- Supplying wood fuel to local market is diversification

12 letters of objection have been received. The principal grounds of objection are as follows:

- Commercial sized unit in rural environment
- Adverse impact on local amenity
- Poor quality of plans
- Lack of data on operation of plant
- Diversification away from agricultural operation
- Expansion/intensification of operations
- Noise/vibration
- Hours of operation
- Road safety
- Increase in heavy traffic
- Export of wood chip to supply fuel
- Import of grain for drying (commercial)
- Fire Hazard



## **APPLICANTS' SUPPORTING INFORMATION**

The applicant has submitted detailed plans and elevations, and a statement in support of their retrospective application

### **CONSULTATION RESPONSES:**

#### **Scottish Borders Council Consultees**

**Roads Planning:** No objection. Given the low level of traffic generated by this proposal the officer will not be objecting to the application.

**Environmental Health Officer:** No objection. The officer has recommended that all plant and machinery be maintained and serviced in accordance with the manufacturer's instructions so as to stay in compliance with his stipulated noise limits.

#### **Statutory Consultees**

##### **Edrom Allanton and Whitsome Community Council:**

The Community Council (CC) advises that areas of concern include:

Lack of details

Noise levels

Delivery times, route and number of trips

Increase in traffic

Road safety

Seeks traffic to utilise route with less residential dwellings

Seeks passing places

The CC has received an assurance from the applicant that chipping operation is not a diversification into supplying woodchip to others. If this was to happen the impact of traffic on the minor access road and the level of noise could be reasons for the CC to object.

Deliveries have not been confined to the time before 7am as we were assured they would be. Unless the deliveries are scheduled to arrive only from the north of Ravelaw and be confined to 1 a week, before 7am we object to this application.

### **DEVELOPMENT PLAN POLICIES:**

#### **Scottish Borders Local Development Plan 2016**

PMD1 - Sustainability

PMD2 - Quality Standards

ED7 - Business, Tourism and Leisure Development in the Countryside

ED9 - Renewable Energy Development

HD3 - Protection of Residential Amenity

EP16 - Air Quality

## **KEY PLANNING ISSUES:**

The key planning issues related to this application are whether the development would have an adverse impact on:

1. the landscape
2. the amenity of residential properties
3. road safety

## **ASSESSMENT OF APPLICATION:**

### Background

Biomass is an energy source comprising of biological material derived from living or recently living organisms such as virgin wood or other wood feedstock. The plant will use this fuel source to simultaneously generate electricity and heat to support the operation of the farm business. It would serve a grain/woodchip dryer which is also proposed as part of the application. The applicant has submitted detailed plans and elevations, and a statement in support of his retrospective application.

### Principle

Policy ED7 encourages proposals for business in the countryside provided that the development is to be used directly for agricultural or forestry operations and that the development respects the amenity and character of the surrounding area. The development must have no significant adverse impact on nearby uses, particularly housing. The use and scale of the development should be appropriate to the rural character of the area and should take into account accessibility considerations.

Policy ED9 states 'the Council will support renewable energy development such as biomass boilers where they can be accommodated without unacceptable significant adverse impacts or effects, giving due regard to relevant environmental, community and cumulative impact considerations.' Where renewable technologies are being located in the countryside locations, such as this proposed biomass system, the development will be assessed against the relevant environmental protection policies.

In line with the above policies, this development, using wood pellets as a fuel source, would be classed as renewable energy production - to be directly used to support agricultural operations undertaken at Ravelaw Farm, namely the drying of crops from surrounding fields.

Whilst the development fits the policy aims for energy efficiency and sustainability, the impact on neighbouring uses, amenity and environment will require to be assessed.

### Impact on Historic Environment

It is not considered that there would be an adverse impact on any historic assets, for example the C Listed Farmhouse (Ravelaw) or medieval Reavelaw Farmstead, both of which are set at a distance away from the development.

### Impact on Natural Environment

It is not considered that there would be an adverse impact on any protected sites in the vicinity, in this case, The Leet tributary to River Tweed (SAC).

### Loss of Prime Agricultural Land

This is a farm scale sized development siting within the existing complex. There would be no impact on prime agricultural land.

### Impact on the Landscape

Concerns were raised by neighbours as to the visual impact on the rural landscape.

The introduction of any building on site has the potential to create landscape impacts. In long views into the site, consideration has to be given to the topography and level of containment, along with the screening function provided by existing vegetation.

The development is sited within the existing working farm complex and there are limited views into the site from residential receptors given the screening provided by the existing farm sheds, which also would form the backdrop from other locations. The hedge-lined roads in the vicinity are the main visual receptors however there is mature vegetation present on the boundaries that provide a sufficient element of screen cover from these viewpoints.

Policy PMD2 aims to ensure that all new development is of high quality and respects the environment in which it is contained.

Consideration has been given to scale, mass and form, as well as design, materials and finishes. The buildings/plant are of a size appropriate to agricultural uses. The structures are of a smaller scale and height to the existing agricultural sheds. The boiler is housed within a metal shipping container (approximately 12m x 2.5m) coloured dark green, a typical colour found on buildings of this nature in the Borders countryside. This dark colour allows the building to visually recede in the rural setting. The feeder bin and flue are constructed of metal, coloured silver.

The character and appearance of the plant is similar to agricultural buildings evident in the local rural environment and only the top of the flue will be visible from roadside.

It is considered that the development would not be unduly prominent in the landscape and would not harm the visual amenities of the area or views into or out of the area in compliance with Policy PMD2.

### Impact on the amenity of residential properties

Policy HD3 aims to protect the amenity of both existing established residential areas and proposed new housing developments. The nearest residential properties to the development site are the farm cottages and new build properties to the south of the steading. They are separated from the application site by the existing range of farm buildings.

## Fire risk

Concern was raised by neighbours over the development representing a fire hazard. The Environmental Health Officer did not raise any adverse comments in relation to the issue of safety. The applicant is required to comply with regulations of relevant agencies in respect of health and safety on farms. This matter is not regulated by the Council.

## Noise/vibration

Concerns have been raised by the Community Council and neighbours with regard to noise/vibration nuisance stemming from the development and chipping operations on site. Residents consider the proposed development to be inappropriate in nature given the proximity of the development to residential houses.

Consideration has been given to the potential impact of the development on residential amenities to include disturbance.

In his statement, the applicant has explained that grain from the harvest is loaded into the farm building to remove moisture. The boiler system will aid drying out of the grain and woodchip will be dried between batches of grain.

In terms of hours of operation of the applicant has confirmed that an inverter has been fitted to automatically turn the heat exchange off at nights / weekends. The applicant has confirmed that the chipping operation takes place within the farm complex once or twice a month (on a week day). Timing of chipping is restricted to 0900 hours and lasts for 3 hours. In the longer term a new bunker for chipping operations is planned at the north of the site, further away from the dwellings.

The Environmental Health Officer (EHO) has reviewed the application, and taking account of boiler size and chipping operations, has no objections to the development subject to the following conditions in respect of noise emissions and operation of plant and machinery:

*Any noise emitted by plant and machinery used on the premises will not exceed Noise Rating Curve NR20 between the hours of 2300 – 0700 and NR 30 at all other times when measured within the nearest noise sensitive dwelling (windows can be open for ventilation). The noise emanating from any plant and machinery used on the premises should not contain any discernible tonal component. Tonality shall be determined with reference to BS 7445-2*

*All plant and machinery shall be maintained and serviced in accordance with the manufacturer's instructions so as to stay in compliance with the aforementioned noise limits.*

The EHO has raised no concerns over potential vibration disturbance. It would be prudent to apply the conditions in respect of noise levels to ensure control/regulation of the matter. The operation of the equipment would provide a source of noise. However the noise is not inconsistent with daily farm operations.

Given the officer's assessment with respect to noise/vibration nuisance and the use of conditions to control noise, it is considered that noise disturbance would not be an issue significant enough to warrant refusal of the application

## Air quality

Policy EP16 (Air Quality) sets out the council position in terms of development affecting air quality.

In relation to the emissions from the boiler/flue policy EP16 states that 'development proposals that could adversely affect the quality of the air in a locality to a level that could potentially harm human health and wellbeing must be accompanied by provisions that the Council is satisfied will minimise such impacts to an acceptable degree.'

The applicant has provided data which has been reviewed by the Environmental Health Officer who advises that in order to pass the screening test/target emission rates the height of the stack must be raised to a minimum of 7.9m. This is still lower than the ridge height of the main agricultural building at the site. The Environmental Health Officer was consulted on the revised plan to depict this new flue height and has no objections to the proposals.

## Cumulative impact

Concerns have been raised by neighbours as to the cumulative impact of development approved at this site. In respect of the approved Anaerobic Digester (AD) plant granted permission in October 2015, this would be sited over 250m to the east of the farm complex, but it is noted that the permission has not been implemented but neither has it lapsed. Should that development go ahead, the plant would generate electricity for export to the grid and inert fertiliser from manure to be used on the farm. The Environmental Health Officer has confirmed that there would be no requirement to consider the AD plant in assessing the biomass boiler given the distance of the AD Plant from the farm complex.

It is not considered that the proposal will adversely affect the quality of air in the locality to a level that could potentially harm human health and wellbeing or the integrity of the natural environment. Therefore, the proposal is in compliance with Policy E16

## Impact on traffic and road safety

Concerns have been raised by the Community Council and neighbours as to an increase in traffic movements stemming from the development and road safety. In particular the restriction of wood chip being exported off site. The CC sought for delivery of logs to be confined to before 7am and to arrive only from the north of Ravelaw.

The applicant has confirmed that logs are delivered to site up to 2 times over a two week period for the purpose of chipping on site. The chips are primarily for use with the boiler; however the applicant has advised that some bags were provided to a neighbouring farmer. Members may wish to consider whether any controls on off-site deliveries are relevant in this instance, however in discussions with the applicant it was assured by the applicant that the provision to neighbour was minimal. Any attempt to restrict the direction from which deliveries are made is likely to be unreasonable given that the approach in either direction is by public road. It might however be possible to require the submission of a traffic management plan if that was considered necessary. However, the Roads Planning Officer has reviewed the

matter and raised no objections to the development taking into account the low level of traffic generated. The applicant has advised that use of wood for fuel has led to a reduction in oil deliveries to site.

Neighbours were concerned with regard to cumulative impact in relation to other development at the steading. Apart from initial construction traffic, journeys to supply inputs to the AD Plant digester would use internal farm tracks.

It is considered that there is no significant change to traffic volumes in this instance. The proposals are considered acceptable in road safety terms.

## **CONCLUSION**

The use of renewable technologies for farm business purposes has become more common in the Borders., with approvals for biomass and AD plants granted in the locality.

It is accepted that the proposed development will be consistent with the Council's policies on renewable energy production. It is an appropriate building in terms of design, scale and massing and it is considered that due to the topography and vegetation screening the visual impact will be negligible.

The development will not have a significant adverse impact on the environment, landscape or the setting of nearby buildings.

The key issues raised by the objectors relate to matters which are to be controlled by conditions. The EHO and Roads Officer have not objected to the principle of the development.

It is considered that subject to appropriate conditions the proposed development will not have any adverse impacts upon the wider residential amenities of the area, in compliance with Policy HD3.

On the basis of the resolution of these matters through listed conditions the application can be supported.

## **RECOMMENDATION BY CHIEF PLANNING OFFICER:**

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

1 The development hereby permitted shall not be carried out otherwise than in complete accordance with the plans and specifications approved by the Planning Authority, in unless agreed in writing by the Planning Authority.

Reason: To ensure that the development is carried out in accordance with the approved details

2 All combustion plant and associated flues shall be maintained and serviced in accordance with the manufacturer's recommendations. The combustion plant should only use fuel of a type and grade as specified by the manufacturer and which has been used for the basis of the air quality assessment. If different fuel arrangements

are made the boiler shall be re commissioned to ensure that the assessed emissions are not exceeded.

Reason: To protect the residential amenity of nearby properties.

3 Any noise emitted by plant and machinery used on the premises shall not exceed Noise Rating Curve NR20 between the hours of 2300 – 0700 and NR 30 at all other times when measured within the nearest noise sensitive dwelling (windows can be open for ventilation). The noise emanating from any plant and machinery used on the premises should not contain any discernible tonal component. Tonality shall be determined with reference to BS 7445-2

Reason: To protect the residential amenity of nearby properties.

4 All plant and machinery will be maintained and service in accordance with the manufacturer's instructions so as to stay in compliance with the aforementioned noise limits.

Reason: To protect the residential amenity of nearby properties

#### DRAWING NUMBERS

L/01	Location/Site Plan	28.04.2017
100	Plan/Elevations	28.04.2017

#### **Approved by**

Name	Designation	Signature
Ian Aikman	Chief Planning Officer	

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

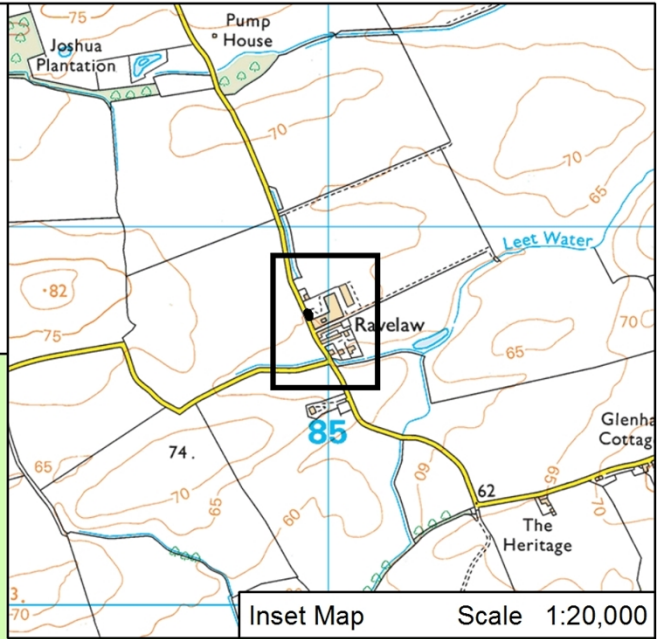
#### **Author(s)**

Name	Designation
Lucy Hoad	Planning Officer



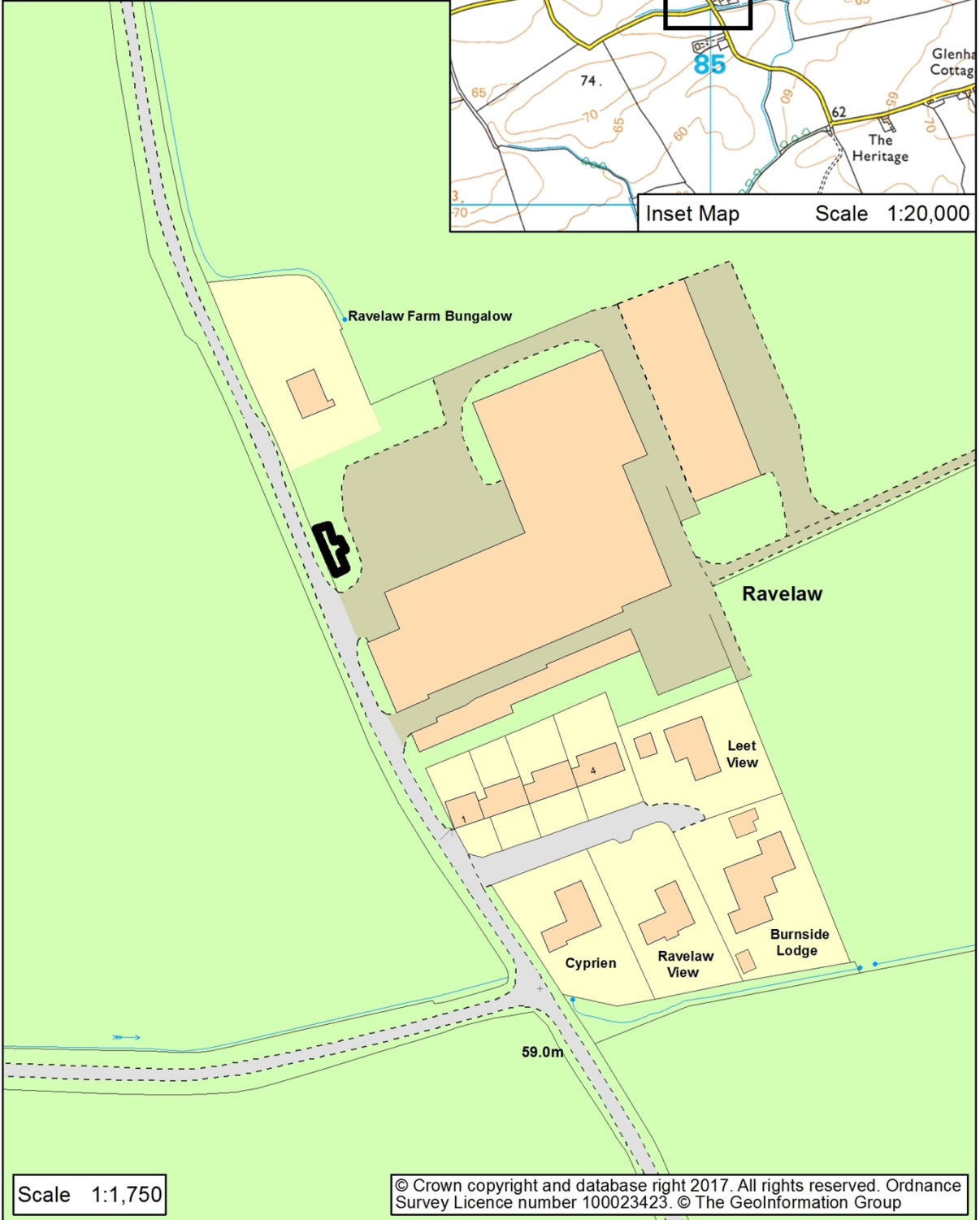
17/00463/MOD75

Land North Of Easter Softlaw Farm  
Kelso



Inset Map

Scale 1:20,000



Scale 1:1,750

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**SCOTTISH BORDERS COUNCIL**

**PLANNING AND BUILDING STANDARDS COMMITTEE**

**26 JUNE 2017**

**APPLICATION FOR PLANNING PERMISSION**

<b>ITEM:</b>	<b>REFERENCE NUMBER:</b> 17/00087/FUL
<b>OFFICER:</b>	Stuart Herkes
<b>WARD:</b>	Tweeddale West
<b>PROPOSAL:</b>	Erection of Class 6 storage and distribution buildings, associated Class 5 use and erection of ancillary dwellinghouse and associated development and landscaping works
<b>SITE:</b>	Land North East Of 3 The Old Creamery, Dolphinton
<b>APPLICANT:</b>	Mr Alastair Brown
<b>AGENT:</b>	Ironside Farrar Ltd

**CONSIDERATION BY PLANNING AND BUILDING STANDARDS COMMITTEE**

Planning Application 17/00087/FUL has been referred to the Planning and Building Standards Committee for determination under Section 43A(6) of the Town and Country Planning (Scotland) Act 1997. Its referral is supported by five Members on the grounds that: *“(t)his application is of concern to the public interest of the area as it covers a wide range of planning policies and other matters considered important by applicant and objector alike”*.

**SITE DESCRIPTION**

The site is an area of open agricultural land, less than 2ha in extent, which lies around 250m to the northwest of Dolphinton and to the immediate south of the A702. There is an agricultural access directly from the A702 at its northern extremity.

The site is readily visible from the A702. It is mostly level, but with small natural rise toward the northeast of the site.

There are some stands of trees to the east and west of the site, and a couple of trees along the road boundary with the A702. However, the site and surrounding area are otherwise generally open in character.

Along with a larger area of land to the south and west, the site lies within the provisional Local Biodiversity Site (pLBS) ‘Ingraston Moss’. It is also within the near vicinity of the Pentland Hills Special Landscape Area (SLA), which lies on the opposite (northern) side of the A702; and is linked by a shared ditch to the Dolphinton – West Linton Fens and Grassland Site of Special Scientific Interest (SSSI), which lies to the south. The site is within a carbon-rich soils area.

## PROPOSED DEVELOPMENT

Full planning permission is sought for a new purpose-built business premises for a mixed employment (Class 5 and Class 6) use to accommodate of the applicant's two existing businesses which currently operate from the Dolphinton area. A new dwellinghouse is also proposed in connection with the business.

The proposed new business premises would consist of: (i) a loading bay shed, to accommodate the cement silo and water container and provide cover to load cement-mixer lorries; (ii) a secure garage and vehicle store, to accommodate and maintain vehicles and equipment; including accommodation of a biomass woodchip boiler and fuel store; (iii) secure materials storage sheds; and (iv) an external area for the storage and manufacture of concrete blocks. These buildings would be attached to one another, forming a single range of buildings that would be located within the centre of the site. The highest structure, the materials store building, would be just under 12m in its overall height above the finished floor level of the sheds.

The new dwellinghouse, which would be located immediately to the south of the new business premises, is proposed to be ancillary to the operation of the business use of the site, and would include office accommodation for the businesses' administration.

During the consideration of the application, revisions have been made to introduce a more significant landscaping treatment for the site to that which was originally proposed. This would involve tree planting on land outwith the application site, which the applicant has advised he would be able to secure as part of his purchase of the application site from the current land owner. The landscape works include the formation of a bund wall to help screen views of the operational yard area from the nearby A702.

The proposal has been assessed as falling below the parameters that would have required the formal submission of an Environmental Impact Assessment (EIA). No statutory consultees have requested that the proposal should be supported by an EIA.

## PLANNING HISTORY

The site has no previous planning history.

## REPRESENTATION SUMMARY

Forty representations have been received in support of the application; those that set out reasons for support do so on the following grounds:

- **Residential Amenity and Road Safety Benefits to Dolphinton** - Relocation of Border Mix from its current premises would benefit the residential amenity of surrounding properties (principally through reduced noise and traffic) and would improve road safety on the local road, and at the nearby road junction with the A702 (especially in the event that Garvald Quarry were to be re-activated in the near future, which would have potential to generate greater numbers of larger vehicles on the local road and junction, taking access through Dolphinton);
- **Safeguard Future of an Established Local Business and Employer** - Operation from the application site would allow an established local business to continue operating within the local area, continue to serve an established

customer-base, continue to employ people in the local area, and contribute to the local economy. Refusal would jeopardise the business's future;

- **Potential for Economic, Employment and Environmental Benefits to the area** - Operation from the application site would allow the business to expand; overcome existing operational constraints and leasing arrangements within their existing premises; employ more people; contribute more strongly to the local economy, make greater use of local businesses and services; become more operationally efficient and productive; and realise environmental benefits; and
- **Satisfactory Amenity and Environmental Impacts** - Proposed location is well-considered with respect to the protection of the amenity of the surrounding area, including the local landscape and the amenity of local residents. The site benefits from some screening; and has potential for good site access.

Fifteen representations have been received in objection to the application (an additional sixteenth representation was withdrawn by the objector and is not considered below). These object to the proposals on the following grounds:

- **Contrary to Local Development Plan** – specifically ED7, HD2, PMD4 and PMD2 in that the site is in the countryside, is not allocated for any industrial use; and there is no operational requirement for the proposal to be sited on this specific rural site. There is no operational need for a house to be located on the site in the service of the applicant's business operations. The proposed use would be more appropriately accommodated on an industrial estate where it would be in character with surrounding uses. The proposal is not sympathetic to the amenity and environment of this greenfield site or the rural character of the site and surrounding area;
- **Detrimental to Environment and Natural Heritage Resources** – including impacts upon designated and sensitive natural heritage resources at the site and within the near vicinity; impacts upon trees; potential for air, soil and water course pollution; potential to affect a significantly wider area than the site. The application should have been supported by an EIA;
- **Detrimental to Landscape and Visual Amenity** – the scale, height and massing of the buildings would be inappropriate in landscape and visual terms; these would constitute an eyesore within local area being unsympathetic and out-of-character with this rural area and farm land. The applicant proposes an inadequate landscaping treatment for a relatively open site;
- **Detrimental to Residential Amenity** – noise nuisance; air quality and dust nuisance; light pollution; and loss of privacy;
- **Detrimental to Road Safety** – increased traffic, particularly HGVs; inadequate site access onto a busy and fast trunk road. It is questioned whether proper account and consideration has been given to police, court and accident reports relating to this stretch of the A702 road, which is seen as particularly dangerous;
- **Detrimental to Drainage, Water Environment and Soils** – particularly Ingraston Moss; soil type advised to be inadequate for the accommodation of this type of proposal. There is potential for increased flooding on a poorly drained site, in terms of interaction with soil-types; impacts on carbon-rich soils, have not been fully accounted for;
- **Detrimental to Water Supply;**
- **Inadequate or Contradictory Advice in Supporting Information** – inadequate or contradictory information has been given with respect to the selection of the

site and with respect to the proposed operation; no account should be taken of Applicant's concerns with respect to competition. There has been inadequate exploration of potential to use other sites, such as brownfield land within surrounding area (PAN 60 encourages reuse of brownfield land ahead of the development of greenfield sites); it is advised that there are sites close by in South Lanarkshire, which are available, but which have not been considered by the Applicant.

- **No Operational Need for a House On-Site** - Other alternative security measures might be considered ahead of the Applicant living on site. The Applicant's existing house is only half a mile from the site. It is considered that the proposal could be a 'back door' method of securing a new house in the countryside, were none of the associated business proposals to be developed out;
- **Promotion Within the Area of Further Development Inappropriate to a Rural Area** - particularly industrial, exaggerating the impacts of the current proposal; and negatively impacting the approach to Dolphinton village;
- **Improper Notification of Application** – advised that 'adjoining' neighbours have not been directly informed;
- **Inadequate Consideration of Potential Future Uses of Site** – it is unclear how the site might be used if the business were to move on from the site; while the bespoke nature of what would be accommodated may not prove particularly flexible when it comes to reuse by any subsequent occupier;
- **Insufficient Economic Effect to Justify Support for Development** – the proposal would not create sufficient jobs and/or generate any meaningful investment in the local economy to justify the development of the site contrary to planning policy; impacts on landscape and area would also be detrimental to tourist economy.
- **Human Health Risks**
- **Flood Risks**
- **Outdoor Access** - Impacts upon the setting and views from several paths and rights of way within the surrounding area.

Three general comments have also been received (two from one of the objectors), which express concerns with respect to the following matters:

- Transport Scotland's response – specifically the agency's understanding of planning policy with respect to the use of the site;
- The future use of the applicant's existing business premises at Dolphinton – it is requested that the industrial use of the existing site should be removed if the application is approved; and
- The potential to have accommodated the operation at Garvald Quarry – contrary to the view expressed by the applicant, the Quarry is not understood to be re-opening imminently, and it is suggested that the applicant has ignored or downplayed potential to continue operating from the quarry site, or even to relocate the businesses to the quarry site as an alternative to the current proposal.

## **APPLICANTS' SUPPORTING INFORMATION**

The application is supported by the following documents:

- Planning Supporting Statement;
- Supplementary Supporting Statement – House Requirement;
- Supplementary Statement – Air Quality, Dust Management, Noise and Lighting; and
- Preliminary Ecological Assessment;
- A letter of support from Glenrath Farms forwarded by the agent;
- Letters from local land owners advising of their correspondence with the Applicant with respect to his interest in securing land from them; and
- 3D visualisations of the site.
- Supplementary Statement on Carbon Rich Soils and Alternative Site Search

These documents are all available for viewing in full on the planning pages of the Council's website.

With respect to the supporting case set out within these documents, it is advised that the applicant currently operates two businesses within the Dolphinton area.

The first of these, and longest established, is Border Mix Ltd. This is a specialist concrete supplier that services local public, commercial, farm and private customers. It currently operates from a leased yard within the Development Boundary at Dolphinton. This is surrounded by residential properties, including the applicant's own family home. It is advised that Border Mix currently operates the site 7 days a week, and 24 hours a day. Given the presence of a number of larger rival concrete contractors based in the wider area to the west of Dolphinton, in Lanarkshire and West Lothian, the company generally considers that its location at Dolphinton is integral to its service of markets in closer proximity to it than its competitors, including within the wider area towards both Peebles and Edinburgh.

The second business operated by the applicant is The Big Block Company Ltd, which operates from leased ground at Garvald Quarry. This is a more recent business venture, which manufactures and supplies a range of large, interlocking concrete blocks for use in retaining walls, storage and containment facilities, landscaping, and flood defences. It is advised that the current lease of land at the quarry is due to expire shortly, at which point it is anticipated quarrying operations would be recommenced.

The two businesses are advised to be closely interconnected in their servicing and land use requirements, and between them employ six people: specifically the applicant, three full-time drivers, a casual labourer and one part-time administrative assistant.

The applicant advises that the expansion of his businesses is currently being constrained by the limited size of Border Mix's yard, and by ongoing concerns with respect to the continued use of the quarry land by The Big Block Company. He anticipates that a new facility to accommodate both businesses on one site would allow the businesses to expand to their potential, with a commensurate expansion in its workforce; which in the short-term, is anticipated to result in an increase of two new jobs and a requirement for the admin assistant to be employed on a full-time basis.

It is advised that the removal of Border Mix from its current site would also benefit the amenity of surrounding residential properties and would improve traffic movement, since

vehicles at present require to make use of both the yard and road to manoeuvre. It is advised that there would be greater conflict in terms of traffic movement at the site in the event of the re-activation of the quarry, which would increase the number of larger vehicles operating on this local road, in addition to the applicant's own vehicles, were these to continue operating from the existing site.

With respect to the identification of the application site as the most appropriate location for the proposed new centre of operations for his businesses, the applicant advises that his search criteria were that the new site should:

- be in Dolphinton and on the A702, to service and conserve the businesses' established customer-base;
- be of a scale to meet the applicant's business requirements, including land sufficient to accommodate the operation and expansion of both businesses, along with a new dwellinghouse for on-site security (which the Applicant sees as essential to his operations);
- have direct access to the strategic road network, avoiding current manoeuvring constraints at and between the existing sites;
- be isolated from established residential areas so as not to have any unacceptable impacts upon the amenity of any neighbouring dwellings; and
- be available for the proposed uses, essentially by being available for transfer to the applicant at a cost reflective of the intended use, which can be absorbed by the business.

The applicant also advises that alternative sites were considered, including existing and allocated industrial sites within West Linton (Deanfoot Road), Peebles (South Park) and Biggar, which have all been discounted in favour of the current application site. The various sites identified have been discounted for a range of reasons, including lack of interest in selling on the part of one land owner; difficulties relating to road access in another case; and potential to conflict with the base of operations of other rival concrete suppliers.

The applicant advises that there is no suitable site within the Development Boundary at Dolphinton or elsewhere within the local area, and that the businesses' location on a rural site is itself appropriate, because the businesses primarily support customers who are themselves rural businesses.

In response to the Planning Department's concern that the applicant had not evidenced a sufficiently thorough investigation into the possibility of accommodating the business proposal on an existing brownfield site within the local area, the applicant has provided further details of a search identifying 13 alternative named sites, mostly attributed to farms and mostly to the north and east of Dolphinton. An accompanying table advises why each of the alternative sites has been discarded by the applicant. Reasons for their elimination include: (i) insufficient size, in the case of two sites; (ii) the lack of direct access to the strategic road network in the case of one site; (iii) insufficient isolation from surrounding residential properties, in the case of five sites; and (iv) the lack of availability for the proposed use, in the case of ten sites. The application site is the only site so assessed, which meets all of the applicant's identified search criteria. Some correspondence relating to these enquiries is also included within the supporting details.

Among the sites which are identified as being unavailable for uptake, is the Applicant's existing leased premises at Garvald Quarry. The quarry operators advise in an attached email of 01 June 2017, that this land would be required by them: "*in future for quarry plant and stocks for the long term*". Beyond this, they do not commit to selling any land at the quarry until such time as it has been established how any subsequent re-activation of the quarry operation would be accommodated in future.

With respect to the specific need for a new dwellinghouse on the site, the applicant considers that this is justified and/or required for the following reasons:

- the applicant considers that the dwellinghouse is required operationally by a business that is itself appropriate to a countryside location, largely as a consequence of the business' service of rural businesses;
- the applicant requires to be accommodated on site on a full time basis because his presence "is essential to the efficient operation" of the businesses;
- the cement supply business operates on a 7-days-a-week and 24-hours-a-day basis, often requiring "ad hoc customer service at unsociable hours";
- the house would also be used to accommodate the businesses' office;
- the presence on-site of a worker is needed for security; the current business premises of Border Mix are overlooked by the applicant's existing home, and he is concerned to maintain a similar arrangement at the new site; and
- the applicant requires to sell his existing home because the significant capital investment required to relocate would be provided largely from the sale of the family home.

As far as the applicant is concerned, a dwellinghouse on site is an integral part of the proposed business operation, and vital to its successful transfer to the new site.

## **CONSULTATION RESPONSES:**

### **Scottish Borders Council Consultees**

**Economic Development Section:** Economic Development fully supports the application on the grounds that this should promote the business' expansion and efficiency, and the protection and creation of jobs, advising that the alternative could possibly be the closure of the business, if the current ground leases are terminated. The service considers that the relocation of the two businesses to the same site would allow the applicant to increase efficiencies, reduce their carbon footprint, and enable longer working hours in the winter, which would potentially enable the businesses to expand, creating new jobs. It advises that there are few if any options in this part of the Borders Region, to re-locate the businesses' operations to any industrial site. It considers that the type of operation concerned, is likely to cause fewer problems if it is sited in a rural location, away from residential properties, both from a noise, dust and vehicle movement point of view. Also, due to the size of site needed, it is considered that the same or equivalent amount of land within an existing industrial estate would probably be extremely costly, as land values on a basic agricultural plot are much lower than a serviced zoned business site.

**Roads Planning Section:** is supportive of the relocation of this business to the site on the basis that the existing premises lies adjacent to residential dwellings and appears to

be outgrowing its current site. Relocating the business would remove the existing conflict between residential traffic and business traffic which requires the use of the public road for manoeuvring.

**Environmental Health Section:** responded at the time of the original consultation to advise that it has no comments with respect to potential land contamination concerns, and to advise with respect to potential amenity and pollution concerns, that the Applicant should provide an assessment of impacts arising from the proposed development (noise, dust, fumes etc.) and that any necessary mitigation measures should be specified. The Applicant has since provided a statement on these particular matters which Environmental Health advises, requires a few tweaks with respect to the proposed mitigation measures in order to secure its support. These primarily relate to the need for agreed complaints procedures for the regulation of air quality, dust and noise; the need for the regulation of air quality and dust mitigation measures to be made the responsibility of a specific role within the operation; and the need for lighting installation to comply with recommendations of the Institution of Lighting Engineers. It is considered that all of these matters can be made the subject of planning conditions requiring agreement of the requisite details prior to the commencement of operations.

**Landscape Section:** advises that in landscape and visual terms, the site is extremely exposed and would be in full view of the A702 road from both directions, and from and within the setting of the Pentland Hills Special Landscape Area (SLA) which lies to the north. Since there are large buildings in the wider countryside, usually associated with farm steadings, the impact is not completely unexpected, but the additional yard storage area constitutes further visual intrusion. There is also anticipated to be visual impacts associated with 24/7 hours of working and the need for any yard lighting.

It is considered absolutely essential that maximum advantage is taken of opportunities for mitigation to reduce visual impacts, specifically:

- (i) the prior agreement of the finished colour(s) of the proposed buildings;
  - (ii) the prior agreement of the details of the proposed bund;
  - (iii) the regulation of any lighting to minimise unnecessary light spillage outwith the site;
- and
- (iv) the provision and strengthening of screen planting

A 'Marked Up Plan' has been provided by the Landscape Architect to illustrate specifically what would be sought. The amended site plan reflects the additional planting that was sought, and is considered to represent as much as could be done to balance the needs of screening and the ecological/habitat interest. It is anticipated that within five to ten years, this reinforced planting should screen the development from the road.

**Archaeology Officer:** there are no known archaeological assets within the development area, but based on discoveries in the wider area from a range of periods, as well as upon underlying sub-soil deposits (both peat and sand and gravel deposits), there is moderate potential for the site to contain previously unknown archaeological features, deposits or objects. To assess this, a 10% trial trench evaluation of the entire development site should take place in advance of development. Further investigation and dissemination may be required depending on the results. To this end, a planning condition requiring a developer funded field evaluation is recommended.

**Ecology Officer:** initially responded to require that prior to determination, a



proportionate Ecological Impact Assessment (EclA) should be submitted for the Planning Authority's approval, including an assessment of potential impacts on Ingraston moss pLBS, European Protected Species (otter), badger, and breeding birds. Following the submission of this EclA, the Ecology Officer has more recently responded to advise that the proposal is acceptable from an ecological perspective, provided planning conditions are applied.

**Education and Lifelong Learning:** advises with respect to the proposed new dwellinghouse that financial contributions would be required towards education provision for the local Primary School and High School.

### **Statutory Consultees**

**Community Council:** supports the application on the grounds that:

- (i) the Applicant operates a well-established business with a current base that it serves from Dolphinton, removal from which would present dangers to the business;
- (ii) the Applicant has made attempts to obtain premises elsewhere but these have been unsuccessful and the proposed location is the best solution for the business' long-term future;
- (iii) the Applicant experiences a high level of difficulty and constraint upon his operation at its current site, with little to no prospect of expansion of the cement delivery part of the business;
- (iv) coupled with the possibility of losing the manufacturing and storage area for the high-volume component of the business, a move is necessary to grow the business; and
- (v) the proposed buildings are agricultural in appearance, would be located within a natural dip, would be screened by a bund and trees. Taking account of the above, the Community Council finds that the Applicant has satisfied Local Development Plan Policies ED2, PMD2, and ED7. Within this assessment, it supports the Applicant's advised need for a dwellinghouse to be present on the site, to secure equipment and other assets.

**Transport Scotland:** No objection, subject to the imposition of conditions in relation to access construction and visibility.

**Scottish Natural Heritage:** initially responded to object to the proposals on the basis that further information was required to assess whether or not the proposal would affect the integrity of the Dolphinton – West Linton Fens and Grassland Site of Special Scientific Interest (SSSI). However, following review of the Applicant's Ecological Impact Assessment (EclA), SNH has more recently advised that notwithstanding certain deficiencies in the information provided, it is content that the natural heritage interests of national importance adjacent to the site would not be affected by the proposal. Accordingly, is able to withdraw its initial objection. This is based on its understanding that the development would be operated in accordance with the Applicant's advice, and that certain highlighted matters would require to be regulated by SEPA under the Pollution Prevention and Control (Scotland) Regulations 2012 (PPC) and the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (as amended) (CAR).

**SEPA:** initially objected on the grounds of a lack of information on foul and surface water drainage. In particular, information was sought as to whether or not foul drainage would involve a private discharge. Following submission of a plan of the proposed site drainage, SEPA has more recently responded to advise that it is content to withdraw its

objection on the basis that the proposed drainage arrangements are acceptable in principle.

**Health and Safety Executive:** does not intersect a pipeline or hazard zone.

#### **DEVELOPMENT PLAN POLICIES:**

##### **SES Plan Strategic Development Plan 2013**

##### **Adopted Scottish Borders Local Development Plan 2016**

Policy PMD1: Sustainability

Policy PMD2: Quality Standards

Policy PMD4: Development Outwith Development Boundaries

Policy ED2: Employment Uses Outwith Business and Industrial Land

Policy ED7: Business, Tourism and Leisure Development in the Countryside

Policy HD2: Housing in the Countryside

Policy HD3: 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 EP5: Special Landscape Areas

Policy EP8: Archaeology

Policy ED10: Protection of Prime Quality Agricultural Land and Carbon Rich Soils

Policy EP13: Trees, Woodlands and Hedgerows

Policy EP15: Development Affecting the Water Environment

Policy EP16: Air Quality

Policy IS2: Developer Contributions

Policy IS4: Transport Development and Infrastructure

Policy IS6: Road Adoption Standards

Policy IS7: Parking Provision and Standards

Policy IS9: Waste Water Treatment Standards and Sustainable Urban Drainage

Policy IS13: Contaminated Land

#### **OTHER PLANNING CONSIDERATIONS:**

Scottish Planning Policy

PAN 60 – Planning for Natural Heritage

#### **KEY PLANNING ISSUES:**

Whether or not the proposal to locate and operate industrial business premises at this rural site is appropriate, including in terms of landscape visual and environmental impact;

Whether or not a residential property at this rural site is appropriate in planning policy terms.

## **ASSESSMENT OF APPLICATION:**

### **Planning Policy - Proposed Business Premises**

Local Development Plan policies direct development to appropriate locations, primarily within development boundaries and, in the case of business development, to land allocated for that purpose. Any other proposal is required to justify the need for the location proposed.

Policy PMD4 states that where development boundaries are defined on Proposals Maps, these indicate the extent to which towns and villages should be allowed to expand during the Local Plan period. As such, proposals for new development outwith the development boundary and not on allocated sites should normally be refused.

The policy does however allow that an approval might be granted exceptionally, where strong reasons can be given that it is a job-generating development in the countryside that has an economic justification under Policy ED7 or HD2; or that it is a development that it is considered would offer significant community benefits that outweigh the need to protect the Development Boundary. In either case, the development must also be able to meet the determining criteria of the policy in question.

While it is acknowledged that approval would result in the benefit of the removal of the existing business operation from a residential area within the development boundary at Dolphinton, this would not be the 'significant community benefit' that could justify the proposal being made the subject of an exceptional approval under Policy PMD4. The potential benefit to the surrounding area of removing the existing business premises from the village is material, but it does not address the primary purpose of the policy which is to ensure that development outside development boundaries is properly justified. The "community benefit" test for the purposes of this policy is whether the proposed use is one that delivers significant benefits to the community that it might not be possible to accommodate within a settlement. Examples given in the plan for community uses are schools, community centres or a health centre.

A case needs to be made for the particular location of the development and, while a general case has been made to support the relocation of the business in this case, it has not been demonstrated that this is the only site to which the circumstances would apply.

Local Development Plan Policy ED7 requires that, in order to be supportive, the Council should be satisfied that there is an economic and/or operational need for the proposal to be located on this site, in the particular countryside location identified, and that the business could not be accommodated within the Development Boundary.

The site is an undeveloped field, some distance beyond the Development Boundary, which is not allocated for industrial use, or indeed for any other use. The business use described encompasses both Class 6 storage use and Class 5 industrial use, which have no requirement to be sited and operated in the countryside. Such premises would ordinarily be expected to be accommodated within the Development Boundary, more particularly within an industrial estate, more suited to such uses, avoiding the release of undeveloped sites in the countryside.

The applicant however maintains that there is an economic and operational need for the specific proposed business premises to be sited and operated from this particular countryside location. This is on the grounds that the premises would accommodate existing businesses which need to continue operating from the Dolphinton area, to service an established customer-base. This also requires good access to the A702; a larger purpose-built site capable of accommodating the businesses' expansion; and sufficient set-back from the nearest dwellings to conserve neighbours' residential amenity. Taking account of these considerations, and the applicant's inability to secure such a site within the Development Boundary at Dolphinton, the applicant contends that he had no option other than to identify a site outwith the Development Boundary, but in close proximity to Dolphinton.

With respect to the selection of the specific site, the applicant advises that in addition to the above, the lack of other opportunities to buy land within the surrounding area, coupled with this particular land owner's willingness to sell the application site to the applicant at a competitive price, have been significant factors for the applicant. While the applicant has considered other sites within the wider area, including allocated industrial land in West Linton and Peebles, he advises that he has encountered problems with respect to land owners being unwilling to sell land at an affordable price or with respect to difficulties relating to vehicular access and movements along the local road network. Ultimately however, his main concern has been that the businesses' established operations should not be removed too far from their existing base.

The Council's Economic Development service is supportive of the applicant's proposals and corroborates the efforts that the applicant has made to identify alternative premises elsewhere, in Peebles and West Linton, as well as the level of difficulty that the Applicant has had in attempting to secure any established industrial premises or allocated business land within the surrounding area.

Taking account of concerns with respect to the protection of residential amenity and appropriate arrangements for the accommodation of vehicular parking and movement, it is clear that the applicant's ability to secure an appropriate alternative site within the Development Boundary at Dolphinton is extremely limited. It is therefore broadly accepted that the Applicant has a requirement for a new site outside of the Development Boundary at Dolphinton.

However, whilst the case for a new site is acknowledged, it is still necessary to assess the location of the chosen site and the likely impacts arising from that choice. The fact that the site is highly visible is likely to accentuate those impacts, bringing into question whether this is the most appropriate site for the development being proposed.

A difficulty remains that there is little indication of any rigorous attempt on the part of the applicant to secure any other specific site beyond the application site. Ahead of the identification of a greenfield site, it would have been necessary to have first sought to identify suitable brownfield land within the vicinity, such as the quarry or a farm steading. Within the supporting case, site selection relative to certain other identified alternative sites within the surrounding area, is largely only explained by the fact that the application site lies within the ownership of a third party who is willing to sell the land at a price that is considered to be acceptable to the applicant. However, in a system concerned with land use impacts, no account can be had to the fact that the applicant may have to

secure land at a more competitive price than otherwise might have been the case, as this could be argued against any site.

The applicant has, quite reasonably, identified a site within immediate proximity to the trunk road, but this proximity in itself does not justify the selection of this precise site over any and all other potential sites. It is an argument that could be applied to a number of sites.

Although some details have been provided of a site search involving thirteen alternative sites, these do not identify any specific sites so much as rural land owners (mostly farms) within the surrounding area that have been contacted by the applicant about the possibility of selling land. The majority of these have been discounted on the basis that the land owners are unwilling or unable to sell, which although a practical consideration, is not a compelling justification for the application site.

Amongst these sites identified as being unavailable is Garvald Quarry, where the applicant's block-manufacturing operation is currently accommodated on land leased from the quarry owners, Tarmac. The applicant is concerned that there is likely to be a short-term need for him to relocate away from the quarry ahead of the latter being reactivated. While Tarmac's emailed advice to the applicant confirms the owner's reluctance to sell to the applicant the existing block-manufacturing site (or any other land currently within its ownership), it only appears to identify a long-term concern to reactivate the quarry, and does not rule out the potential to extend in area or time, any lease of the same land to the applicant. The applicant's concern is that he wishes to own the land ahead of investing in any buildings, which appears to make the land unavailable in this particular case. While the opportunity to invest in, and grow the business through the acquisition of a site and accommodation of both businesses, is understandable, it is unclear to what extent the applicant is setting parameters that exclude what may be viable and more acceptable ways of operating in planning terms. It is not for example, altogether apparent that block manufacturing operations could not be continued, even scaled up, at the quarry at present or within the foreseeable future, and within temporary rather than permanent buildings. The applicant's concern to buy a site and centralise his operations would appear to be a significant driver, and undue weight cannot be given to this where opportunities for more flexible operating arrangements have not been sufficiently explored within the supporting details.

The supporting case has not demonstrated that the applicant's needs could only be met at this particular site. In fact, insufficient information has been presented to demonstrate that the proposal might not have been accommodated just as readily on brownfield land within the surrounding area, or where the site might have benefited from existing accesses, established yards, buildings and/or established landscaping. The applicant does evidence communication with surrounding land owners with respect to his interest in acquiring land, but the information is general, and the exact terms of any expressions of interest are not fully detailed.

In summary, although the case for relocation is accepted, the supporting case for the choice of site appears to rest upon the availability of the application site **for sale** and the economic benefits to the applicant of securing a large area of land relatively inexpensively, perhaps precisely because the land is not allocated for business or any other land use. These factors do not in planning terms justify support for this application site over any other area of land within the wider area, or override established policies

designed to protect the countryside against unjustified development. It is again, an argument that could be applied often and to many sites. To this end, it is considered that the applicant has not demonstrated that there is an economic and/or operational need for the particular countryside location of the site and therefore the proposal is contrary to the requirements of Policy ED7.

### **Planning Policy - Proposed Dwellinghouse**

In planning policy terms, the application site is an isolated rural site, lying as it does outwith the Development Boundary at Dolphinton and in isolation from any existing building group, where small scale residential development might be considered acceptable. In order to comply with the requirements of Adopted Local Development Plan Policy HD2, therefore, any new dwellinghouse proposed for this site requires special justification and would normally only be supported if it were necessary as direct operational requirement to support an business requiring a functional need to accommodate a worker on-site, on a full-time basis at the site.

As noted in the preceding section, the case for the business is not considered to have been made and therefore, if Members accept that position, then it correspondingly follows that there would be no need for a house at the site. On this basis alone, the proposed dwellinghouse would fail to comply with the requirements of Policy HD2.

Even if the case for the business is accepted, it is legitimate to consider whether the need for a house at the site has been made.

The Applicant advises that he may need to operate the cement supply business at unsociable hours, and prepare cement for dispatching at relatively short-notice to meet quick-turn-around or emergency contracts.

It is acknowledged that the business's workers might require to access the site at unsociable hours to prepare and dispatch cement supplies at short-notice; and that having a worker living within a relatively short distance to the site would undoubtedly be helpful to the operation; however, this does not necessarily translate into an overriding need for there to be a worker actually residing on site on a permanent basis.

It does not appear operationally necessary that the same individual would be permanently required on site to prepare cement for distribution other than in direct response to a customer's specific order. It is not disputed that the business may operate on a 24-hour, 7-days-a-week basis, but this in itself does not justify any operational need for a dwellinghouse on site so much as suggest that this concern would in fact be better met by shift-working. It is therefore not accepted that there is any operational requirement for any worker to reside on site to meet these short-term and emergency cement supply contracts.

The applicant also seeks the permanent presence on-site of a worker for security reasons. However, it would be reasonable to ask whether any security issue might be addressed in other ways, such as a perimeter of security fencing and/or use of surveillance cameras. It is not clear that the need for a house is any greater than for other business operators, for example, on an industrial estate where there would be equivalent needs and concerns to store valuable vehicles and equipment securely.

It might be argued, with respect to the business operations described, that accommodation for a duty worker or watchman could fulfil the need, rather than a family home for the Applicant himself. The proposed site is sufficiently close to the nearby building group that it would be possible to be available at short notice to deal with any issues.

A site office could readily be accommodated on site and would address the suggested requirement.

Taking account of all of the above, it is not considered that the applicant has demonstrated compliance with the requirements of Section (F) Economic Requirement of Policy HD2. There is no justifiable operational requirement for a residential property to be located outwith the Development Boundary for the purpose of supervising new purpose-built premises for a cement supply business and a concrete block manufacturing and supply business; especially premises that are not already established on-site, as in this case.

This would seem to reinforce the view that this is not the appropriate location to establish the business. Even if it were accepted that the applicant has a justifiable operational need to be accommodated near his business premises, it would be appropriate to have considered locations where there was already an existing house, ahead of establishing a new site which could then only be served by a new house. It is a requirement of Policy HD2 that new housing should only be permitted where no suitable existing house or other building capable of conversion to residential use is available.

If Members do accept the case for the house, it would be legitimate to require that the dwellinghouse should be constructed at the same time as, or after, the business premises buildings, in order to avoid the risk that an isolated new dwellinghouse in the countryside is built and the business is not. It would also be appropriate to require by condition that the house should be retained within the same planning unit as the business premises, and only be occupied by someone who works within, or has retired from, the associated business premises. This would also ensure that the operation of the business premises would have no unacceptable impacts upon the amenity of the occupants of the residential property.

### **Planning Policy ED10: Protection of Carbon Rich Soils**

Local Development Plan Policy ED10 serves to protect carbon rich soils, specifically by requiring that development on carbon rich soils should be refused unless: the land is allocated for development within the local plan; the development meets an established need that cannot be met by any other site; and/or the development is small scale and directly related to a rural business.

The applicant advises that notwithstanding that the site is located within an area of Carbon Rich Soils, the specific on-site conditions are not favourable to the conservation of deep peat deposits. This includes a history of cyclical ploughing, sowing and ongoing improvement of the land for farming through field drainage and fertilizer applications. Further, he advises that construction would be a one-off event, unlikely to release any more carbon than the continuation of farming at the site. As such, he maintains that the actual quality of carbon rich soils at the site is now liable to be sufficiently diminished that the proposal would not be liable to have any unacceptable impacts upon this resource.

The applicant's evidence on this matter is not comprehensive, and does not in itself reasonably allow Policy ED10 to be set aside. The latter policy in any case, identifies circumstances in which it would be appropriate to allow development to be accommodated, where it otherwise meets the policy's requirements. These largely mirror the considerations that are assessed under Policies PMD4, ED7 and HD2, as detailed above.

Accordingly, and in line with a recommendation that the development of this particular rural site for the proposal has not been substantiated, and there is no operational justification for a house on this land, it would follow that the proposal would also not comply with Policy ED10, in that the impact on a designated area of carbon rich soils is unnecessary and unacceptable.

### **Design and Layout**

It is accepted that a robust landscaping scheme and the selection of dark or natural colours as would normally be used on modern farm buildings, could provide sufficient landscape and visual mitigation of their appearance, although this will take time to establish. Similarly, strong screening at lower levels from the proposed bunding and the proposed tree planting could also form an acceptable containment of any external yard areas. Such matters are capable of being regulated by appropriately worded planning conditions.

In other circumstances, the proposed design of house would have raised considerably more concerns than it does here – principally because the main roof ridge has a continuous height, giving it an unusual form, as well as an overly exaggerated horizontal emphasis. However, as an isolated residential property that would be located behind considerably larger business premises buildings relative to the trunk road, and subject to an appropriate landscaping treatment for the wider site, it would have relatively insignificant landscape and visual impacts in views from the A702 and the surrounding countryside. It would still be appropriate to require that its external materials and finishes should be regulated, including the prior approval of the render colour, to ensure a satisfactory finished appearance.

### **Road Safety, Access and Parking**

Notwithstanding objectors' concerns about road safety on this stretch of the A702, Transport Scotland (who have responsibility for the trunk road network) have raised no objection, subject to requirements with respect to the formation, construction and operation of the site access being met in full. Again, such matters are capable of being addressed by planning condition.

### **Landscape and Visual Impacts**

The site is currently highly visible from the main road and any landscaping required to mitigate the visual effects of the large-scale development proposed will need to be significant and may take several years to fully establish.



The Landscape Section is fully supportive of the Applicant's revised proposals for landscaping treatment for the site, which appears extensive and robust with respect to proposed new tree planting, particularly in the area between the site and the trunk road.

A point of note is that much of the land that is shown to accommodate new tree planting, is not in fact within the application site. Indeed, it is also not within the applicant's own ownership, although is currently within the same ownership as the application site. The applicant has however supplied a letter confirming the current land owner's stated intention to sell this additional land to the applicant, as part of any purchase of the application site. The matter would certainly require to be regulated by planning condition. Such a condition would need to be "suspensive", meaning that it would require the planting to take place first, in turn meaning that the applicant will need to have first acquired this additional land ahead of the commencement of any development.

In the event of permission being granted, there would also be a need for further planning conditions referencing both the applicant's proposed landscaping treatment and requiring the submission and prior approval of the precise details of the proposed tree planting scheme.

It would also be necessary, if permission were granted, to require the prior agreement of the finished floor levels, and finished ground levels. Similarly, the details of the finished appearance of any bunded feature, including heights and profile would also require to be provided for prior approval, to ensure a satisfactory finished landscaped appearance for the site in views from the public road.

### **Residential Amenity**

The proposed distance of set back of the site from the Development Boundary at Dolphinton, does largely ensure that the businesses' operations would not be liable to have any unacceptable impacts upon the amenity of the nearest residential properties. Nonetheless, Environmental Health retains some concerns with respect to the management of air quality, dust, noise, and lighting. Environmental Health Officers do however consider that these concerns can be addressed under appropriately worded planning conditions.

Advice with respect to lighting does however raise a difficulty in that the applicant's concern to operate 7 days a week, and potentially on a 24 hour basis does indeed suggest that the operation would have some requirement for the installation and use of lighting. However, no specific lighting proposals have been set out within the proposals.

There is potential for lighting to be installed as permitted development (e.g. as lights on buildings), but in the event of approval, it would still be appropriate to ask the applicant to refer to the Planning Department with respect to any future lighting proposals, primarily enable assessment of the lighting concerned.

### **Cultural Heritage and Archaeology**

The Archaeology Officer's concern is capable of being met by an appropriately worded planning condition.

## **Natural Heritage**

Following the provision of additional details, both the Council's Ecology Officer and SNH are now satisfied that the proposals would have no unacceptable impacts upon the natural heritage interests at the site and in the surrounding area subject to their stated concerns being met within appropriately worded planning conditions.

## **Infrastructure**

SEPA's concerns are largely capable of being met by informatives, and a condition to regulate the implementation of proposals for the operation of an appropriate foul drainage system.

## **Developer Contributions**

A legal agreement would be required in the event of approval, to secure the requisite development contributions towards local education provision.

## **Other Concerns**

Notwithstanding the concerns of one of the objectors, notification was in accordance with statutory requirements. There are no residential properties within 20m of the site boundary that would have necessitated specific notification.

Objectors' concerns that the site might end up in alternative business and/or residential uses have some credibility. Once established, other businesses within the same use class could benefit from the permission. It is unlikely the proposed buildings would be used for farming and new uses, most likely new commercial uses, could operate from the buildings without the need for further consent from the Council. If permission were to be granted, it would therefore be advisable to restrict by condition the use to that proposed by the applicant, to ensure that there would be full and appropriate scrutiny of any potential successor business operations.

The site is not within a flood risk area or Conservation Area.

The future use and disposal of the Applicant's existing business premises at Dolphinton, are not a matter for consideration as part of this application.

## **CONCLUSION**

The proposed business premises for a mixed Class 5 and Class 6 business operation does not comply in principle with Adopted Local Development Plan Policies PMD4, ED7 or ED10 in that the Applicant has not demonstrated any overriding economic and/or operational need for it to be located in this particular countryside location.

The proposed dwellinghouse would not meet any direct operational requirement of an agricultural, horticultural, forestry or other enterprise which is itself appropriate to the

countryside, and therefore does not comply in principle with Adopted Local Development Plan Policies PMD4, HD2 or ED10.

The proposal relates to a site that lies outwith the Development Boundary and no overriding reasons have been given to substantiate that it is a job-generating development in the countryside that has an economic justification under Policy ED7 or HD2; or that it is a development that would offer significant community benefits that would outweigh the need to protect the Development Boundary. As such, the proposal does not comply in principle with, or with any of the justified exclusions allowed from, Adopted Local Development Plan Policy PMD4.

Notwithstanding the potential to realise benefits both to the Applicant's businesses and wider local economy; and indirectly to the amenity of residential properties around the Applicant's existing premises in Dolphinton, it is considered that there are no other material considerations that would justify a departure from these provisions.

### **RECOMMENDATION BY CHIEF PLANNING OFFICER:**

I recommend that the application is refused for the following reasons:

1. The proposed business premises for a mixed Class 5 and Class 6 business operation does not comply in principle with adopted Local Development Plan Policies PMD4, HD2 or ED7 in that the applicant has not demonstrated any overriding economic and/or operational need for it to be located in this particular countryside location and therefore the proposed development would represent unjustified, sporadic and prominent development in the open countryside.
2. The proposed dwellinghouse would not meet any direct operational requirement of an agricultural, horticultural, forestry or other enterprise which is itself appropriate to the countryside, and therefore does not comply in principle with adopted Local Development Plan Policies PMD4 and HD2.
3. The proposed development would result in the unjustified and permanent loss of carbon-rich soils, contrary to Policy ED10 of the adopted Local Development Plan.

### DRAWING NUMBERS

<b>Plan Ref</b>	<b>Plan Type</b>
BMIX01 PL001	Location Plan
BMIX01 PL002 B	Site Plan
BMIX01 PL003	Floor Plans
BMIX01 PL004	Elevations
BMIX01PL005	Elevations
0329 PL004	Existing Layout

**Approved by**

Name	Designation	Signature
Ian Aikman	Chief Planning Officer	

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

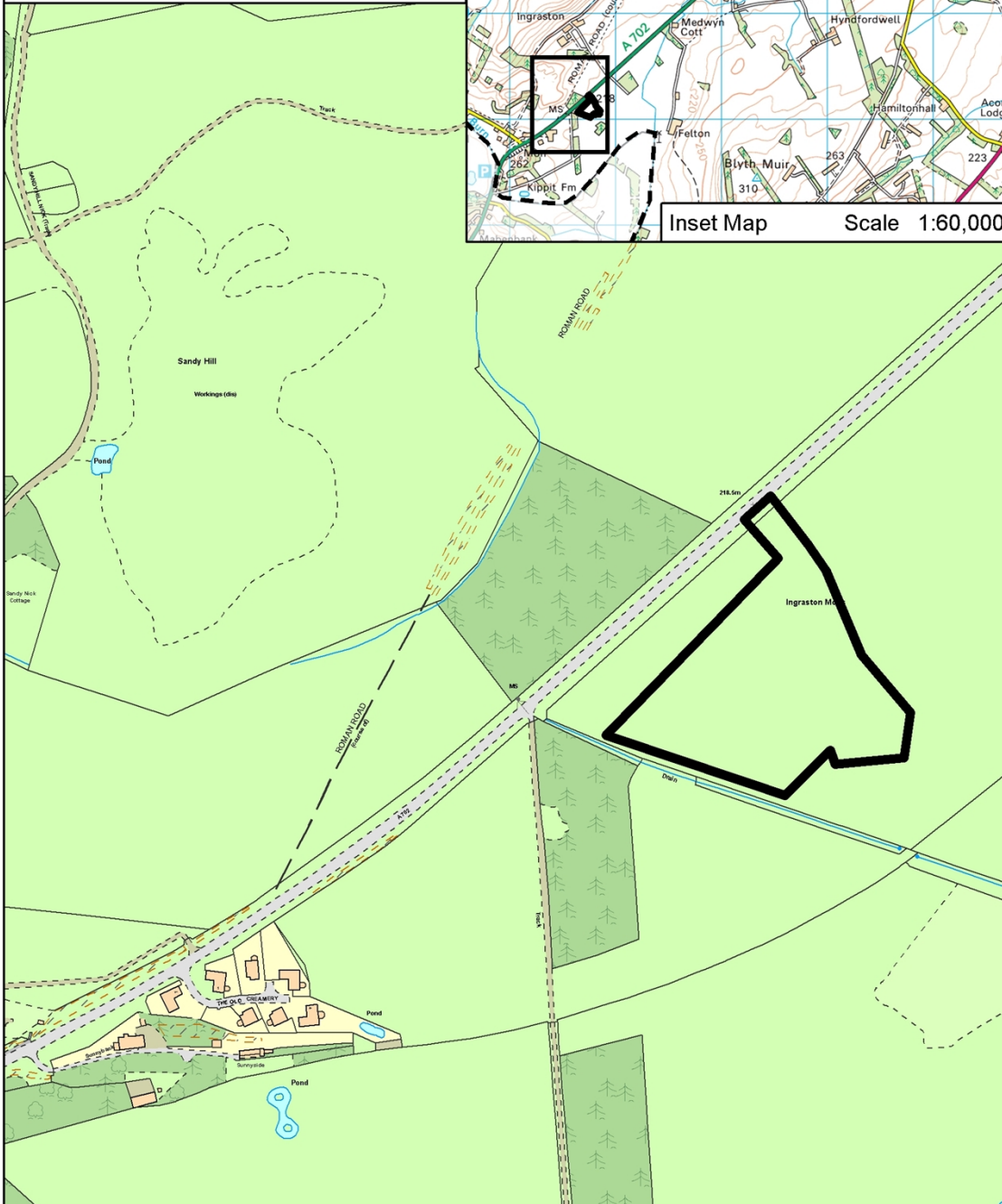
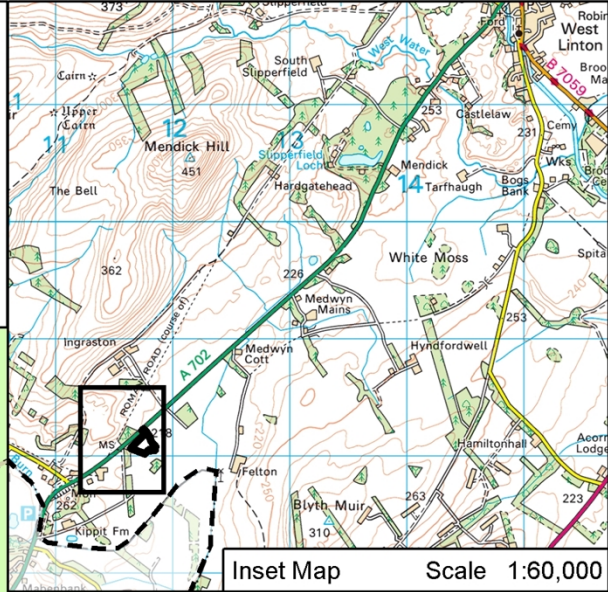
**Author(s)**

Name	Designation
Stuart Herkes	Planning Officer



17/00087/FUL

Land North East Of  
 3 The Old Creamery  
 Dolphinton



Scale 1:4,500

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**SCOTTISH BORDERS COUNCIL**

**PLANNING AND BUILDING STANDARDS COMMITTEE**

**26 JUNE 2017**

**APPLICATION FOR PLANNING PERMISSION**

<b>ITEM:</b>	<b>REFERENCE NUMBER:</b> 17/00299/FUL
<b>OFFICER:</b>	Carlos Clarke
<b>WARD:</b>	Galashiels and District
<b>PROPOSAL:</b>	Erection of dwellinghouse
<b>SITE:</b>	Land South of Sunnybank, Forebrae Park, Galashiels
<b>APPLICANT:</b>	Mark Entwistle
<b>AGENT:</b>	None

**SITE DESCRIPTION**

The site is located off Forebrae Park, a private road which, over its initial section from the High Road, is considerably steep. It serves a number of existing dwellinghouses and stops short of the end of Ellwyn Terrace to the south-east by a few metres. This section is included in the application site. The site itself is currently overgrown, roughly triangular in shape, with levels that vary but, overall, drop steeply down from Forebrae Park. Detached houses overlook the site to the north and north-east, and the site backs onto the large gardens of residential properties to the south and south-west (Upper and Lower Eastmount and West and East Lynnwood). To the south-east is Ellwyn Terrace, a relatively modern development of detached houses, including split-level houses on its southerly side.

**PROPOSED DEVELOPMENT**

The application principally seeks full planning permission for a detached house, on 2¾ storeys, split-levelled from front to back, with an access and pedestrian link from Forebrae Park. The application also seeks consent to form a link between Forebrae Park and Ellwyn terrace by means of regrading and retaining the ground and forming a 6m long section of 3.3m wide road.

**CONSIDERATION BY PREVIOUS PLANNING AND BUILDING STANDARDS COMMITTEE**

This application was considered by the previous meeting of the Planning and Building Standards Committee on 24<sup>th</sup> April. The Committee made the following decision:

*Continued to enable further investigation of legal implications of the proposed road link on the private ownership of Forebrae Park and to enable a site visit to be undertaken by the new Committee.*

Members will be advised verbally at the meeting about the legal implications of the proposed road link.

A site visit has not been arranged because the Local Government Elections occurred shortly after the last meeting of the previous Committee, meaning that the Committee were unable to fulfil the request for a site visit. Members may decide whether to accept the recommendation of the previous Committee or whether to proceed to determination of the application, based on the information before them.

## PLANNING HISTORY

The site has been subject to several applications in recent years:

- 08/01555/FUL Erection of dwellinghouse - withdrawn
- 09/01206/FUL Erection of dwellinghouse - withdrawn
- 13/01010/FUL Erection of dwellinghouse – refused for the following reasons:
  1. The development would not comply with Policy G7 of the Consolidated Local Plan 2011 because it would be served by an access road which is incapable of accommodating further traffic in a manner which is appropriate to road and pedestrian safety. The application does not include an alternative means of road access that would reduce the need to use the existing sub-standard road.
  2. The development would not comply with Policies G7 or INF4 of the Consolidated Local Plan 2011 because the layout of the parking area within the site is not capable of accommodating parking and turning for two cars, leading to potential road and pedestrian safety risk
- 14/00987/FUL Erection of dwellinghouse - withdrawn

## REPRESENTATION SUMMARY

Representations on behalf of six households have been submitted which can be viewed in full on *Public Access*. A summary of the objections is as follows:

- Access would be via a single lane poorly constructed road. It is queried whether this will be made good after the works
- The construction period will result in unacceptable disruption, safety impacts (HGVs reversing along Forebrae Park), noise, dust and traffic affecting neighbouring amenity and health
- The Roads Planning Service have indicated concern regarding unacceptable impact on Torvannoch's driveway
- The road link to Ellwyn Terrace will lead to a significantly adverse impact on Ellwyn Terrace which is single track with no passing places and has a lack of parking. Joining the roads will affect existing parking at the turning area. Extra traffic movements will affect safety including children who use the link as a route to school and play in the street. It will lead to higher speeds. The need for the link is queried. It will increase traffic noise. Ellwyn Terrace will no longer be a quiet and beautiful cul-de-sac but a normal street subject to traffic of people and vehicles
- Disruption of view and effect on property value
- Overlooking and loss of privacy
- Loss of trees will permanently change the landscape
- Effect on the boundary wall on the south side (bounding Upper and Lower Eastmount and West and East Lynnwood) which is being used inappropriately as a retaining wall and showing signs of considerable stress. There are concerns regarding further earth pressure, water pressure and vehicle impacts. These will increase during the building works for the house and road link. It is queried whether reinforcement will be provided and contended that works close to it should be removed. Steps should be taken to deal with surface water drainage against it. The wall is not meant to be a retaining wall.
- Effects on stability of the soil – no geological report has been provided



## **APPLICANT'S SUPPORTING INFORMATION**

3d imagery has been included within the submitted plans and drawings

### **DEVELOPMENT PLAN POLICIES:**

#### **Local Development Plan 2016**

PMD2 Quality Standards  
PMD5 Infill Development  
IS2 Developer Contributions  
IS3 Developer Contributions Related to the Borders Railway  
IS7 Parking Provision and Standards  
IS9 Waste Water Treatment Standards and Sustainable Urban Drainage  
EP 1 International Nature Conservation Sites and Protected Species  
EP13 Trees, Woodlands and Hedgerows  
EP16 Air Quality  
HD3 Protection of Residential Amenity

### **OTHER PLANNING CONSIDERATIONS:**

SPG Developer Contributions 2016  
SPG Trees and Development 2008  
SPG Landscape and Development 2008  
SPG Placemaking and Design 2010  
SPG Guidance on Householder Development 2006

### **CONSULTATION RESPONSES:**

#### Scottish Borders Council Consultees

**Roads Planning Service:** The principle of a dwelling on this site has previously been accepted, most recently in applications 08/01555/FUL, 09/01206/FUL, 13/01010/FUL and 14/00987/FUL, however there have been requirements for a link road to be formed between Forebrae Park and Ellwyn Terrace. This current submission includes details relating to this link. It should be a condition of this application, if approved, that the link is provided prior to works commencing on the proposed dwelling. Given the complexity of the link in terms of geometry, staff from this section must be made aware when the link is being formed to enable them to be present on-site to ensure acceptable alterations are carried out.

The RPS has no objections provided the following conditions are adhered to.

1. The link between Forebrae Park and Ellwyn Terrace must be completed prior to works commencing on the dwelling unless otherwise agreed in writing with this department.
2. Notification of proposed start dates for the works associated with the formation of the link must be given to the Roads Planning Service in advance of any works commencing on-site.
3. All works in relation to the completion of the link must be carried out by a contractor first approved by the Council.
4. Parking and turning, excluding any garages, must be provided within the curtilage of the property prior to occupation and be retained in perpetuity thereafter.

5. The initial 6m of the private access must have a gradient not steeper than 1 in 12.
6. Thereafter the access between the initial 6m and the parking/turning area must have a gradient not greater than 1 in 8.
7. The parking turning area must have a gradient not greater than 1 in 12.
8. The initial 6m of the private access must be constructed to their specification.
9. Any gates approved at the access must be hung so as to open into the site.
10. Details of how the applicant proposes to manage the delivery of construction materials and staff to the site must be provided prior to commencement on-site.
11. Prior to commencement on site, the approval of the Council must be obtained in regards to the engineering details for the retaining features included within the proposal.

**Education and Lifelong Learning:** No reply

**Environmental Health Service:** Assessed the application for air quality, noise and nuisance. The plans indicate that solid fuel will be used for heating. The site is within a Smoke Control Area which prohibits the use of certain fuels. A condition is recommended to regulate the type of fuel used

Statutory Consultees

**Galashiels Community Council:** No reply

**KEY PLANNING ISSUES:**

Whether the development would comply with planning policies with respect to infill housing development within a settlement, including as regards siting, design and layout, and impacts on neighbouring amenity but also, in particular, whether the road access is suitable, including the visual, amenity and traffic impacts of the proposed road link

**ASSESSMENT OF APPLICATION:**

*Principle*

The site is within the town's settlement boundary, has no allocations or designations and is not open space of either recreational or townscape value. It comprises an overgrown area that would be best put to a viable use. Policy PMD 5 of the Local Development Plan 2016 principally supports infill development subject to consideration of impacts (as below). The site is accessible from a private road leading from the public road network and is within reasonable distance of amenities. The erection of a dwellinghouse here would not lead to land use conflict.

*Access and parking*

The development is to be served by an access from Forebrae Park with parking and turning within the site. The road is private but it is understood the site owner has the right to take access from it. Potential damage to the road is a matter between owners. The Roads Planning Service has advised of specifications for the access and parking arrangement and has verbally confirmed that the proposals meet their gradient requirements. A condition can require compliance with the plan and with the junction construction specification required by the RPS. The house is accessible from the level parking area. Disabled access within the building is for the Building Standards

To support a house here, the RPS recommends that a link be formed between Forebrae Park and Ellwyn Terrace. This has consistently been their advice throughout all previous applications, all of which have stalled principally because of the lack of a suitable road link being proposed. Advice given by the RPS on previous applications (specifically 08/01555/FUL and restated in response to 13/01010/FUL) includes the following commentary:

- In 1987 an outline application was made for four dwellinghouses on land to the east of Forebrae House with the applicant's intention that the houses be served by the road known as Forebrae Park. This extensive site encompasses the smaller site associated with this current planning application. Borders Regional Council as Roads Authority (Roads & Transportation Department) advised against the proposal on the basis that the road was private, narrow in part (including at the junction with High Road), excessively steep in part, suffered from poor junction visibility (where it joined High Road) and was poorly constructed in part. The R & T Department recommended that the number of dwellinghouses be restricted to three (now built and known as Belvedere, Sunnybank and Torvannoch) and advised that it would not be appropriate in the longer term for the houses to be served solely by Forebrae Park. On this basis a legal agreement was entered into in 1991 between the Council and the owners of Forebrae House, Belvedere and Torvannoch which gave the Council, as Roads Authority, a right in perpetuity to form a vehicular link between Forebrae Park and Ellwyn Terrace.
- Ellwyn Terrace was designed and has been built so as not to prejudice a vehicular link to Forebrae Park.
- The Roads Planning Service were then able to recommend in favour of a further house only on the basis that the developer be held responsible for forming the road link as was always envisaged. They advised that the benefit of having the link will outweigh the disbenefit of adding additional traffic to the road. It is in the best interests of road safety that the residents of the dwellinghouses at the top of Forebrae Park are given the opportunity of an alternative shorter route to the public road network via the link.
- Emergency services will benefit, in particular in winter conditions, from having an alternative means of access to the houses at Forebrae Park. It may be a concern among Forebrae Park residents that there could be an increase in traffic using Forebrae Park as a result of the link, but it would appear that the vast majority of traffic associated with Ellwyn Terrace will access the public road network via Melrose Road/Station Brae and will have no desire to use Forebrae Park. The link will certainly result in some traffic from Ellwyn Terrace using Forebrae Park but this will be minimal and will only involve traffic which will be travelling along High Road in a north westerly direction (south easterly for the return journey). This increase in traffic is likely to be compensated for by existing Forebrae Park traffic, associated with the houses towards the end of the road, which will access the road network via Ellwyn Terrace/Crescent thus avoiding the poorly constructed length of Forebrae Park as well as the steep part. Larger service vehicles which presently visit Forebrae Park will, in the event of the link, be likely to travel along Forebrae Park in one direction only. The RPS advised that they considered that none of the roads are suited to serving new development and that they were only able to recommend in favour of an application for a new dwellinghouse on the basis that a vehicular link will open up Ellwyn Crescent/Terrace to the residents of the houses in Forebrae Park and of the two access routes Ellwyn Crescent/Terrace is the better one.

Following on from this recommendation by the RPS, the current application now includes the road link proposal, which will link Forebrae Park and Ellwyn Terrace over a 6 metre section. The RPS supports the scheme, subject to conditions. Due to the particular circumstances of this site, a traffic management plan is recommended for the construction period to manage traffic, and specific notification to the RPS.

Ultimately, this proposal will link two streets that are currently dead-ends within metres of each other. To link them will reflect planning policy guidance which is designed to maximise connectivity between residential developments. Given the RPS's clear support, and their careful and long-held encouragement of the link, the narrow width of the link, and relatively low number of properties affected, it is not considered that traffic along Ellwyn Terrace will constitute a road safety risk or affect the character of the street such that the opportunity to provide this link should be lost. If the road link is not provided, then a house here would not be provided with a satisfactory access.

### *Placemaking and design*

Trees will be lost to the development and affected by the road link. However, none are of public amenity value of note. The site is essentially overgrown. Trees beyond the site to the south are unlikely to be adversely affected.

The site is elevated and visible from across the town, but houses behind are on a higher level. The proposed house would also be below the level of the house to the east by 2.6m. The site's location relates it to the variety of houses in Forebrae Park, yet also the more regular arrangement of houses in Ellwyn Terrace. It needs to sympathetically relate to both in layout, scale, form and design, acting as a transition of sorts between them.

Accounting for its transitional position, the proposed building line responds sufficiently to Ellwyn Terrace. It will front the road as existing houses do, with parking set behind to the rear. Its layout means there will be some potential for its 'rear' garden to be exposed, but the existing streetscape in Ellwyn Terrace is already relatively busy with retaining walls and outbuildings, so this is not a concern. Level information demonstrates that the house will be set below the road and houses on Ellwyn Terrace, with retaining walls framing it, and the driveway and parking set above the southern boundary. Its level of cut-in is reduced by the split-level arrangement, so retaining walls are not excessive. Ellwyn Terrace already has retaining walls with frontages set below the road. The house's lower level than Ellwyn Terrace will jar a little with the regular roofscape, but it will also relate to the variation in Forebrae Park. It is noted that sectional drawings do not appear to be wholly reliable regarding the precise height of the house relative to the road. However, levels information does demonstrate that the house will be set well below it.

The house would be relatively large in scale but it is proportionate to the plot size and its scale is comparable to neighbouring houses, with its bulk broken by a recessed end. Its scale and split-level form would be comparable with neighbouring houses, including 2/3 storey split houses on Ellwyn Terrace and a 2 ½ storey building opposite.

The building's form will be gabled and heavier-set than Ellwyn Terrace, which has less top-heavy roofs. However, it will also relate to the greater variety of building forms in Forebrae Park. It has heavy details for the roof (eave and verges) but so do neighbouring houses. Materials are specified as tiles, render and brick basecourse to match adjacent properties. These require further consideration, to ensure the selection responds sympathetically to the context. Hard surfaces can also be covered by condition.

Post and rail fencing is proposed to the front, which is agreeable, though more detail is required of boundary treatments as part of a landscape scheme designed to integrate the development with the site.

The road link works would comprise levelling of a six metre section of ground, with a section of fence removed, ground levelled, gabion baskets placed on the south side, and retaining walls on the north side. The sections are very useful, albeit not entirely accurate, but there can be some degree of flexibility on the precise details in order to ensure a smooth link. Retaining wall heights are not provided. However, they are likely to be low, and Ellwyn Terrace already has a number of retaining walls. The height of walls can be sought by condition.

The house will be south-facing, though detailed energy efficiency requirements are for the Building Standards. There is also ample room for bin storage.

### *Neighbouring amenity*

This proposal is for a small scale development comprising one house and a short section of road. Construction impacts in terms of dust and noise are capable of being regulated outside the planning process.

Traffic generated by a single house or by additional traffic accessing Ellwyn Terrace via the road link will not have significant amenity consequences.

Effects on view and property values are not material considerations in this case. Impact on outlook from properties will not be particularly adverse, particularly as the house is set well below houses to the north, and offset from the house to the east. There would also be no serious effect on neighbouring amenity as regards daylight or sunlight loss.

As regards privacy, the impact of the development is acceptable. It is below houses to the north, with no windows to the east. Permitted Development rights can be removed to prevent windows being added on the eastern elevation. It will overlook garden ground to the south, however, the grounds of Upper and Lower Eastmount are heavily overlooked now and the net difference between the existing situation and that proposed is not significant, albeit the house will more directly overlook a corner of the garden. There would also be overlooking of the garden of East Lynnwood but there is existing tree coverage, and the overall effect is not likely to be significant.

The effect of the road link in terms of light or outlook impacts would not be adverse.

The Environmental Health Service recommends a condition regulating the type of heating fuel. This is controlled separately and a planning condition is not required. An informative note is recommended.

### *Ecology*

There are no ecological designations and no mature trees or buildings will be removed. It is an overgrown site so has the potential to support nesting birds. This matter can be accounted for in an Informative, given the potential to remove the planting now as part of maintenance of the land.

### *Services*

No details of surface water drainage have been provided aside from reference to proposed soakaways. A condition can secure a Sustainable Urban Drainage System scheme that

maintains existing run-off, though its detailed specification is for the Building Standards. Maintenance of the structural stability of the southern boundary wall as a result of run-off is for the applicant/owner of the site and not for the planning approval, if granted. Mains water and foul drainage services will be required and a condition will require evidence of provision.

#### *Effects on wall and ground stability*

Structural implications on adjacent structures resulting from the location of the building or grading of the ground would be considered by Building Standards as part of the Building Warrant application and are not planning issues. They would need addressed by the applicant's structural engineer. How the contractors physically undertake the work is for them and their insurance. If the proposals need adjusted to suit any requirements imposed by Building Standards, it will be for the applicant to address these. Amendments which materially change the proposals will require a fresh planning application.

#### *Contributions*

A legal agreement will be necessary to secure developer contributions as required by Policies IS2 and IS3 and current supplementary guidance.

### **CONCLUSION**

Subject to a legal agreement and compliance with the schedule of conditions, the development will accord with the relevant provisions of the Local Development Plan 2016 and there are no material considerations that would justify a departure from these provisions

### **RECOMMENDATION BY CHIEF PLANNING OFFICER:**

I recommend the application is approved subject to the following conditions, legal agreement and informatives:

1. No development shall commence on the erection of the dwellinghouse until the road link between Forebrae Park and Ellwyn Terrace has been formed in accordance with a surfacing, drainage and retaining wall specification first approved by the Planning Authority and in accordance with the detailed plans and sections approved under this consent. No works shall commence on the road link until notification has been provided in writing to the Planning Authority of the applicant's intention to commence work at least 14 days in advance of works commencing. All works on the road link must be carried out by a contractor approved by the Council before works commence  
Reason: In the interests of road and pedestrian safety and, with respect to retaining walls also in the interests of ensuring the works are visually appropriate
2. No development shall commence until a Construction Traffic Management Plan has been submitted to and approved by the Planning Authority. The construction traffic within the control of the applicant shall be operated in accordance with the approved CTMP  
Reason: To maintain road and pedestrian safety
3. No development shall commence until written evidence is provided on behalf of Scottish Water to confirm that mains water and foul drainage connections shall be made available to serve the development, and until a surface water drainage scheme has been submitted to and approved by the Planning Authority. Mains services and approved surface water drainage measures shall be operational prior to occupancy of the dwellinghouse  
Reason: To ensure the development can be adequately serviced

4. No development shall commence except in strict accordance with a scheme of soft landscaping and boundary treatment works, which shall first have been submitted to and approved in writing by the Planning Authority, and shall include:
  - i. location and detailed schedule of new trees, shrubs, hedges and grassed areas
  - ii. design details of new boundary treatments and of the retaining walls specified on the approved plans (notwithstanding the General Permitted Development (Scotland) Order 1992 (as amended 2011) or any subsequent amendment or Order)
  - iii. a programme for completion and subsequent maintenance.

Reason: To visually integrate the development as sympathetically as possible with its context

5. No development shall commence until a schedule and samples of all external materials, finishes and colours of the house and hard standings (notwithstanding references on the approved plans and drawings) have been submitted to and approved by the Planning Authority. The development shall be completed using the approved schedule of materials, finishes and colours.

Reason: To visually integrate the development as sympathetically as possible with its context

6. The house shall not be occupied until the access, parking/turning and footpath on the approved site plan have been provided in accordance with the approved plan, including specified gradients. The first six metres of the entrance shall comply with the Council's approved specification (see Informative Note). The access and parking/turning area shall be maintained free for the parking of at least two vehicles. Notwithstanding the right to erect gates within the scope of the General Permitted Development (Scotland) Order 1992 (as amended 2011), no gates shall be erected that open out over Forebrae Park.

Reason: To ensure the development is adequately serviced with off-street parking and pedestrian access

7. Notwithstanding the General Permitted Development (Scotland) Order 1992 (as amended 2011, or any subsequent amendment or Order) no window or door opening shall be formed within the elevation described as the east elevation on the approved drawings without a planning application having first been submitted to and approved by the Planning Authority

Reason: To minimise risk to neighbouring amenity

#### Information for the applicant

1. The site has the potential to be occupied by nesting birds. Clearance of vegetation should be carried out outside the breeding season (generally March to August) unless the site is first checked beforehand. Disturbance of nesting birds is an offence under habitat legislation.
2. The first 6 metres of the entrance to the site should be constructed to the following specification: 40mm of 14mm size close graded bituminous surface course to BS 4987 laid on 60mm of 20mm size dense binder course (basecourse) to the same BS laid on 350mm of 100mm broken stone bottoming blinded with sub-base, type 1.
3. Potential effects of the development on the stability of the boundary wall to the southerly boundary should be established separately by the applicant's engineer, as well as potential effects on any other neighbouring structures. This consent does not

account for physical risk of damage to the integrity of structures, as this is a matter regulated separately through the Building Warrant process. Any measures required to address this that would materially amend the development approved under this Planning Permission would require a fresh planning application.

4. Galashiels is within a Smoke Control Area. Any solid fuel heating appliance installed in the premises should only burn smokeless fuel. Alternatively, non-smokeless fuel may be used if the appliance is approved for use in a Smoke Control Area. The appliance should only burn fuel of a type and grade that is recommended by the manufacturer.

Within a Smoke Control Area you must only use an Exempt Appliance <http://smokecontrol.defra.gov.uk/appliances.php?country=s> and the fuel that is approved for use in it <http://smokecontrol.defra.gov.uk/fuels.php?country=s> . In wood burning stoves you should only burn dry, seasoned timber. Guidance is available on - [http://www.forestry.gov.uk/pdf/eng-woodfuel-woodasfuelguide.pdf/\\$FILE/eng-woodfuel-woodasfuelguide.pdf](http://www.forestry.gov.uk/pdf/eng-woodfuel-woodasfuelguide.pdf/$FILE/eng-woodfuel-woodasfuelguide.pdf) Treated timber, waste wood, manufactured timber and laminates etc. should not be used as fuel. Paper and kindling can be used for lighting, but purpose made firelighters can cause fewer odour problems.

#### DRAWING NUMBERS

Location plan

Site Plan FCE/FORBRAE/01/A

Ground, 1<sup>st</sup> and 2<sup>nd</sup> Floor plans FCE/FORBRAE/02/A

North/south/east/west elevations FCE/FORBRAE/03/A

Section AA/North and South Views FCE/FORBRAE/04/A

Section BB, CC & DD east and south FCE/FORBRAE/05/A

Plan of link section SK01

Long section SK/2 A

Road channel profiles longitudinal sections SK/3 A

Cross Sections A-E SK/4 C

Additional cross sections SK/5 C

Topographical survey

#### **Approved by**

Name	Designation	Signature
Ian Aikman	Chief Planning Officer	

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

#### **Author(s)**

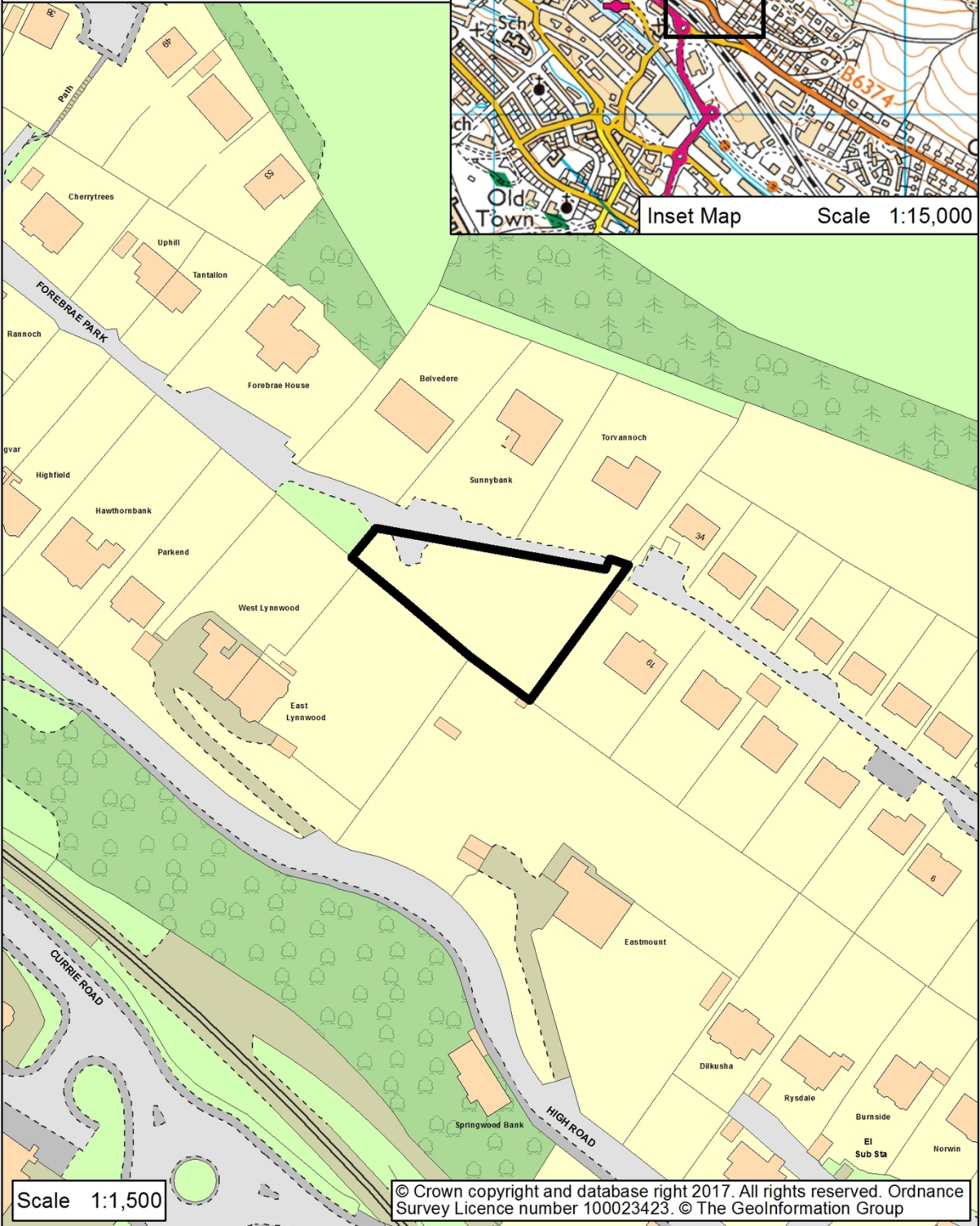
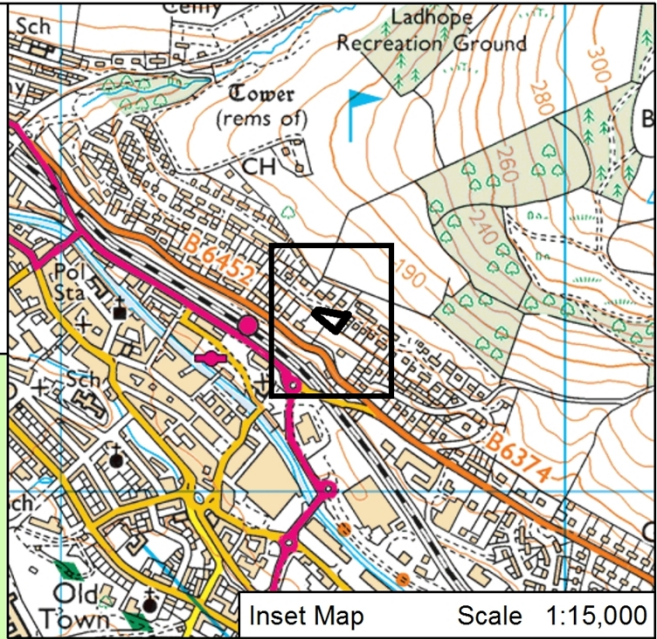
Name	Designation
Carlos Clarke	Lead Planning Officer





17/00299/FUL

Land South of Sunnybank  
Forebrae Park  
Galashiels



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**SCOTTISH BORDERS COUNCIL**

**PLANNING AND BUILDING STANDARDS COMMITTEE**

**26 JUNE 2017**

**APPLICATION FOR PLANNING PERMISSION**

**ITEM:** REFERENCE NUMBER: 17/00463/MOD75  
**OFFICER:** Mr E Calvert  
**WARD:** Kelso and District  
**PROPOSAL:** Modification of planning application pursuant to planning permission 06/00929/FUL  
**SITE:** Land North Of Easter Softlaw Farm, Kelso  
**APPLICANT:** Mr G Scott-Watson  
**AGENT:** FBR Ltd per Mrs Sarah Mason

**SITE DESCRIPTION:**

Easter Softlaw is 3km south east of Kelso. The B6396, leading to Wooler, passes the road end of the farmhouse; 8no semi-detached of farm cottages (four pairs) and the junction for a minor road. The Farm Holding is set to the south of this minor road and has progressively developed on land north and east of the Farmhouse. Portions of traditional agricultural ranges are still visible today however the character of the holding is now dominated by steel/ concrete framed sheds, silos and corrugated steel sheet cladding. New Softlaw House is on the opposite side of the minor road (north east of the farm), set within a large private garden and canted at an angle to the road.

**PROPOSED DEVELOPMENT:**

Modification or discharge of a section 75 agreement is sought relating to New Softlaw House granted permission on 05 June 2007, 06/00929/FUL.

The reason for this modification or discharge request is three fold:

1. The Agent notes that the s.75 is erroneous in that New Softlaw Farmhouse is held in different title to the land.
2. The applicant wishes to modify the s.75 to transfer (ownership) of five fields farmed by another family member.
3. The applicant wishes to modify the s.75 to dispose of the eight Farm Cottages currently restricted by the s.75.

**PLANNING HISTORY:**

06/00929/FUL

The applicant, Douglas Scott-Watson, was a partner in the Farm business and son of the Farm owner. He sought accommodation on-site to oversee the farming enterprise.

Approval was granted subject to conclusion of a s.75 agreement registered on 30 March 2007, signed by George Scott Watson, owner of the land and father of the applicant, thereby restricting:

1. The whole farm and houses to be held as a single property
2. No part to ever be sold or otherwise disposed
3. No further dwellings to be erected or otherwise without consent of the Planning Authority.

## **CONSULTATION RESPONSES:**

**Legal Services:** No response.

## **REPRESENTATION SUMMARY**

No representation received.

## **DEVELOPMENT PLAN POLICIES:**

### **Local Development Plan 2016:**

HD2 New Housing in the Countryside  
Circular 3/2012 Planning Obligations and Good Neighbour Agreements

## **OTHER PLANNING CONSIDERATIONS**

"New Housing in the Borders Countryside" SPG, 2008  
SPP 2014.

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

## **KEY PLANNING ISSUES:**

Whether a s.75 agreement amendment or discharge would satisfy the 5 tests of Circular 3/2012: Necessity; planning purpose; relationship to the development; scale and kind; and reasonableness.

## **ASSESSMENT OF APPLICATION**

### **Policy context**

Planning policy has changed since the grant of permission. The application was assessed against Scottish Borders Local Plan: Finalised December 2005, Policy D2 – Housing in the Countryside. This policy prescribed a requirement to legally tie the proposed house to the business and to restrict occupancy.

The Local Development Plan 2016, HD2 Housing in the Countryside, no longer prescribes this requirement although it is read in conjunction with;

"New Housing in the Borders Countryside", Supplementary Planning Guidance, 2008.

This Guidance states that a s.75 agreement will normally be required for economically justified development proposals. It identifies the need to restrict further residential development and requires that the land unit and the dwelling house are not sold separately. It is explicit that isolated new housing is unacceptable without

economic justification. It is against this background that the proposals (business, house and land) must be held as a single indivisible unit.

The ultimate aim is to direct appropriate development of housing in rural areas, focusing on defined settlements to support services, facilities and sustainable travel patterns.

### **Necessity**

A legal agreement was necessary at the time of decision as a Planning Condition (restricting further development) would not have been competent legally. The overriding material consideration was economic requirement for the house, as the siting and relationship would not have otherwise been supported by housing in the countryside policy. The house has been constructed on what was considered a site disparate from the building group. The Committee Report from the time confirmed that “the applicants are willing to enter into a section 75 agreement precluding further houses being built on farm land unless they are agriculture occupancy related”.

Under current Policy (LDP 2016, HD2) and SPG, a legal agreement would still be required. Siting and relationship of this dwelling was only acceptable in terms of being directly for the use and development of associated land for agriculture. The siting appears a direct relationship to the farm for security, oversight of livestock or animal husbandry reasons.

Whether New Softlaw Farmhouse now sits within the building group of Softlaw under LDP Policy HD2 on building group policy would be for an application to test.

In the meantime, necessity of agreement is accepted.

### **Planning Purpose**

It transpires that New Softlaw Farmhouse has never been governed by restrictions placed by the s.75 agreement. At the time of the application, New Softlaw Farmhouse was transferred to a different title by Douglas Scott-Watson, and register in the Sasines on 05 April 2007. Thus New Softlaw Farmhouse has always been held in different title to land restricted by the s.75 agreement. Technically, the house could be disposed on the open market, separate to the farm lands, which would be rather at odds with the planning purpose of the s.75 agreement.

The effect, however, is that the house is not governed by an occupancy restriction and the agent has offered a draft modification.

The proposed modification would tie occupancy of New Softlaw Farmhouse and would seek to tie a portion of agricultural land. The land area would be commensurate to the operation of a business (181.26 ha.) whilst excluding 8no Cottages and 5no fields mentioned above.

However, Scottish Planning Policy (SPP) of 2011 provides policy framework on the appropriate use of occupancy controls and states explicitly that occupancy restrictions should be avoided.

Recent Scottish Government Planning appeals in Scottish Borders and East Lothian have generally concluded that legal agreements restricting occupancy or further development conflict with latest planning advice by the Scottish Government's Chief Planning Officer.

A clear message is being sent by Scottish Government that legal agreements should not be relied upon to deliver housing in the countryside policy. Scottish Government wish planning policy and evidenced based Supplementary Guidance to be relied upon to deliver efficient land use planning and not legal agreements. This Scottish Government stance raises significant issues in regard to how development is managed and restricted in areas under intense pressure.

It is the Officer's recommendation that discharge (rather than modification) of this agreement will not set a precedent in this locality. Any application for new residential development would be assessed against the terms of the prevailing local development plan 2016.

It is noted that New Housing in the Countryside SPG, 2008 holds limited weight in this issue. The SPG predates Central Government Policy, which is a significant material factor. There remains development pressure in Scottish Borders for economically justified housing.

Officers therefore consider that this is a legitimate case and that discharge is appropriate.

### **Relationship to development; Scale and kind**

The existing agreement raises no issues in these regards.

### **Reasonableness**

The s.75 agreement sought to achieve that:

1. The whole farm and houses to be held as a single property.
2. No part to ever be sold or otherwise disposed.
3. No further dwellings to be erected or otherwise without consent of the Planning Authority.

It is now considered that Point 1 is can be afforded little weight that given farm land and New Softlaw Farmhouse have never been held as a single indivisible property.

Officers are minded to consider that Point 2 is unreasonable owing to changes in circumstances. The Applicant wishes to dispose of 8no cottages and five fields which are part of the title lands restricted by this agreement. The applicant is being unreasonably restricted from making changes to the business and therefore there is an argument that this burden should be relaxed.

Point 3 has limited purpose, given that the means for testing this issue is more properly through a fresh planning application, which could then be assessed against the prevailing policy of the time.

It is demonstrated that discharge of agreement does not materially affect the principle which was established in 2007. New Softlaw Farmhouse continues to be used in relation to the operation of an agricultural business over a commensurate area of

surrounding land. The s.75 agreement is therefore considered to have limited purpose and, given the inconsistency with recent national guidance, is considered difficult to argue for its retention.

## **CONCLUSION**

The proposal to discharge this s.75 agreement is accepted as it no longer satisfies Circular 3/2012: planning purpose and reasonableness tests. The house is now separate to the land holding although it remains a direct operational requirement of the business. Any proposed development would be assessed against Local Development Plan 2016 and any forthcoming Supplementary Planning Guidance on New Housing in the Countryside. No deficiencies in infrastructure and services will be created or exacerbated as a result of this discharge.

## **RECOMMENDATION BY CHIEF PLANNING OFFICER:**

I recommend discharge of the s.75 Agreement is approved.

## DRAWING NUMBERS

Location Plan

### **Approved by**

Name	Designation	Signature
Ian Aikman	Chief Planning Officer	

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

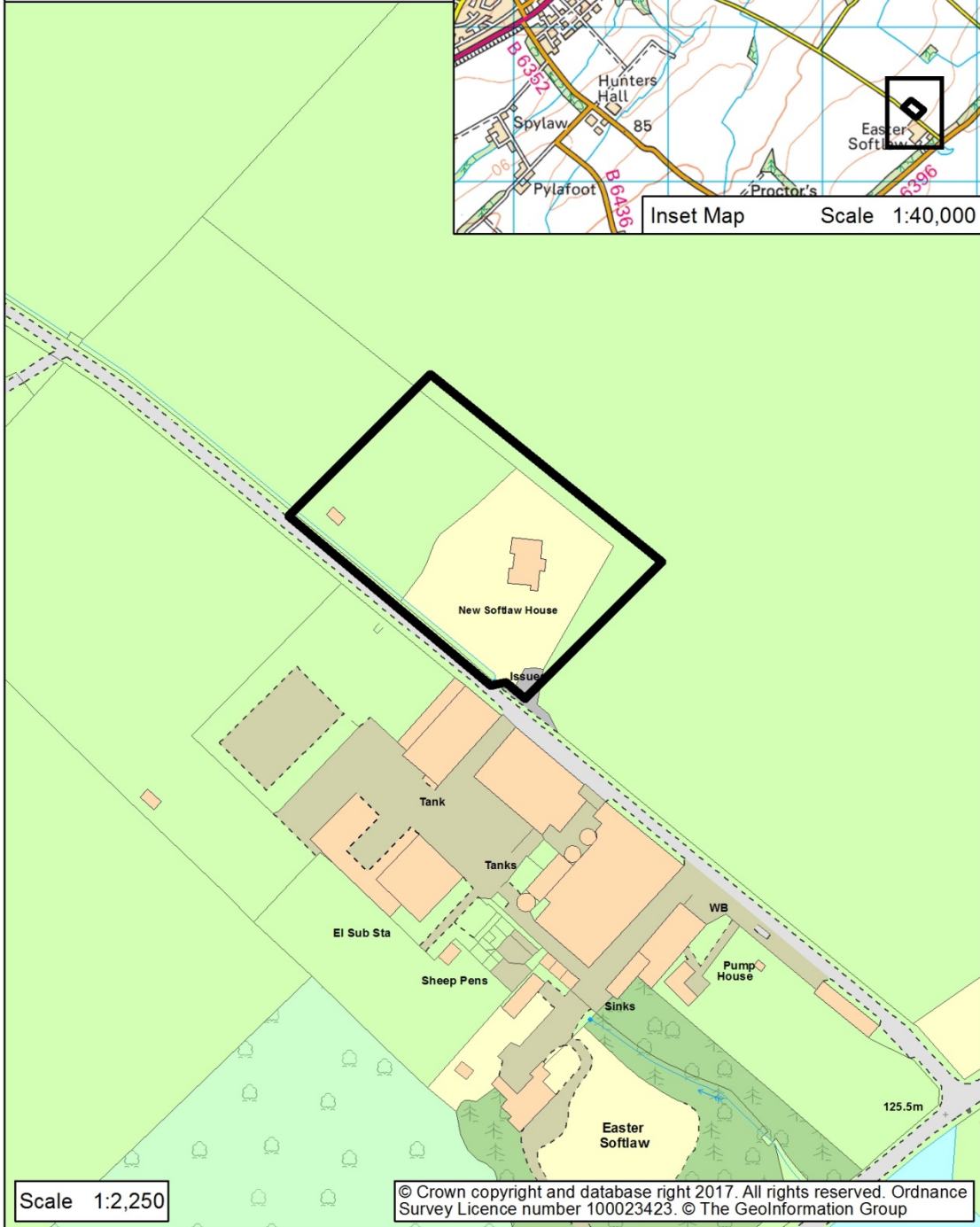
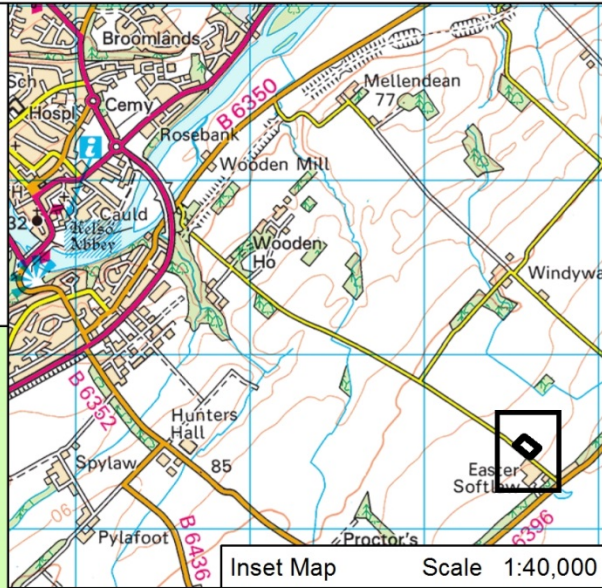
### **Author(s)**

Name	Designation
Euan Calvert	Assistant Planning Officer



17/00463/MOD75

Land North Of Easter Softlaw Farm  
Kelso





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## **PLANNING APPEALS & REVIEWS**

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### **Briefing Note by Chief Planning Officer**

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## **PLANNING AND BUILDING STANDARDS COMMITTEE**

**26<sup>th</sup> June 2017**

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### **1 PURPOSE**

- 1.1 The purpose of this briefing note is to give details of **Appeals** and **Local Reviews** which have been received and determined during the last month.

### **2 APPEALS RECEIVED**

- 2.1 Planning Applications

Nil

- 2.2 Enforcements

Nil

### **3 APPEAL DECISIONS RECEIVED**

- 3.1 Planning Applications

- 3.1.1 Reference: 16/01284/MOD75  
Proposal: Discharge of planning obligation pursuant to planning permission 00/00244/OUT  
Site: Broadmeadows Farm, Hutton  
Appellant: Mr Alistair Cochrane

Reason for Refusal: The proposal would be contrary to policy HD2 paragraph (F) of the Local Development Plan 2016 and supplementary planning guidance New Housing in the Borders Countryside 2008. With no planning obligation in place and no linkage to the farm land the house could be sold to anyone not connected with agriculture. The removal of the planning obligation would contradict the policy justification for granting planning permission for the house, running counter to the encouragement of sustainable rural development. It is considered that the principle secured by the existing Section 75 agreement (vital to acceptability of the development) should be upheld in these circumstances.

Grounds of Appeal: 1. The Section 75 occupancy restriction should be removed to allow the continued operation of the farm as a single, viable

farming unit. 2. Such restrictions are no longer appropriate to farm dwellings and are not to be used and the legal agreement does not comply with the tests set out in Scottish Government Circular 3-2012. 3. Circumstances, at the farm, have materially changed since planning permission was issued in 2001. 4. Specific circumstances explained in various application and appeal documents explain why the removal of the legal agreement is required to allow the continued operation of the farm. 5. The Local Development Plan and Supplementary Guidance reasons for refusal apply to new build housing in the countryside and not existing housing. This appeal does not refer to, nor will it require, new build housing. As such, the reason for refusal should be dismissed.

Method of Appeal: Written Representations & Site Visit

Reporter's Decision: Sustained

Summary of Decision: The Reporter, David Buylla, concluded that the discharge of the planning obligation would not accord with the LDP Policy HD2, because it would be contrary to the New Housing in the Borders Countryside SPG, with which the policy expects all proposals to comply. However, that SPG pre-dates, and is inconsistent with, subsequent national policy, which presumes against the types of control that are required by the planning obligation. In the context of current planning policy, the reporter found that there was no longer a planning purpose for the obligation and that the conflict with the development plan was justified, therefore the obligation fails the 'planning purpose' test in Circular 3/2012 and should be discharged.

### 3.2 Enforcements

3.2.1 Reference: 14/00028/COND  
Proposal: Non compliance with condition no 2 of 13/01142/FUL  
Site: Office, 80 High Street, Innerleithen  
Appellant: Michael Todd

Reason for Notice: Installation of UPVC windows and doors without planning permission

Grounds of Appeal: 1. Copies of the enforcement notice were not served as required by the Act. 2. The period specified in the notice (to comply with the steps to be taken) falls short of what should reasonably be allowed. 3. The steps required by the notice to be taken exceed what is necessary to remedy any injury to amenity caused by the breach stated in the notice.

Method of Appeal: Written Representations & Site Visit

Reporter's Decision: Dismissed

Summary of Decision: The Reporter, Trudi Craggs, upholds the enforcement notice but allows the appeal to the extent that she has varied the time period for compliance within five months instead of three. The reporter concluded that the argument that little or no harm has been caused and therefore that no steps require to be taken is not, in this case, a valid one. Allowing the windows and doors to remain would not address the breach of the planning control. The reporter considers the steps set

out in the notice, namely that the appellant install windows and doors as approved under planning permission 13/01142/FUL, are required to remedy the breach of planning control.

3.2.2 Reference: 16/00126/UNDEV  
 Proposal: Erection of fence  
 Site: 12 Merse View, Paxton  
 Appellant: Steven McClymont

Reason for Notice: Unauthorised Development

Grounds of Appeal: The area highlighted on the enforcement notice covers an area of boundary fence. The majority of the fence has been standing for well in excess of 4 years which is the specified time for any enforcement to be made.

Method of Appeal: Written Representations & Site Visit

Reporter's Decision: Dismissed

Summary of Decision: The Reporter, David Buylla, concluded that the fence was erected after 3<sup>rd</sup> September 2016 and therefore has not been in place for over four years and cannot be regarded as the maintenance, improvement or alteration of the previous fence taken down sometime between 2009 and 2013. The reporter dismissed the appeal and upheld the enforcement notice, subject to two wording amendments to the notice.

#### 4 APPEALS OUTSTANDING

4.1 There remained 5 appeals previously reported on which decisions were still awaited when this report was prepared on 8<sup>th</sup> June 2017. This relates to sites at:

• Land North West of Whitmuir Hall, Selkirk	• 1 Borthwick View, Robertson, Hawick (Murphy-McHugh)
• 1 Borthwick View, Robertson, Hawick (Ramsay – 16/00146)	• 1 Borthwick View, Robertson, Hawick (Ramsay – 16/00105)
• Hartree House, Kilbucho	•

#### 5 REVIEW REQUESTS RECEIVED

5.1 Reference: 16/00872/FUL  
 Proposal: Erection of dog day care building, perimeter fence and associated works (retrospective)  
 Site: Land South West of Milkieston Toll House, Eddleston  
 Appellant: Mr Paul Lawrie

Reasons for Refusal: 1. The development is contrary to PMD2 in that the fence and building do not satisfy quality standards in that development is having an adverse impact on the amenity and character of the surrounding landscape. 2. The development is contrary to ED7 in that no business case has been provided to justify the economic and operational need for the particular countryside location and this development is unsuitable for the locality. 3. The development is contrary to IS7 in that intensified traffic usage at the sub-standard vehicular access creates a detrimental

impact on road safety on the A703 and is contrary to policy on minimising accesses on to A-class roads.

- 5.2 Reference: 16/01467/AMC  
Proposal: Erection of dwelling house and detached garage (approval of matters specified in all conditions pursuant to planning permission 15/00301/PPP)  
Site: Land North East of Dundas Cottage, Ettrick, Selkirk  
Appellant: Mr J McGrath

Condition Imposed: Condition 3: Notwithstanding the submitted details in this application, the roof of the dwelling shall be slate of a type first submitted to and approved in writing with the planning authority. The development is thereafter to be completed using the agreed slate, prior to occupation of the dwelling. The external parts of the flue of the wood burning stove are to be matt black or matt grey in colour. The remaining external surfaces of the development hereby approved shall be of materials indicated on the submitted application form and approved plans, and no other materials shall be used without the prior written consent of the Planning Authority. Reason: To ensure a satisfactory form of development, which contributes appropriately to its setting.

- 5.3 Reference: 17/00005/PPP  
Proposal: Erection dwellinghouse  
Site: Land South of Balmerino, Ashkirk  
Appellant: Ms Gillian MacKay

Reason for Refusal: The proposed development would be contrary to Policy PMD4 of the Scottish Borders Local Development Plan 2016, in that the proposed development would be located outwith the Ashkirk Development Boundary, and insufficient reason and justification for an exceptional approval has been advanced. Other material considerations do not justify a departure from the Development Plan in this case.

- 5.4 Reference: 17/00044/PPP  
Proposal: Erection of two dwellinghouses  
Site: Garden Ground of Woodlands, Broomlee Mains, West Linton  
Appellant: Mrs Sandra Newton

Reason for Refusal: The proposal for a dwellinghouse at this location is contrary to Scottish Borders Local Development Plan policy HD2 Housing in the Countryside and Supplementary Planning Guidance New Housing in the Borders Countryside as the site is not located within a building group of three or more houses and there are no overriding economic needs or benefits to the local community that would justify approval. The site would not have a satisfactory relationship to any existing building group or contained sense of place at this location.

- 5.5 Reference: 17/00090/FUL  
Proposal: Erection of agricultural storage shed with welfare accommodation  
Site: Land West of Former William Cree Memorial Church Kirkburn, Cardrona, Peebles  
Appellant: Cleek Poultry Ltd

Reasons for Refusal: 1. The application is contrary to Policies PMD2 and ED7 of the Scottish Borders Local Development Plan 2016 in that it has not

been adequately demonstrated that there is an overriding justification for the proposed building that would justify an exceptional permission for it in this rural location and, therefore, the development would appear as unwarranted development in the open countryside. The proposed building is not of a design or scale that appears suited to the size of the holding on which it would be situated, which further undermines the case for justification in this location. 2. The application is contrary to Policy ED7 of the Scottish Borders Local Development Plan 2016 in that it has not been adequately demonstrated that any traffic generated by the proposal can access the site without detriment to road safety. 3. The application is contrary to Policies EP7 and EP8 of the Scottish Borders Local Development Plan 2016 in that it has not been adequately demonstrated that the development will not adversely affect the setting of the adjoining statutorily listed building and sites of archaeological interest.

- 5.6 Reference: 17/00092/FUL  
Proposal: Erection of agricultural storage shed with welfare accommodation  
Site: Land West of Former William Cree Memorial Church Kirkburn, Cardrona, Peebles  
Appellant: Cleek Poultry Ltd

Reasons for Refusal: 1. The application is contrary to Policies PMD2 and ED7 of the Scottish Borders Local Development Plan 2016 in that it has not been adequately demonstrated that there is an overriding justification for the proposed building that would justify an exceptional permission for it in this rural location and, therefore, the development would appear as unwarranted development in the open countryside. The proposed building is not of a design or scale that appears suited to the size of the holding on which it would be situated, which further undermines the case for justification in this location. 2. The application is contrary to Policy ED7 of the Scottish Borders Local Development Plan 2016 in that it has not been adequately demonstrated that any traffic generated by the proposal can access the site without detriment to road safety.

- 5.7 Reference: 17/00093/FUL  
Proposal: Erection of agricultural storage shed with welfare accommodation  
Site: Land West of Former William Cree Memorial Church Kirkburn, Cardrona, Peebles  
Appellant: Cleek Poultry Ltd

Reasons for Refusal: 1. The application is contrary to Policies PMD2, EP5 and ED7 of the Scottish Borders Local Development Plan 2016 and Supplementary Planning Guidance relating to Special Landscape Area 2 - Tweed Valley in that it has not been adequately demonstrated that there is an overriding justification for the proposed building that would justify an exceptional permission for it in this rural location and, therefore, the development would appear as unwarranted development in the open countryside with adverse and cumulative visual impacts on the local environment. The proposed building is not of a design or scale that appears suited to the size of the holding on which it would be situated, which further undermines the case for justification in this location. 2. The application is contrary to Policies PMD2, EP5 and ED7 of the Scottish Borders Local Development Plan 2016 and Supplementary Planning Guidance relating to Special Landscape Area 2 - Tweed Valley in that it has not been adequately demonstrated that there is an overriding justification for the proposed building that would justify an exceptional permission for it

in this rural location and, therefore, the development would appear as unwarranted development in the open countryside with adverse visual impacts on the Tweed Valley Special Landscape Area and the local environment. The proposed building is not of a design or scale that appears suited to the size of the holding on which it would be situated, which further undermines the case for justification in this location. The application is contrary to Policy ED7 of the Scottish Borders Local Development Plan 2016 in that it has not been adequately demonstrated that any traffic generated by the proposal can access the site without detriment to road safety.

- 5.8 Reference: 17/00094/FUL  
Proposal: Erection of agricultural storage shed with welfare accommodation  
Site: Land West of Former William Cree Memorial Church Kirkburn, Cardrona, Peebles  
Appellant: Cleek Poultry Ltd

Reasons for Refusal: 1. The application is contrary to Policies PMD2, EP5 and ED7 of the Scottish Borders Local Development Plan 2016 and Supplementary Planning Guidance relating to Special Landscape Area 2 - Tweed Valley in that it has not been adequately demonstrated that there is an overriding justification for the proposed building that would justify an exceptional permission for it in this rural location and, therefore, the development would appear as unwarranted development in the open countryside with adverse and cumulative visual impacts on the local environment. The proposed building is not of a design or scale that appears suited to the size of the holding on which it would be situated, which further undermines the case for justification in this location. 2. The application is contrary to Policy ED7 of the Scottish Borders Local Development Plan 2016 in that it has not been adequately demonstrated that any traffic generated by the proposal can access the site without detriment to road safety.

- 5.9 Reference: 17/00118/FUL  
Proposal: Change of use of redundant steading and alterations to form dwellinghouse with associated parking and infrastructure works  
Site: Redundant Steading North West of Pots Close Cottage, Kelso  
Appellant: Roxburghe Estates

Reasons for Refusal: 1. The proposal is contrary to Policy HD2 of the Local Development Plan 2016 and the advice of Supplementary Planning Guidance - New Housing in the Borders Countryside (December 2008), in that: i. the proposal does not appropriately constitute a conversion in that it is not physically capable of conversion; ii. the building is not worthy of conversion in terms of its architectural or historic merit; iii.) the site lies outwith any recognised settlement or building group and the need for a new dwellinghouse on this site has not been adequately substantiated. 2. The proposal is contrary to PMD2 of the Local Development Plan 2016 and the advice contained within Supplementary Planning Guidance - New Housing in the Borders Countryside (December 2008) and Supplementary Planning Guidance - Placemaking and Design (January 2010), in that the resulting building would not be in keeping with the design and character of the existing building. 3. The proposal is contrary to policies EP2 and EP3 of the Local Development Plan 2016 in that the potential impact on local biodiversity and protected species is unknown as surveys of the

surrounding buildings and trees have not been carried out, informed by a Preliminary Roost Assessment.

## 6 REVIEWS DETERMINED

6.1 Reference: 16/01464/FUL  
Proposal: Erection of agricultural storage building with welfare accommodation  
Site: Field No 0328 Kirkburn, Cardrona  
Appellant: Cleek Poultry Ltd

Reasons for Refusal: 1. The application is contrary to Policies PMD2, EP5 and ED7 of the Scottish Borders Local Development Plan 2016 and Supplementary Planning Guidance relating to Special Landscape Area 2 - Tweed Valley in that it has not been adequately demonstrated that there is an overriding justification for the proposed building that would justify an exceptional permission for it in this rural location and, therefore, the development would appear as unwarranted development in the open countryside with adverse visual impacts on the local environment. The proposed building is not of a design or scale that appears suited to the size of the holding on which it would be situated, which further undermines the case for justification in this location. 2. The application is contrary to Policy ED7 of the Scottish Borders Local Development Plan 2016 in that it has not been adequately demonstrated that any traffic generated by the proposal can access the site without detriment to road safety.

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Upheld

6.2 Reference: 16/01506/FUL  
Proposal: Erection of straw storage building  
Site: Field No 0328 Kirkburn, Cardrona  
Appellant: Cleek Poultry Ltd

Reasons for Refusal: 1. The application is contrary to Policies PMD2, EP5 and ED7 of the Scottish Borders Local Development Plan 2016 and Supplementary Planning Policies relating to Special Landscape Area 2 - Tweed Valley in that the proposed building will be prominent in height, elevation and visibility within the landscape and will have a significant detrimental impact on the character and quality of the designated landscape. 2. The application is contrary to Policies PMD2 and ED7 of the Scottish Borders Local Development Plan 2016 in that it has not been adequately demonstrated that there is an overriding justification for the proposed building that would justify an exceptional permission for it in this rural location and, therefore, the development would appear as unwarranted development in the open countryside. The proposed building is not of a design or scale that appears justified by the size of the holding on which it would be situated, which further undermines the case for justification in this location. 3. The application is contrary to Policy ED7 of the Scottish Borders Local Development Plan 2016 in that it has not been adequately demonstrated that any traffic generated by the proposal can access the site without detriment to road safety.

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Upheld

6.3 Reference: 16/01507/FUL  
Proposal: Erection of machinery storage building  
Site: Field No 0328 Kirkburn, Cardrona  
Appellant: Cleek Poultry Ltd

Reasons for Refusal: 1. The application is contrary to Policies PMD2, ED7 and EP5 of Scottish Borders Local Development Plan 2016 and Supplementary Planning Policies relating to Special Landscape Area 2- Tweed Valley in that the proposed building will be prominent in height, elevation and visibility within the landscape, will be poorly visually related to the existing buildings adjoining and will have a significant detrimental impact on the character and quality of the designated landscape. 2. The application is contrary to Policies PMD2 and ED7 of Scottish Borders Local Development Plan 2016 in that it has not been adequately demonstrated that there is an overriding justification for the proposed building that would justify an exceptional permission for it in this rural location and, therefore, the development would appear as unwarranted development in the open countryside. The proposed building and use are not of a scale or purpose that appear related to the nature or size of the holding on which the building would be situated, which further undermines the case for justification in this location.

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Upheld

6.4 Reference: 16/01513/FUL  
Proposal: Erection of machinery storage building  
Site: Field No 0328 Kirkburn, Cardrona  
Appellant: Cleek Poultry Ltd

Reasons for Refusal: 1. The application is contrary to Policies PMD2, EP5 and ED7 of the Scottish Borders Local Development Plan 2016 and Supplementary Planning Policies relating to Special Landscape Area 2- Tweed Valley in that the proposed building will be prominent in height, elevation and visibility within the landscape and will have a significant detrimental impact on the character and quality of the designated landscape. 2. The application is contrary to Policies PMD2 and ED7 of the Scottish Borders Local Development Plan 2016 in that it has not been adequately demonstrated that there is an overriding justification for the proposed building that would justify an exceptional permission for it in this rural location and, therefore, the development would appear as unwarranted development in the open countryside. The proposed building is not of a design or scale that appears justified by the size of the holding on which it would be situated, which further undermines the case for justification in this location. 3. The application is contrary to Policy ED7 of the Scottish Borders Local Development Plan 2016 in that it has not been adequately demonstrated that any traffic generated by the proposal can access the site without detriment to road safety.

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Upheld



## 7 REVIEWS OUTSTANDING

7.1 There remained 4 reviews previously reported on which decisions were still awaited when this report was prepared on 8<sup>th</sup> June 2017. This relates to sites at:

<ul style="list-style-type: none"><li>• Land North West of Dunrig Spylaw Farm, Lamancha, West Linton</li></ul>	<ul style="list-style-type: none"><li>• Danderhall Cottage, St Boswells, Melrose</li></ul>
<ul style="list-style-type: none"><li>• Land West of Former William Cree Memorial Church Kirkburn, Cardrona, Peebles (17/00027/FUL)</li></ul>	<ul style="list-style-type: none"><li>• Land West of Former William Cree Memorial Church Kirkburn, Cardrona, Peebles (17/00028/FUL)</li></ul>

## 8 SECTION 36 PUBLIC LOCAL INQUIRIES RECEIVED

8.1 Reference: 14/00530/S36  
Proposal: Erection of 15 turbines 132 high to tip, access track, compound, permanent anemometer mast and 2 no borrow pits  
Site: Birneyknowe Wind Farm, Land North, South, East & West of Birnieknowe Cottage, Hawick  
Appellant: Banks Renewables

Reasons for Objection: 1. Impact on Landscape Character: The proposed development would be contrary to policies PMD2, EP5, and ED9 of the Scottish Borders Local Development Plan 2016 and policy 10 of the Strategic Development Plan 2013 in that, taking into consideration the following factors, it would unacceptably harm the Borders landscape: There is no capacity for very large turbine development within these Landscape Character Areas and the applicant has failed to demonstrate how the proposed wind farm can be accommodated within the site without unacceptable adverse impacts on the landscape. By virtue of the location, scale and extent of the wind farm, the proposal would be out of scale with the receiving landscape and would contrast significantly with other landscape features, appearing as a dominant feature in the landscape. The proposal would intrude on views into and out of the Teviot Valleys Special Landscape Area. The proposal would diminish the significance of Rubers Law as an important landscape feature, due to the scale of the turbines and their proximity, competing with this sensitive skyline feature and adversely affecting its setting. The proposal would adversely affect the landscape setting of Hawick on approach from the north, dominating views and adversely affecting Hawick's landscape character. The proposal would be highly visible from the iconic panoramic viewpoint at the national border at Carter Bar. 2. Adverse Visual, Amenity and Cultural Heritage Impacts

The proposed development would be contrary to policies PMD2, ED9, EP8 and HD3 of the Scottish Borders Local Development Plan 2016 and policy 10 of the Strategic Development Plan 2013 in that, taking into consideration the following factors, it would give rise to unacceptable visual, amenity and cultural heritage impacts: Limited containment within the 5km range and consequent significant visual impacts from sensitive receptors, including public roads, rights of way, hill summits, Common Riding routes and dwellinghouses. Significant cumulative impacts on sensitive receptors and on landscape character, with an overlapping of schemes and with turbines becoming a dominant feature in the area. Significant impacts to the historic landscape and settings of designated

and non-designated sites and monuments and it has not been demonstrated that the benefits of the proposal will clearly outweigh the heritage value of the asset or its setting.

## 9 SECTION 36 PUBLIC LOCAL INQUIRIES DETERMINED

Nil

## 10 SECTION 36 PUBLIC LOCAL INQUIRIES OUTSTANDING

10.1 There remained 3 S36 PLI's previously reported on which decisions were still awaited when this report was prepared on 8<sup>th</sup> June 2017. This relates to sites at:

• (Whitelaw Brae Wind Farm), Land South East of Glenbreck House, Tweedsmuir	• Fallago Rig 1, Longformacus
• Fallago Rig 2, Longformacus	•

### Approved by

**Ian Aikman**  
**Chief Planning Officer**

**Signature** .....

### Author(s)

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**Background Papers:** None.

**Previous Minute Reference:** None.

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