

# Public Document Pack



## PLANNING AND BUILDING STANDARDS COMMITTEE MONDAY, 30TH APRIL, 2018

A MEETING of the PLANNING AND BUILDING STANDARDS COMMITTEE will be held in the COUNCIL CHAMBER, COUNCIL HEADQUARTERS, NEWTOWN ST BOSWELLS TD6 0SA on MONDAY, 30TH APRIL, 2018 at 10.00 AM

J. J. WILKINSON,  
Clerk to the Council,

23 April 2018

<b>BUSINESS</b>	
1.	<b>Apologies for Absence.</b>
2.	<b>Order of Business.</b>
3.	<b>Declarations of Interest.</b>
4.	<p><b>Minute.</b> (Pages 3 - 26)</p> <p>Minute of Meeting of 26 March 2018 to be approved and signed by the Chairman. (Copy attached.)</p>
5.	<p><b>Applications.</b></p> <p>Consider the following application for planning permission:-</p>
	<p>(a) <b>Whithaugh Park Holiday Centre, Newcastleton - 17/01740/FUL</b> (Pages 27 - 44) Demolition of guest lodges and refurbishment of 6 retained lodges, erection of guest lodges, staff accommodation, new central hub with associated facilities, refurbishment and extension to existing staff lodge, redesigned site layout with new access roads, parking and footpaths. (Copy attached.)</p>
	<p>(b) <b>Land South of Rossleigh, Horndean - 17/01602/PPP</b> (Pages 45 - 58) Erection of dwellinghouse. (Copy attached.)</p>
	<p>(c) <b>Land West of Peelgait, Selkirk - 17/00923/PPP</b> (Pages 59 - 74) Erection of two dwellinghouses. (Copy attached.)</p>
	<p>(d) <b>Lumsdaine Farm, Coldingham - 18/00134/FUL</b> (Pages 75 - 84) Erection of general purpose agricultural building. (Copy attached.)</p>
	<p>(e) <b>Land North East and North West of Farmhouse, Braidie, Hawick - 18/00253/FUL</b> (Pages 85 - 98) Erection of 80 metres anemometer mast. (Copy attached.)</p>
6.	<b>Consultation on Fees charged for Applications under the Electricity Act 1989</b> (Pages

	99 - 134)  Consider report by Service Director Regulatory Services. (Copy attached.)
7.	<b>Appeals and Reviews</b> (Pages 135 - 142)  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>

**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  
fhenderson@scotborders.gov.uk

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**SCOTTISH BORDERS COUNCIL  
PLANNING AND BUILDING STANDARDS COMMITTEE**

MINUTE of Meeting of the PLANNING  
AND BUILDING STANDARDS  
COMMITTEE held in Scottish Borders  
Council, Council Headquarters, Newtown  
St Boswells TD6 0SA on Monday, 26  
March 2018 at 10.00 am

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Present:- Councillors T. Miers (Chairman), S. Aitchison, J. A. Fullarton, H. Laing,  
S. Mountford, C. Ramage and E. Small.  
Apologies:- Councillors A. Anderson, S. Hamilton  
In Depute Chief Planning Officer, Lead Planning Officer (Development Management  
Attendance:- and Enforcement), Lead Planning Officer, Lead Roads Planning Officer, Senior  
Roads Planning Officer (Alan Scott), Managing Solicitor (Ron Kirk), Democratic  
Services Team Leader, Democratic Services Officer (F. Henderson).

1. **MINUTE**

There had been circulated copies of the Minute of the Meeting held on 5 February 2018.

**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 applications as detailed in Appendix I to this Minute.**

**MEMBERS**

Councillor Mountford left the meeting following consideration of application 17/00767/PPP and returned to the meeting for consideration of applications 17/01709/FUL and 17/01757/MOD75. Councillor Fullarton left the meeting following consideration of application 17/01709/FUL.

3. **APPEALS AND REVIEWS**

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

**DECISION**

**NOTED that:-**

(a) **there remained nine appeals outstanding in respect of:-**

- **Land North of Howpark Farmhouse, Grantshouse**
- **Poultry Farm, Marchmont Road, Greenlaw**
- **Land South West of Easter Haprew Farmhouse, Peebles**
- **Hutton Hall Barns, Hutton**
- **Land East of Knapdale, 54 Edinburgh Road, Peebles**
- **Land North West of Gilston Farm, Heriot**
- **Land South West of Lurgiescleuch (Pines Burn) Hawick**
- **13 St Eilla's Place, Eyemouth**
- **Land North West of Kirkburn Church, Peebles**

- (b) review requests had been received in respect of the following:-
- (i) Erection of dwellinghouse on Land East of Keleden, Ednam, Kelso – 17/01613/PPP;
  - (ii) Extension to form new living room at 16 Craig Brown Avenue, Selkirk – 17/01409/FUL;
  - (iii) Extension to dwellinghouse on Land South East of Beckhope, Kailzie, Peebles – 17/01572/PPP;
- (c) The Local Review Body had upheld the Appointed Officers decision in respect of:-
- (i) the Erection of a dwellinghouse on Land North East of an incorporating J Rutherford Workshop, Rhymers Mill, Mill Road, Earlston – 17/00479/FUL;
  - (ii) of the Erection of a temple on Land South West of Kirkburn Parish Church , Cardrona – 17/01039/FUL;
- (d) The Local Review Body had overturned the Appointed Officers decision in respect of:-
- (i) the erection of boundary fence and formation of parking area (retrospective) (subject to conditions and informatives) at 1 Eildon Terrace, Newtown St Boswells – 17/01230/FUL
  - (ii) the erection of dwellinghouse with attached garage on Land North West of Alderbank, Macbiehill, West Linton – 17/01406/FUL
- (g) there remained two reviews outstanding in respect of:-
- Derelict Dwelling on Land West of Glenkinnon Lodge, Peelburnfoot, Clovenfords and
  - The Erection of a dwellinghouse on land East of Keleden, Ednam, Kelso

*The meeting concluded at 2.40 p.m.*

## APPENDIX I

### APPLICATIONS FOR PLANNING PERMISSION

<u>Reference</u>	<u>Nature of Development</u>	<u>Location</u>
17/01625/FUL	Improvement and construction of mountain bike trails, extension to existing car parking facilities, demolition of buildings and associated works	Glentress Peebles

Decision - 17/01625/FUL – Approved application subject to the following conditions and informatives.

#### Conditions

1. No development to be commenced in relation to the bike skills area until further details of extent, ground levels, surface treatment and any structures are submitted to, and approved by, the Planning Authority. Once approved, the skills area to be completed in accordance with the approved details and before the closure of the existing bike skills area to public use.  
Reason: To ensure a satisfactory form of development, which contributes appropriately to its setting.
2. No development to be commenced until a scheme for improvements to the existing crossing arrangement of the multi-use path with the A72 is submitted to, and approved by, the Planning Authority. The scheme should include proposed measures and a timescale for implementation. Once approved, the scheme to be completed in accordance with the approval and agreed timescale.  
Reason: In the interests of road, pedestrian and cyclist safety.
3. No development to be commenced until further details of the main entrance barrier (indicated in Drawing DB4001.036 3 of 6), including method of operation and maintenance) are submitted to, and approved by, the Planning Authority. Once approved, the barrier and related roadway section to be completed and operated thereafter in accordance with the approved details.  
Reason: In the interests of road, pedestrian and cyclist safety and to ensure efficient operation of the Glentress facility.
4. The upgrading of the upper and lower overflow car parks to be completed in accordance with the approved drawings before the Buzzard's Nest car park is closed to public use.  
Reason: In the interests of road safety and to ensure that sufficient off street parking space is retained for operation of the Glentress facility.
5. The proposals shall not involve any closed culverting of watercourses nor shall there be any alterations that would reduce the flow conveyance. Suitable bridging solutions, bottomless or arched culverts should be used where watercourse crossings are required.  
Reason: To safeguard against detrimental impacts on the water environment.
6. All surface water from the development, including during construction, to be treated in accordance with SUDS principles and any run-off from hard surfaces to be attenuated to at least existing greenfield run-off rates.  
Reason: To safeguard against detrimental impacts on the water environment and downstream receptors.
7. All planting shown on approved Drawing DB4001.036 (6 of 6) shall be carried out in the first planting and seeding seasons concurrently with the development of the bike skills area and new trails, or in the next available planting season thereto and maintained thereafter in accordance with the approved details.

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

8. The emergency vehicle rendezvous point shown on Drawing DB4001.036 (5 of 6) to be provided before the multi-user path, trails and skills area are operational.

Reason: To ensure appropriate and safe access for emergency vehicles.

9. No development to be commenced until a Construction Environmental Management Plan has been submitted to, and approved by, the Planning Authority. Once approved, the development to proceed fully in accordance with the Plan.

Reason: To safeguard ecological interests at the site.

10. Prior to commencement of development, detailed Species Protection Plans for bats, red squirrels, pine marten, amphibians and reptiles, breeding birds and raptors and badgers, shall be submitted to and approved by the Planning Authority. The SPPs shall incorporate measures outlined in the provisional species protection plans provided by Solway Ecology (Consulting) Ltd, (2017) and shall include provision for pre-development supplementary surveys (including squirrel drey surveys) as well as mitigation, and enhancements for protected species, where possible. Development shall be undertaken in strict accordance with the approved SPPs.

Reason: To safeguard ecological interests at the site.

11. No development shall commence during the breeding bird season, unless wholly in accordance with a Species Protection Plan for breeding birds that has been submitted to and approved by the Planning Authority.

Reason: To safeguard ecological interests at the site.

12. In relation to bats in buildings, prior to the commencement of development, the applicant shall provide to the Planning Authority:

- a copy of the relevant European Protected Species licence, or,
- a copy of a statement in writing from Scottish Natural Heritage (licensing authority) stating that such a licence is not necessary for the specified development.

Reason: To safeguard European Protected Species interests at the site

13. No development shall take place within the development site until the applicant has secured the implementation of a programme of archaeological works in accordance with a Written Scheme of Investigation (WSI) which has been submitted by the applicant, agreed by Scottish Borders Council Archaeology Service, and approved by the Planning Authority. The WSI shall be formulated and implemented by a contracted archaeological organisation working to the standards of the Chartered Institute for Archaeologists (CIfA) approval of which shall be in writing by the Planning Authority. Thereafter the developer shall ensure that the programme of archaeological works is fully implemented and that all recording, recovery of archaeological resources within the development site, post-excavation assessment, reporting and dissemination of results is undertaken to the satisfaction of the Planning Authority in agreement with Scottish Borders Council Archaeology Service.

Reason: The site is within an area where development may damage or destroy archaeological remains, and it is therefore desirable to afford a reasonable opportunity to record the history of the site.

14. No development to be commenced until a Heritage Access Interpretation and Management Plan is submitted to, and approved by, the Planning Authority in liaison with Historic Environment Scotland.. The Plan should provide for suitable interpretative materials in relation to Horsburgh Castle Farm, Horsburgh Castle and Eshiels Roman camps archaeological sites and also include measures to limit impacts on Castle Hill. Interpretative material should also be provided for the "Howff" building if removed. Once approved, the Plan to be implemented in accordance with the approved details.

Reason: To safeguard scheduled monuments in the vicinity of the site.

15. The "Howff" building within the upper overflow car park shall not be removed until a full archaeological record is made of the building and its history, the findings then submitted to, and approved by, the Planning Authority.  
Reason: The building is of archaeological interest and to provide adequate recording of it and its history.
16. No development to be commenced until a scheme is submitted to, and approved by the Planning Authority, in liaison with Historic Environment Scotland, indicating the demarcation by temporary fencing (or equivalent) of the extent of the scheduled monument Eshiels, Roman camps within an appropriate buffer zone. Once approved, the scheme to be implemented in accordance with the approved details and retained until the development is completed.  
Reason: To safeguard scheduled monuments in the vicinity of the site.
17. No development to be commenced until a Construction Management Plan is submitted to, and approved by, the Planning Authority. Once approved, the development to be implemented in accordance with the Plan.  
Reason: To safeguard the amenity of adjoining residents.

### Informatives

1. Please note that permission may be required from SEPA under The Water Environment (Controlled Activities) (Scotland) Regulations 2011 for any engineering activities in, or in the vicinity of, inland watercourses. This would include any watercourse crossings, bank reinforcements, boreholes and general water management across the site.
2. The above application appears to involve the alteration and improvement of existing mountain bike trails and associated infrastructure. An area of the land proposed for car parking expansion appears to house commercial/ industrial buildings of unknown use alongside existing parking. This land use is potentially contaminative and may have resulted in land contamination which could affect the welfare of users, the value of the property, and the liabilities the owner/ occupier may have.

The land is not currently identified as contaminated land and the Council is not aware of any information which indicates the level of risk the potential contamination presents.

The requirement for a full site assessment and potential remediation may not be practical or proportionate given the nature of the application and it is recommended that the applicant is advised of potential land contamination issues by way of an Informative Note.

The historic use of the site is recorded within a Council database. This database is used to prioritise land for inspection within the Council's Contaminated Land duties. Should the applicant wish to discuss these duties their enquiry should be directed to Environmental Health.

3. The developer is reminded that a licence will be required from Scottish Natural Heritage in the case of:
  - Any works within 30m of a badger sett;
  - Any works which destroys or disturbs the drey of a red squirrel, or which injure, or kill a red squirrel, or which disturb a red squirrel whilst it occupies its drey;
  - in accordance with the Wildlife and Countryside Act 1981 (as amended) and the Protection of Badgers Act 1992 (as amended)
4. The SBC Access Officer seeks mitigating instructions to encourage respect for all users of the multi-use trail and to ensure that the entrance barrier allows pedestrian, cyclist and horse rider access.
- 5.

## NOTE

Mr Alan Stevenson, Head of Communities, Recreation and Tourism Forest Enterprise, Scotland spoke in support of the application

**17/01633/FUL** - Approved subject to the following conditions and informatives :

### Conditions

1. The occupation of the 56 holiday cabins shall be restricted to genuine holidaymakers, any person staying for a maximum of 4 weeks in total within any consecutive period of 13 weeks. A register of holidaymakers shall be kept and made available for inspection by an authorised officer of the Council at all reasonable times.  
Reason: Permanent residential use in this location would conflict with the established planning policy for this rural area.
2. No development to be commenced until further details of the main entrance barrier (adjoining the Go Ape facility), including method of operation and maintenance, are submitted to, and approved by, the Planning Authority. Once approved, the barrier to be completed and operated thereafter in accordance with the approved details.  
Reason: To ensure that access to the development and facilities is limited to occupants, their visitors and associated trades and staff.
3. The three staff accommodation units shall only occupied be by persons employed in the holiday cabin development at the site, including partners and dependants of such employees.  
Reason: Permanent residential use unrelated to the holiday development in this location would conflict with the established planning policy for this rural area.
4. No development to be commenced until samples of all external materials to be used on all buildings, structures and deckings throughout the site are submitted to, and approved by, the Planning Authority. The development then to proceed in accordance with the approved samples.  
Reason: To safeguard the visual amenity of the area and the character of the designated landscape.
5. No development to be commenced until a scheme for improvements to the existing crossing arrangement of the multi-use path with the A72 is submitted to, and approved by, the Planning Authority. The scheme should include proposed measures and a timescale for implementation. Once approved, the scheme to be completed in accordance with the approval and agreed timescale.  
Reason: In the interests of road, pedestrian and cyclist safety.
6. The upgrading of the upper and lower overflow car parks to be completed in accordance with the approved drawings under application 17/01625/FUL before the Buzzard's Nest car park is closed to public use.  
Reason: In the interests of road safety and to ensure that sufficient off road parking space is retained for operation of the Glentress facility.
7. No development to be commenced until full engineering details, including construction and gradient information, are submitted to, and approved by, the Planning Authority for all roads and parking areas within the development. Once approved, roads and parking areas to be implemented in accordance with the approved details.  
Reason: In the interests of road and pedestrian safety.
8. No development to be commenced until further details of the foul drainage system are submitted to, and approved by, the Planning Authority. The drainage should be connected to the public system unless an acceptable and appropriate private system can be satisfactorily



demonstrated to, and subsequently approved by, the Planning Authority in consultation with SEPA. Once approved, the development then to be implemented in accordance with the approved details and maintained thereafter.

Reason: To ensure that the site is adequately serviced and to protect the water environment.

9. All surface water from the development, including during construction, to be treated in accordance with SUDS principles and any run-off from hard surfaces to be attenuated to at least existing greenfield run-off rates.

Reason: To safeguard against detrimental impacts on the water environment and downstream receptors.

10. All exterior lighting on buildings and throughout the site and the design of cabins to be fully in accordance with the details submitted in the Lighting Management Strategy.

Reason: To safeguard the visual amenity of the area and the character of the designated landscape.

11. Trees to be retained within the site, any removals being in accordance with the Tree Survey/Arboricultural Method Statement and Woodland Management Plan. The trees within the site to be managed in perpetuity in accordance with the Woodland Management Plan.

Reason: To ensure that adequate tree cover remains within the site to ensure the development is suitably screened and visual impact is minimised.

12. No development to be commenced until further details of the new planting and restoration works shown on 35-23, 35-24 and 35-25 Rev A are submitted to, and approved by, the Planning Authority. This should include timing of planting and a maintenance regime. Once approved, the planting and restoration works then to be implemented and maintained in accordance with the approved details.

Reason: To ensure that the development is suitably screened and visual impact is minimised.

13. All water extraction and provision for the development to be fully in accordance with the Borehole Feasibility Review and subsequent information submitted with the application.

Reason: To ensure adequate water supply for the development and address impact on existing private supplies.

14. Unless otherwise agreed in writing and in advance by the Planning Authority, prior to any development commencing on site, a scheme will be submitted by the applicant (at their expense) to identify and assess potential contamination on site. No construction work shall commence until the scheme has been submitted to, and approved, by the Council, and is thereafter implemented in accordance with the scheme so approved.

The scheme shall be undertaken by a competent person or persons in accordance with the advice of relevant authoritative guidance including PAN 33 (2000) and BS10175:2011 or, in the event of these being superseded or supplemented, the most up-to-date version(s) of any subsequent revision(s) of, and/or supplement(s) to, these documents. This scheme should contain details of proposals to investigate and remediate potential contamination and must include:-

- A desk study and development of a conceptual site model including (where necessary) a detailed site investigation strategy. The desk study and the scope and method of recommended further investigations shall be agreed with the Council prior to addressing parts b, c, d, and, e of this condition.
- and thereafter
- Where required by the desk study, undertaking a detailed investigation of the nature and extent of contamination on site, and assessment of risk such contamination presents.

- Remedial Strategy (if required) to treat/remove contamination to ensure that the site is fit for its proposed use (this shall include a method statement, programme of works, and proposed validation plan).
- Submission of a Validation Report (should remedial action be required) by the developer which will validate and verify the completion of works to a satisfaction of the Council.
- Submission, if necessary, of monitoring statements at periods to be agreed with the Council for such time period as is considered appropriate by the Council.

Written confirmation from the Council, that the scheme has been implemented completed and (if appropriate), monitoring measures are satisfactorily in place, shall be required by the applicant before any development hereby approved commences. Where remedial measures are required as part of the development construction detail, commencement must be agreed in writing with the Council.

Reason: To ensure that the potential risks to human health, the water environment, property, and, ecological systems arising from any identified land contamination have been adequately addressed.

15. The proposals shall not involve any closed culverting of watercourses nor shall there be any alterations that would reduce the flow conveyance. Suitable bridging solutions, bottomless or arched culverts should be used where watercourse crossings are required.  
Reason: To safeguard against detrimental impacts on the water environment.
16. The development shall proceed in accordance with the Construction Management Plan submitted with the application.  
Reason: To ensure environmental effects are minimised during construction of the development.
17. Operational management within the site, including access, signage and waste management shall be in accordance with the Operational Management Plan submitted with the application.  
Reason: To ensure environmental effects are minimised during operation of the development.
18. Prior to commencement of development, detailed Species Protection Plans for bats, red squirrels, pine marten, amphibians and reptiles, breeding birds and raptors and badgers, shall be submitted to and approved by the Planning Authority. The SPPs shall incorporate measures outlined in the provisional species protection plans provided by Solway Ecology (Consulting) Ltd, (2017) and shall include provision for pre-development supplementary surveys (including squirrel drey surveys) as well as mitigation, and enhancements for protected species, where possible. Development shall be undertaken in strict accordance with the approved SPPs.  
Reason: To safeguard ecological interests at the site.
19. No development shall commence during the breeding bird season, unless wholly in accordance with a Species Protection Plan for breeding birds that has been submitted to and approved by the Planning Authority.  
Reason: To safeguard ecological interests at the site.
20. No development to be commenced until a Heritage Access Interpretation and Management Plan is submitted to, and approved by, the Planning Authority in liaison with Historic Environment Scotland. The Plan should also provide for measures to limit impacts on hill forts in the area, including Cardie Hill. Once approved, the Plan to be implemented in accordance with the approved details.  
Reason: To safeguard archaeological sites in the vicinity of the development.
21. No development shall take place within the development site until the applicant has secured

the implementation of a programme of archaeological works in accordance with a Written Scheme of Investigation (WSI) which has been submitted by the applicant, agreed by Scottish Borders Council Archaeology Service, and approved by the Planning Authority. The WSI shall be formulated and implemented by a contracted archaeological organisation working to the standards of the Chartered Institute for Archaeologists (CIfA) approval of which shall be in writing by the Planning Authority. Thereafter the developer shall ensure that the programme of archaeological works is fully implemented and that all recording, recovery of archaeological resources within the development site, post-excavation assessment, reporting and dissemination of results is undertaken to the satisfaction of the Planning Authority in agreement with Scottish Borders Council Archaeology Service.

Reason: The site is within an area where development may damage or destroy archaeological remains, and it is therefore desirable to afford a reasonable opportunity to record the history of the site.

### Informatives

1. In construction of the development through the Construction Management Plan, SEPA pollution control guidelines should also be adhered to.

Please note that permission may be required from SEPA under The Water Environment (Controlled Activities) (Scotland) Regulations 2011 for any engineering activities in, or in the vicinity of, inland watercourses. This would include any watercourse crossings, bank reinforcements, boreholes and general water management across the site.

2. The developer is reminded that a licence will be required from Scottish Natural Heritage in the case of:
  - Any works within 30m of a badger sett;
  - Any works which destroys or disturbs the drey of a red squirrel, or which injure, or kill a red squirrel, or which disturb a red squirrel whilst it occupies its drey;
  - in accordance with the Wildlife and Countryside Act 1981 (as amended) and the Protection of Badgers Act 1992 (as amended)
3. In relation to bats, prior to the commencement of development, the applicant shall provide to the Planning Authority:
  - a copy of the relevant European Protected Species licence, or,
  - a copy of a statement in writing from Scottish Natural Heritage (licensing authority) stating that such a licence is not necessary for the specified development.
4. The SBC Access Officer seeks mitigating instructions to encourage the use of Janet's Brae connecting to the site primarily as a walking route and also traffic calming measures where the link to Peebles in the SW corner crosses the main track.
5. The development should be implemented in accordance with the Energy Efficiency, BREEAM and Utilities Statement submitted with the application.

### NOTE

Mrs Dorothy Thomson, resident spoke against the application

Mr Andrew Brook spoke on behalf of Forest Holidays in support of the application.

### Reference

17/00695/FUL

### Nature of Development

Residential development comprising of 34 no flats with associated parking and retaining wall works

### Location

Workshop and Yard for Caravan Storage, Huddersfield Street Galashiels

Decision: Approved subject to clearance from Scottish Ministers, a legal agreement addressing playspace contributions and the following conditions and informatives:

1. All approved residential units shall meet the definition of "affordable housing" as set out in the adopted Local Development Plan 2016 and Supplementary Planning Guidance "Affordable Housing" 2015 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 prior to development commencing.  
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 and the reinstatement of the Borders Railway.
2. The development shall be carried out wholly in accordance with the plans and drawings approved under this consent, including finished ground, road/parking and floor levels, unless otherwise agreed with the Planning Authority or amended by any other condition in this schedule  
Reason: To ensure the development is completed in accordance with the approved plans, principally to ensure it has an acceptable visual impact, incorporates flood mitigation and safeguards 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 services shall be made available to serve the development. All services shall be operational prior to the occupancy of any residential unit  
Reason: To ensure the development can be adequately serviced
4. No development shall commence until a surface water drainage scheme, including maintenance measures, based on the approved site layout, has been submitted to and approved by the Planning Authority. The approved scheme shall be operational prior to occupancy of any residential unit and maintained in accordance with the approved measures  
Reason: To ensure the development can be adequately serviced with a sustainable urban drainage scheme
5. No development shall commence until a Construction Method Statement has been submitted to and approved by the Planning Authority which specifies measures to minimise adverse effects on neighbouring properties from construction activities. The development shall be implemented in accordance with the approved statement  
Reason: To minimise adverse effects on neighbouring amenity during construction of the development
6. No development shall commence until the following ecological mitigation measures have been submitted to and approved by the Planning Authority:
  - a) Construction Method Statement containing mitigation measures designed to safeguard the Gala Water (River Tweed Special Area of Conservation) during construction of the development
  - b) Species Protection Plan for birds, including mitigation/enhancement for lost habitat
  - c) Species Protection Plan for ottersThe development shall be carried out in accordance with the approved measures  
Reason: To limit potential risk to the Special Area of Conservation, breeding bird and otter habitat and account for loss of bird habitat as a result of the development
7. No development shall commence until a scheme to identify and assess potential contamination on site, in addition to measures for its treatment/removal, validation and monitoring, and a timescale for implementation of the same, has been submitted to and approved by the Planning Authority. Once approved, the development shall only proceed in accordance with the approved scheme

Reason: To ensure that potential contamination within the site has been assessed and treated and that the treatment has been validated and monitored in a manner which ensures the site is appropriate for the approved development.

8. No development shall commence until further details of soft landscaping specified on drawing 8291.1.02C which includes planting specifications, implementation timescale and future maintenance have been submitted to and approved by the Planning Authority. The landscaping shall be implemented and maintained in accordance with the approved plan and details

Reason: To assist with visually integrating the development sympathetically with its context

9. No development shall commence until further details (and samples where required by the Planning Authority) of all external materials (including colours) for all hardstandings within the site; building materials (including all wall finishes, roof, windows/doors/railings and fascias); and site wall materials have been submitted to and approved in writing by the Planning Authority. The development shall be implemented in accordance with the approved specifications and samples. The walls identified in natural stone on the approved site plan shall be finished to match existing natural stone walls to the south-east or north-west of the site.

Reason: The materials to be used require further consideration to ensure a satisfactory form of development, which contributes appropriately to its setting

10. No development shall commence until dimensioned or scaled elevation drawings have been submitted of all walls, including riverside wall (and its material specification), boundary, retaining and bin enclosure walls, and including any tie ins to the existing path and bridge to the north-west, have been submitted to and approved by the Planning Authority. The development shall be carried out in accordance with the approved drawings

Reason: Further information is required of these details in the interests of ensuring a satisfactory form of development, which contributes appropriately to its setting

11. No development shall commence until further details of the undercroft arrangement (including size of opening and application of grilles or louvres) have been submitted to and approved by the Planning Authority, notwithstanding references on the approved drawings. The details shall include a maintenance scheme for keeping the undercroft clear of all obstructions to flood water. The development shall be carried out and maintained in accordance with the approved details

Reason: The elevational treatment of the undercroft requires further consideration to ensure it has a sympathetic visual impact and to ensure the undercroft provides sufficient flood water conveyance

12. No residential unit shall be occupied until the access and parking layout, paths, bike storage and bin enclosure have been completed in accordance with the plans and drawings approved under this consent. No works shall commence on the access until construction details have been submitted to and approved by the Planning Authority, and all works alongside Huddersfield Street (including path and parking spaces 1-4) shall be carried out in accordance with the Council's adoptable standards. All works shall thereafter be retained free from obstruction for their approved purpose

Reason: To ensure the development will be adequately serviced by road, parking, bike and bin storage provision.

13. No residential unit shall be occupied until a flood warning and evacuation procedure has been submitted to and approved by the Planning Authority. The units shall only be occupied while the approved procedure is in operation

Reason: To manage any potential flood risk to the site

14. No site lighting shall be installed unless the details of the lighting (location, height, design, specification and light spread) have been submitted to and approved by the Planning Authority. The lighting shall only be installed in accordance with the approved scheme  
Reason: To minimise the potential visual impact of lighting and to safeguard neighbouring amenity and road safety.

#### Informatives

1. Roads Construction Consent will be required for works forming part of the adoptable road network on Huddersfield Street.
2. Amendments to existing public street lighting should be agreed with the Council's street lighting section
3. The adjacent proprietor (HR Motors) has expressed concerns regarding potential risk to the integrity of the boundary wall. This matter is for the applicant and is outside the scope of this application
4. Site lighting may require a separate Planning Application, in addition to satisfying Condition 14 of the above schedule
5. Condition 9 requires that final material specifications be agreed. The condition provides opportunity to consider in further detail the distribution of block colours within the building's elevations, with the aim of ensuring the building fits its context, is welcoming and that different colours are used to break up the massing of the building, and so complement its form and design.

#### NOTE

Mr Gavin Yuill, Agent spoke in favour of the application.

**Reference**  
16/01403/FUL

**Nature of Development**  
Erection of dwellinghouse

**Location**  
Land South of Abbotsbank  
Gattonside

Decision: Approved subject to a legal agreement and the following conditions and informatives:

1. The development shall only be implemented in accordance with the approved Method Statement for Traffic Management Plan (27/02/18) and Swept Path Analysis and Traffic Management Plan (9275.1.10B) as regards management of construction traffic within and entering and leaving the application site. Access to the site during construction shall only be permitted from the southern access and there shall be no access to the site of any kind (vehicle or pedestrian) permitted from the northern access.  
Reason: To limit potential impacts on road and pedestrian safety
2. No development shall commence until a scheme to identify and assess potential contamination on site, in addition to measures for its treatment/removal, validation and monitoring, and a timescale for implementation of the same, has been submitted to and approved by the Planning Authority. Once approved, the development shall only proceed in accordance with the approved scheme  
Reason: To ensure that potential contamination within the site has been assessed and treated and that the treatment has been validated and monitored in a manner which ensures the site is appropriate for the approved development.
3. No development shall commence until a surface water drainage scheme has been submitted to and approved by the Planning Authority which demonstrates that surface water run-off from the site will be maintained at pre-development levels using sustainable drainage methods during construction of the development and occupancy of the dwellinghouse  
Reason: To ensure the development can be adequately serviced and to safeguard the public road and neighbouring properties from potential run-off
4. No development shall commence until a scheme of hard and soft landscaping works has been submitted to and approved in writing by the Planning Authority. Details of the scheme shall include
  - a) location and design, including materials (and detailed specifications), of all boundary treatments and driveway retaining walls
  - b) soft and hard landscaping works, including tree, shrub and hedge planting and any additional areas of hard surfacing not specified on the approved site plan
  - c) bin storage measures
  - d) A programme for completion and subsequent maintenance.Reason: To safeguard the character and appearance of the Conservation Area
5. 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. Mains services shall be operational prior to occupancy of the dwellinghouse.  
Reason: To ensure the development can be adequately serviced.
6. No development shall commence until a protective fence (compliant with BS5837:12) has been erected along the root protection areas for adjacent trees and hedging, as specified on the approved site plan 9275.1.03D. No works shall be permitted within the fenced area unless agreed with the Planning Authority as being compliant with BS5837:12 and there shall be no excavation for the house beyond the area specified on the approved plan 9275.1.02C  
Reason: To limit potential risk to adjacent trees and hedging which contribute to the character and appearance of the Conservation Area

7. The dwellinghouse shall not be occupied until the treatment of the northern boundary (specified as the 'extent of house plot' on the approved site plan 9275.1.03D) has been approved by the Planning Authority under Condition 4 and until the approved treatment has been implemented in accordance with a timescale agreed with the Planning Authority. This boundary shall provide no means of access of any kind (vehicle or pedestrian) from the north.  
Reason: To safeguard road and pedestrian safety and the character and appearance of the Conservation Area
8. External materials and colours shall accord with the approved drawings, unless otherwise agreed with the Planning Authority. No development shall commence until a schedule (including samples where required by the Planning Authority) providing a detailed specification of all external materials, finishes and colours of the house, retaining walls/planters and hard surfacing has been submitted to and approved by the Planning Authority. The development shall be completed using the approved schedule of materials, finishes and colours. There shall be no bargeboards or fascias applied to the main roofs of the dwellinghouse (excepting only where specified on the approved drawings for the dormers), and window glazing pattern shall accord with the approved drawings (incorporating sash windows on the front elevation upper floor).  
Reason: To safeguard the character and appearance of the Conservation Area
9. The area allocated for parking and turning on the approved site plan 9275.1.03D shall be completed in accordance with the approved plan before the dwellinghouse is occupied, and shall not be used other than for the parking and turning of vehicles in connection with the development hereby permitted.  
Reason: To ensure there is adequate space within the site for the parking and turning of vehicles.
10. The development shall be implemented wholly in accordance with the plans and drawings approved under this consent, including the site, house and driveway/parking levels, and the southern patio area shall be finished to the same level as the parking area, all unless otherwise agreed in writing with the Planning Authority  
Reason: To safeguard the character and appearance of the Conservation Area, neighbouring amenity and road safety

#### Informatives

1. Site clearance works within the bird breeding season should be avoided unless the site is first checked for nesting birds. The applicant has the responsibility to ensure no breach of habitat regulations.
2. If a solid fuel stove is intended, this should be specified as being under 45kw. If specified to be larger, a screening assessment will be required in liaison with the Council's Environmental Health Service to ensure there is no risk of a statutory nuisance from emissions.
3. Solid fuel heating installations can cause smoke and odour complaints and Planning Permission for this development does not indemnify the applicant in respect of nuisance action. In the event of nuisance action being taken there is no guarantee that remedial work will be granted Planning Permission. It is recommended, therefore, that:
  - the flue should be terminated with a cap that encourages a high gas efflux velocity.
  - the flue and appliance should be checked and serviced at regular intervals to ensure that they continue to operate efficiently and cleanly.
  - the appliance should only burn fuel of a type and grade that is recommended by the manufacturer.
  - if you live in a Smoke Control Area you must only use an Exempt Appliance ([www.smokecontrol.defra.gov.uk](http://www.smokecontrol.defra.gov.uk)) and the fuel that is approved for use in it



- in wood burning stoves you should only burn dry, seasoned timber. Guidance is available on [www.forestry.gov.uk](http://www.forestry.gov.uk)
  - 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.
4. There is a low potential for encountering buried archaeology during excavations. If buried features (e.g. walls, pits, post-holes) or artefacts (e.g. pottery, ironwork, bronze objects, beads) of potential antiquity are discovered, please contact the planner or Council's Archaeology Officer for further discussions. Further investigation secured by the development may be required if significant archaeology is discovered per PAN2(2011) paragraph 31. In the event that human remains or artefacts are discovered, these should remain in situ pending investigation by the Archaeology Officer. Human Remains must be reported immediately to the police. Artefacts may require reporting to Treasure Trove Scotland.

<u>Reference</u>	<u>Nature of Development</u>	<u>Location</u>
17/01602/PPP	Erection of dwellinghouse	Land South of Rossleigh, Horndean

Decision: continued to next available meeting.

<u>Reference</u>	<u>Nature of Development</u>	<u>Location</u>
17/00767/PPP	Residential Development	Land South West and South East of Bowbank Cottages, Bellfield Road, Eddleston

Decision: Approved subject to the following conditions and informatives and the completion of a legal agreement for development contributions:

- 1 No development shall commence until the details of the layout, siting, design and external appearance of the building(s), the means of access thereto including two parking spaces (excluding garages) per house, refuse and recycling bin storage and the landscaping of the site have been submitted to and approved in writing by the planning authority.  
Reason: To achieve a satisfactory form of development and to comply with the requirements of section 59 of the Town and Country Planning (Scotland) Act 1997, as amended.
- 2 No development shall commence until all matters specified in conditions have, where required, been submitted to and approved in writing by the planning authority. Thereafter the development shall only take place except in strict accordance with the details so approved.  
Reason: To achieve a satisfactory form of development, and to comply with the requirements of section 59 of the Town and Country Planning (Scotland) Act 1997, as amended.
- 3 The subsequent application for the approval of matters specified in conditions application shall be accompanied by:
  - i. a site layout plan at a scale of 1:500 showing the position of all buildings, roads, footpaths, parking areas (distinguishing, where appropriate, between private and public spaces), walls and fences and landscaping;
  - ii. plans and elevations of each house and garage type showing their dimensions and type and colour of external materials;
  - iii. a landscaping plan at a scale of 1:200 showing the location, species and ground spread of existing and proposed trees, shrubs and hedges;
  - iv. details of any proposed phasing of the development;
  - vi. details of existing and finished ground level, and finished floor levels, in relation to a fixed datum, preferably ordnance datum.

vii. a design statement setting out the rationale for the proposed design and layout.

Reason: To ensure a satisfactory form of development.

- 4 No development shall commence until a scheme of hard and soft landscaping works has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
- a) location and design, including materials and detailed specifications, of all boundary treatments;
  - b) indication of existing trees, shrubs and hedges to be retained, those to be removed and, in the case of damage, proposals for their restoration;
  - c) location of new trees, shrubs, hedges and grassed areas;
  - d) schedule of plants to comprise species, plant sizes and proposed numbers/density;
  - c) a programme for completion and subsequent maintenance;
  - d) bin storage measures;
- Reason: To enable the proper form and layout of the development and the effective assimilation of the development into its wider surroundings
- 5 No development shall commence until the existing private road is upgraded to adoptable standards from a point where the private road meets the D19-1 Bellfield Road adjacent to the church.
- Reason: To achieve a satisfactory form of development and in the interest of road safety.
- 6 No development shall commence until a scheme of details has been submitted to and approved by the planning authority, showing the improvement works to the junction of the A703 and the D19-1 Bellfield Road. The scheme of details shall include engineering details of the altered kerbing and any associated alterations to the roadside drainage, along with the required visibility splays. All works to be carried out prior to works commencing on site by a contractor first approved by the council. Thereafter, they shall be retained in perpetuity.
- Reason: In the interest of road safety.
- 7 No development shall take place until the applicant has secured and implemented an approved programme of archaeological work and reporting in accordance with a Written Scheme of Investigation (WSI) outlining an archaeological field evaluation. Development and archaeological investigation shall proceed only in accordance with the WSI. The requirements of this are:
- a) The WSI shall be formulated and implemented by a contracted archaeological organisation working to the standards of the Chartered Institute for Archaeologists (CIfA) approval of which shall be in writing by the planning authority;
  - b) if significant finds, features or deposits are identified by the attending archaeologist(s), all works shall cease and the nominated archaeologist(s) will contact the council's Archaeology Officer immediately for verification. The discovery of significant archaeology may result in further developer funded archaeological mitigation as determined by the council;
  - c) limited intervention of features, or expansion of trenches will only take place if approved by the council's Archaeology Officer;
  - d) initial results shall be submitted to the planning authority for approval in the form of a Data Structure Report (DSR) within one month following completion of all on-site archaeological works. These shall also be reported to the National Monuments Record of Scotland (NMRS) and Discovery and Excavation in Scotland (DES) within three months of on-site completion;
  - e) further development work shall not take place until the planning authority has determined the potential for further archaeological impacts and, if required, a further requirement for mitigation;
  - f) development should aim to mitigate the loss of significant archaeology through avoidance by design in the first instance according to an approved plan;
  - g) if avoidance is not possible, further developer funded mitigation for significant archaeology will be implemented through either an approved and amended WSI, a new WSI to cover substantial excavation and a Post-Excavation Research Design (PERD).

The results of additional excavations and an appropriately resourced post-excavation Research design shall be submitted to the council for approval within 1 year of the final archaeological works and published in an appropriate publication within 3 years.

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.

- 8 No development shall commence until a scheme has been submitted by the developer (at their expense) to identify and assess potential contamination on site. No construction work shall commence until the scheme has been submitted to and approved by the planning authority and is thereafter implemented in accordance with the scheme so approved.

The scheme shall be undertaken by a competent person or persons in accordance with the advice of relevant authoritative guidance including PAN 33 (2000) and BS10175:2011 or, in the event of these being superseded or supplemented, the most up-to-date version(s) of any subsequent revision(s) of and/or supplement(s) to, these documents. That scheme should contain details of proposals to investigate and remediate potential contamination and must include:

- a) A desk study and development of a conceptual site model including (where necessary) a detailed site investigation strategy. The desk study and the scope and method of recommended further investigations shall be agreed with the planning authority prior to addressing parts b, c, d and, e of this condition and thereafter;
- b) where required by the desk study, undertaking a detailed investigation of the nature and extent of contamination on site, and assessment of risk such contamination presents;
- c) remedial strategy (if required) to treat/remove contamination to ensure that the site is fit for its proposed use (this shall include a method statement, programme of works and proposed validation plan);
- d) submission of a Validation Report (should remedial action be required) by the developer which will validate and verify the completion of works;
- e) submission, if necessary, of monitoring statements at periods to be agreed with the planning authority;

Written confirmation from the planning authority that the scheme has been implemented completed and (if appropriate), monitoring measures are satisfactorily in place, shall be required by the developer before any development commences. Where remedial measures are required as part of the development construction detail, commencement must be agreed in writing with the planning authority.

Reason: To ensure that the potential risks to human health, the water environment, property and ecological systems arising from any identified land contamination have been adequately addressed.

- 9 No development shall commence until precise details of water supply and a surface water and foul drainage scheme have been submitted to and approved by the planning authority which demonstrates that surface water run-off from the site will be maintained at pre-development levels using sustainable drainage methods during construction of the development and subsequent occupancy. Thereafter no development shall take place except in strict accordance with the approved scheme.

Reason: To ensure the development can be adequately serviced and to safeguard the public road and neighbouring properties from potential run-off.

- 10 A detailed drawing to be submitted with the first approval of matters specified in conditions application for the site showing the position, species and root protection area of the trees and hedges within the site and overhanging the site, those to be retained, those to be felled and replanting proposals. Once approved in writing by the planning authority, the development then to be completed in accordance with the approved details.

Reason: In the interest of protecting the trees on site which are worthy of retention and contribute to the visual amenity of the area.

- 11 No development shall commence until the trees to be retained on the site shall be protected by means of protective fence (compliant with BS5837:12) which shall be erected along the root protection areas for trees. No works shall be permitted within the fenced area unless agreed with the planning authority as being compliant with BS5837:12. The fencing shall be removed only when the development has been completed. During the period of construction of the development the existing soil levels around the boles of the hedges so retained shall not be altered. No trees or hedges within the application site or on the site boundary shall be felled, removed, lopped, lifted or disturbed in any way without the prior consent of the planning authority.  
Reason: In the interest of preserving the trees which contribute to the visual amenity of the area.
- 12 No development shall be carried out during the breeding bird season (March-August) unless the development is implemented wholly in accordance with a Species Protection Plan for breeding birds, which shall be submitted to and approved by the planning authority. The SPP shall include provision for a pre-development supplementary survey and a mitigation plan.  
Reason: In order to give full consideration to those details yet to be submitted, in the interest of protecting wildlife.
- 13 The proposed development shall include provision for additional parking within the application site to compensate for the loss of existing parking provision on Bellfield Road outside the church.  
Reason: The current parking outside the church extends over the carriageway of Bellfield Road and the road improvements required to improve the vehicular access to the site are likely to result in the loss of that existing provision which would otherwise be displaced onto the public road to the detriment of road safety.

#### Informatives

It should be noted that:

- 1 The illustrative layout plan submitted is not approved as part of this permission and significant changes to the proposed design and layout will be required as the basis for any detailed application(s). The layout will be expected to accord with the Council's supplementary planning guidance, "Placemaking & Design" and with national guidance, "Designing Streets". It is recommended that the first application for approval of matters specified in conditions should be accompanied by a design statement to support the design rationale for the development.
- 2 In the event that bats are discovered following the commencement of works, works should stop immediately and the developer must contact SNH (tel: 01896-756652) for further guidance. Works can only recommence by following any guidance given by SNH. The developer and all contractors to be made aware of accepted standard procedures of working with bats at [www.bats.org.uk](http://www.bats.org.uk). Further information and articles available at:  
[http://www.bats.org.uk/pages/bats\\_and\\_buildings.html](http://www.bats.org.uk/pages/bats_and_buildings.html)  
[http://www.bats.org.uk/pages/existing\\_buildings.html](http://www.bats.org.uk/pages/existing_buildings.html)  
[http://www.bats.org.uk/publications\\_download.php/1404/Bats\\_Trees.pdf](http://www.bats.org.uk/publications_download.php/1404/Bats_Trees.pdf)
- 3 Details of regulatory requirements and good practice advice for the applicant can be found on the Regulations section of the SEPA website or from the local SEPA office at: Burnbrae, Mossilee Road, Galashiels, TD1 1NF. Tel: 01896 754797.
- 4 Notwithstanding the detail indicated on the submitted drawing, the Council considers that the number of houses indicated represents an overdevelopment of the site; this is likely to give rise to road safety issues arising from the number of vehicle movements associated with the

development on a road network with limited scope for additional capacity. As such, the number of houses shown will not be supported and any detailed application should indicate a reduced number of houses and be supported by an assessment to demonstrate how vehicle movements will be accommodated within the surrounding road network.

#### NOTE

Councillor Kris Chapman spoke against the application.

Ms Kirsty Peebles, on behalf of Eddleston Community Council, and Ms Amy Barlett, resident, both spoke against the application.

Mr Angus Dodds, Agent spoke in support of the application.

#### VOTE

*Councillor Mountford, seconded by Councillor Miers moved that the application be approved subject to the inclusion of an informative advising that the indicative number of 15 houses was overdevelopment and a condition requiring the provision of replacement parking for the church.*

*Councillor Aitchison, seconded by Councillor Laing moved as an amendment that the application be refused on the grounds of road safety on the basis of the information before the committee and the scale of the development.*

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

*Motion - 4 votes*

*Amendment - 3 votes*

*The Motion was accordingly carried.*

<u>Reference</u>	<u>Nature of Development</u>	<u>Location</u>
17/01348/FUL	Erection of 2 No wind turbines 11.8m to tip	Land South West of 6 Lamberton Holding Lamberton

Decision: Approved subject to the following conditions:

#### Conditions:

1. Noise from the installation must not exceed 35dBA L90,10 min up to wind speeds of 10 metres per second measured at 10m height, when assessed in free field conditions outside any noise sensitive premises where the occupier of the property has no financial interest in the development and having Planning Consent at the time of determining this Application.  
Reason: To protect the amenity of other Occupiers.
2. There will be no tonal character to the noise from the installation, audible within any noise sensitive premises. Tonality shall be determined with reference to BS 7445.  
Reason: To protect the amenity of other Occupiers.
3. At the request of the Planning Authority, following a complaint to Scottish Borders Council relating to noise from the wind turbines, the wind turbine operator shall shut down the turbine/s not later than 24 hours after receipt of the request and at his own expense employ an independent consultant, approved by the Planning Authority, to assess the level of noise emissions from the wind turbines (inclusive of existing background noise). The background noise level shall also be measured without the wind turbine operating. The noise of the turbine alone can then be calculated by logarithmic subtraction. If requested by the Planning Authority the assessment of noise immissions shall include an investigation of amplitude modulation in a manner agreed with the Authority. Such mitigation as is required to overcome any identified nuisance shall thereafter be agreed with the Council and put in place before the turbine/s is/are brought back into operation.

Reason: To protect the amenity of other Occupiers.

4. No development shall take place within the development site as outlined in red on the approved plan until the developer has secured a Written Scheme of Investigation (WSI) detailing a programme of archaeological works. The WSI shall be formulated and implemented by a contracted archaeological organisation working to the standards of the Chartered Institute for Archaeologists (CIfA). The WSI shall be submitted by the developer no later than 1 month prior to the start of development works and approved by the Planning Authority before the commencement of any development. Thereafter the developer shall ensure that the programme of archaeological works is fully implemented and that all recording, recovery of archaeological resources within the development site, post-excavation assessment, reporting and dissemination of results are undertaken per the WSI.

Reason: The site is within an area where development may damage or destroy archaeological remains, and it is therefore desirable to afford a reasonable opportunity to record the history of the site.

5. The turbine(s) hereby consented and any ancillary equipment or structures associated with them (including any foundations) shall be removed from the site, and the site restored to its former condition, within 25 years of the date of this planning permission unless a further planning permission is achieved that allows for the retention of the turbine(s) on the site beyond this period.

Reason: In the interests of the amenity of the area so that the turbine(s) hereby consented will be removed to avoid any unnecessary environmental impact resulting from the retention of turbine on the site beyond 25 years.

6. When either or both of the wind turbines hereby consented cease(s) to be required for the purposes of electricity generation, the wind turbine(s) concerned, and any ancillary equipment or structures no longer required for the purposes of electricity generation, shall be dismantled and removed from the site, and the site, or that part of the site no longer in use for electricity generation, shall then be restored to its former condition within 12 months of the cessation of operation of the turbine(s) concerned.

Reason: In the interests of the amenity of the area so that in the event of the turbines reaching the end of their operational life, these will be removed within a reasonable period of time to avoid any unnecessary environmental impact resulting from the retention of non-operational turbines on the site.

7. Unless otherwise agreed in writing by the Planning Authority and in advance of installation, the wind turbines shall match in all respects the finished appearance (including finished colour) of the approved drawings hereby consented. Further, and unless otherwise agreed in writing by the Planning Authority, there shall be no symbols, signs, logos or other lettering displayed on any part of the turbines other than those required for health and safety reasons, and the rotors of both turbines shall only rotate in the same direction.

Reason: In the interests of ensuring that the finished and operational appearance of the wind turbines has landscape and visual impacts which are sympathetic to the amenity of the site and surrounding area.

8. No development shall commence until the Developer has first provided the Planning Authority with documentary evidence that the Ministry of Defence has received, and confirmed its acceptance of, appropriate notification of the following details:
  - i) the date(s) of commencement of the construction of the turbine(s);
  - ii) the date(s) of completion of the construction of the turbine(s);
  - iii) the maximum height (including extension height) of the construction equipment to be used to erect the turbine(s); and
  - iv) the latitude and longitude of the turbine(s) when completed.

Reason: To ensure that appropriate notification is given to the Ministry of Defence to address the latter's concern that accurate information about the delivery and location of the

development hereby consented, should be supplied to allow the Defence Estates Safeguarding to update its records.

9. Fields 7 and 8 on the land ownership plan submitted by the applicant on 5 December 2017 shall be retained in permanent pasture for a minimum period of five years from the date of the first turbine hereby approved being erected.  
Reason: to ensure the surrounding habitat does not attract corn buntings to the site once the turbines are in operation, in the interests of biodiversity.

**NOTE**

Mr John Trotter spoke against the application

Mr William Mykura, Applicant spoke in favour of the application

<b><u>Reference</u></b>	<b><u>Nature of Development</u></b>	<b><u>Location</u></b>
17/01709/FUL	Erection of four dwellinghouses	Land East of Craigpark Court, Galashiels

Decision: Approved subject to a legal agreement and the following conditions and informatives:

1. All approved residential units shall meet the definition of "affordable housing" as set out in the adopted Local Development Plan 2016 and Supplementary Planning Guidance "Affordable Housing" 2015 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 prior to development commencing.  
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 and the reinstatement of the Borders Railway.
2. No development shall commence until a protective fence is erected in accordance with BS5837:12 alongside the tree to the east of Plot 4, as identified on the approved site plan, and the fence shall not be removed until all construction activities on site are fully complete. The existing fence along the northern boundary of Plot 5A shall be retained (or reinstated before works commence) until after construction works are complete. There shall be no construction works, including storage of plant or machinery or provision of retaining walls/boundary treatments (notwithstanding the approved site plan) within the protected areas unless construction details of such works have been submitted to and approved by the Planning Authority, and there shall be no services installed unless compliant with National Joint Utilities Group Guidelines.  
Reason: To safeguard trees of value adjoining the site, including trees subject to Tree Preservation Order
3. No development shall commence until written evidence is provided on behalf of Scottish Water to confirm that mains water and foul drainage services shall be made available to serve the development, and until a surface water drainage connection to the mains has been approved, and the means of maintenance of the surface water drainage scheme have been submitted to and agreed with the Planning Authority. The development shall be serviced by a surface water drainage scheme based on the indicative proposals on drawing 9307 L(52)001 B and existing pre-development run-off rates from the site during and after construction shall be maintained. All services shall be operational prior to the occupancy of any dwellinghouse hereby approved.  
Reason: To ensure the development can be adequately serviced, without flood risk to other properties

4. No development shall commence until specifications (and samples where required by the Planning Authority) of all materials for the parking spaces, paths, house roofs, external walls, basecourses and retaining walls have been submitted to and approved in writing by the Planning Authority. The development shall be implemented in accordance with the approved specifications.  
Reason: The materials to be used require further consideration to ensure a satisfactory form of development, which contributes appropriately to its setting.
  
5. No development shall commence unless in accordance with a scheme of ground, house and road/parking area levels that has been submitted to and approved by the Planning Authority. The scheme shall be related to an off-site datum and shall include existing and proposed levels throughout the application site. The development shall be carried out in accordance with the approved scheme.  
Reason: Further information is required regarding finished house and site levels to ensure the development is visually sympathetic and acceptable as regards road safety
  
6. No development shall take place except in strict accordance with a scheme of landscaping works, which shall first be submitted to and approved in writing by the planning authority. The scheme of works shall include:
  - a) details of new fences/walls, their route, height, design and materials (notwithstanding references on the approved site plan)
  - b) schedule of planting, including screen planting for the easterly boundary, to comprise location, species, plant sizes and proposed numbers/density
  - c) programme for completion (including timescale for fencing alongside parking spaces and all planting) and subsequent maintenance
 Reason: To enable the proper form and layout of the development and the effective assimilation of the development into its wider surroundings and to mitigate effects of the development on the privacy of adjacent properties.
  
7. No dwellinghouse shall be occupied until the road serving the development leading from Craigpark Gardens and the road and parking layout approved under this consent have been completed in accordance with the Council's adoptable standards and until bin stances specified on the approved site plan have been provided. The layout shall accord with the approved site plan and the development shall only be implemented and occupied where the development of Plot 3 has been implemented in accordance with the same site plan  
Reason: To ensure each dwellinghouse can be adequately serviced by road, parking and bin storage provision, and that parking arrangements relate sympathetically to the adjacent approved development
  
8. Notwithstanding the General Permitted Development (Scotland) Order 1992 (as amended 2011 or any subsequent revision or replacement of the Order) there shall be no development involving excavations to finished ground levels within the hatched area identified on the approved plan, and there shall be no extension, enlargement or other external alteration of the dwellinghouses, and no outbuilding, deck or other raised platform erected within the curtilage of any dwellinghouse without a planning application having first been submitted to and approved by the Planning Authority  
Reason: To minimise risk of damage to the roots of a protected tree and minimise risk to the amenity of neighbouring properties
  
9. All rooflights identified on the plans and elevational drawings approved under this consent located on the easterly-facing (rear) roof slopes shall be set a minimum of 1.8 metres above the internal floor level to which they relate  
Reason: To safeguard the privacy of adjacent properties

#### Informatives



The Council's Technical Approval (Roads Planning Service) shall be required for all retaining walls adjacent to the public road

An amended Road Construction Consent will be required for the site. This must include amendments to the lighting, drainage and road layouts and details.

<b><u>Reference</u></b>	<b><u>Nature of Development</u></b>	<b><u>Location</u></b>
17/01757/MOD75	Modification of planning obligation Pursuant to planning permissions 12/00811/FUL, 13/01109/FUL, 14/00412/FUL 14/01227/FUL	Land Adjacent to Craigpark Gardens Galashiels

Decision: Approved subject to a clause requiring that the units be owned and managed by the applicants, or other Registered Social Landlord, as affordable housing, with the exception of Plot 1 which shall remain bound by the original contributions (pro rata).

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**SCOTTISH BORDERS COUNCIL**

**PLANNING AND BUILDING STANDARDS COMMITTEE**

**30 APRIL 2018**

**APPLICATION FOR PLANNING PERMISSION**

<b>ITEM:</b>	<b>REFERENCE NUMBER:</b> 17/01740/FUL
<b>OFFICER:</b>	Mr Scott Shearer
<b>WARD:</b>	Hawick and Hermitage
<b>PROPOSAL:</b>	Demolition of guest lodges and refurbishment of 6 retained lodges, erection of guest lodges, staff accommodation, new central hub with associated facilities, refurbishment and extension to existing staff lodge, redesigned site layout with new access roads, parking and footpaths
<b>SITE:</b>	Whithaugh Park Holiday Centre, Newcastleton
<b>APPLICANT:</b>	Rock UK
<b>AGENT:</b>	Oberlanders Architects LLP

**SITE DESCRIPTION**

Whithaugh Park Holiday Centre is situated on an elevated site to the east of Newcastleton. Access to the site is provided by minor roads to the south. Some shelterbelt planting encloses part of the western boundaries of the site with Newcastleton Forest enclosing its eastern side. Whithaugh Burn dissects the site with more densely populated woodland found around the water course.

The centre is operated by Rock UK, a charity organisation focussed on providing outdoor activity experiences primarily for young people. Rock UK operates four centres with Whithaugh Park being their only one in Scotland. The site offers a broad range of outdoor activities and sports on site which include abseiling, canoeing, gorge walking, mountain biking, swimming and zip wiring. Accommodation is currently provided by various log cabin type buildings which can sleep up to 192 people. A range of other buildings and structures are located in the site to assist with the various activities in addition to existing roads, tracks and bridges.

Three separate application sites are identified within the proposal, see Drawing No; 221-(PL) 002. Each is described below:

Site A – This is the largest of the sites which gently rises to the north out of the more density populated woodland area into open grass land. This area contains the majority of the residential accommodation as well as the reception building, swimming pool, sports hall and pitches.

Site B – This site straddles the entrance road to the site with staff accommodation located to the west of the road. The land slopes towards the north. Mature planting surrounds the existing buildings. A turning head and grass land is located opposite the lodges.

Site C – This site is located to the south east of the main hub and just off the sites internal road. The land is flat and enclosed by planting.

## **PROPOSED DEVELOPMENT**

The application seeks planning permission for the following proposals within each of the three sites (A to C) identified above.

### Site A:

- Demolish 24 of the existing lodges and the reception centre. Refurbish the 6 remaining 'Family Lodges'.
- Extend the existing development to the north to provide new accommodation arranged in five 'clusters' of different sizes which will cater specifically for group visitors. The accommodation will be provided in the buildings referred to as the 'Pine Lodge' and 'Guest Lodge'. Four of the five clusters will have their own 'Day Lodges' which will serve as a gathering space and facilitate individual activities as well as a place to prepare and serve meals. The Day Lodges are of the same design but vary in size to cater for the size of cluster they serve.
- A new central 'Hub' area will provide a focal point to the site. The 'C' shaped building will have two mono pitched ends joined by a flat pitched sedum canopy cover. Internally, the building will provide administrative accommodation and a shop in addition to a covered external space. New parking facilities are proposed here.
- A new road network will serve the new layout with the outer road finished with a gravel track and the internal route with resin bound gravel track

### Site B:

- Alter and extend the existing staff lodge.
- Erect two new staff lodges and form a new parking area. The staff lodges are to be built in to the slope with the underbuilding used to provide storage space.

### Site C:

- Erect a bike store

Apart from the hub building, all of the new buildings will be designed under pitched roofs with the Group Lodge having a stepped pitch. The walls of the buildings are to be finished using timber with various areas of glazing. The roofs of the buildings are to be finished with metal sheeting. Solar panels are to be mounted on the majority of the buildings. Except the bike store, each of the buildings has a covered terrace or deck area.

## **PLANNING HISTORY**

A history of planning decisions at this site is noted below;

- 93/01306/FUL Creation of a lake. Approved.
- 05/01934/FUL Erection of reception centre and office building. Approved,
- 13/00962/FUL Erection of bio-mass boiler house/wood pellet storage shed. Approved.
- 15/00483/FUL Formation of bike tracks, erection of shelter and change of use of land to form skills area. Approved.
- 16/00342/FUL Extensions to Sports Hall. Approved.
- 17/00664/SCR Replacement and expansion of existing accommodation which has led to the submission of this current application. The Council determined that an Environmental Impact Assessment is not required.

## REPRESENTATION SUMMARY

No third party representations have been received.

## APPLICANTS' SUPPORTING INFORMATION

The applicants have submitted the following information in support of the application;

- Design and Access Statement
- Bat Survey
- Ecological Impact Assessment
- Pre-Application Consultation Report
- Surface and Foul Water Management Plan
- Transport Statement

## CONSULTATION RESPONSES:

### Scottish Borders Council Consultees

**Ecology Officer:** Satisfied with the findings of the Ecological Impact Assessment (EclA) and related reports. The site contains marshy grassland which is not of botanical value. Not all the ground is being lost and there will be a net gain of habitat through the removal of lodges from the wooded area to the south. Construction works may impact on protected species and their habitats. To mitigate ecological impacts it is recommended the following matters are addressed before development commences;

- A copy of a European Protected Species licence of statement from SNH is provided which states that a licence is not required.
- Confirmation that the Species Protection Plan for bats outlined in the bat Survey is enacted.
- A Species Protection Plan for badger and breeding birds is agreed and thereafter implemented.

**Economic Development:** Support the increase and improvement of the accommodation at this holiday centre. The improvements will significantly increase the quality of visitor experience and meets key objectives of Scottish Borders Tourism Strategy 2013 – 2022. The proposals also satisfy the updated Visit Scotland consultation paper on National Tourism Development Framework for Scotland which specifically noted that there was an opportunity to improve existing self-catering accommodation within rural parts of the Scottish Borders.

**Environmental Health (Amenity and Pollution):** A suite of conditions are recommended to agree precise site drainage and water supply proposals in addition informatives outlining best practice methods to ensure these services are operated appropriately and suitable information is provided to address the conditions. An additional informative to advice suitable working hours for construction operations is also recommended.

**Flood Risk and Coastal Management:** No objection. Against SEPAs mapping tool the site has a 0.5% risk of flooding occurring each year. The development is out with the 1:200 year flood area. The proposals are judged to include suitable surface water management methods.

**Landscape Architect:** The overall visual effects on the receiving landscape will be minimal and acceptable. The existing site and expansion area benefits from attractive

vegetation cover of semi natural woodland and rich grassland and it would be beneficial to retain and enhance as much of the landscape cover as possible. It is recommended that a more specific landscape plan to a larger scale is provided which details trees to be removed and retained, extent of ground works and proposed planting and seeding. These details inform the contractors working areas and define tree protection in accordance with BS5837:2012. In addition an explanation of the maintenance of rich grassland would be helpful as this cover could be damaged by routine mowing. It is recommended that the application is approved subject to a condition for a detailed landscape plan.

**Roads Planning:** The proposals will not have a significant impact on the public road network. The applicant should satisfy themselves that they are providing enough parking however given the location of the proposal is it not anticipated that any potential parking issues would have an impact on the public road network. All new private roads should be constructed with a smooth free draining, well compacted running surface which is capable of withstanding a minimum axle load of 14 tonne.

### **Statutory Consultees**

**Community Council:** No response received at the time of writing.

**Scottish Environmental Protection Society (SEPA):** Following an initial objection on lack of information about foul drainage, additional information clarified that the site is to be served by a sewage treatment plant with a discharge to the Liddle Water. There is adequate dilution within the Liddle Water to accommodate this discharge and the application has indicated that their existing licence will be adjusted accordingly. SEPA have withdrawn their objection and are content for the applicant to discuss licence requirements with their regulatory team.

The proposed surface water drainage arrangements are acceptable. The highest risk for pollution is from the construction phase. It is recommended that a SUDS scheme for site development works is agreed by way of a condition of the consent with the Planning Authority.

The site or part of it lies within an area with a medium flood risk from the Whithaugh Burn and the number of tributaries which run through the site add to the flood risk. SPP seeks to avoid development taking place in areas of a functional flood plain. Against SEPA's guidance, the proposals represent a vulnerable land use. A number of the lodges which are being demolished lie within an area of flood risk. The new lodges and associated facilities are being located further away from the Whithaugh Burn and reducing the flood risk at the site. The site is adjacent to the flood extents but no information is held to indicate that the site is at flood risk concluding that no objection is raised on flood risk grounds.

**Scottish Natural Heritage (SNH):** No objection. The species surveys identified the presence of bats across the site, particularly within existing buildings. SNH are the licencing authority for bats and it is recommended that the removal of existing lodges will destroy roosts and will require a licence also the renovation of other buildings (retained lodges, sports hall and swimming pool) may require disturbance/destruction licences.

### **Other Consultees**

None.

## **DEVELOPMENT PLAN POLICIES:**

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

PMD2 - Quality Standards

ED7 - Business, Tourism and Leisure Development in the Countryside

HD3 - Protection Residential Amenity

EP1 - International Nature Conservation Sites and Protected Species

EP2 - National Nature Conservation and Protected Species

EP3 - Local Biodiversity

EP13 - Trees, Woodlands and Hedgerows

IS6 - Road Adoption Standards

IS7 - Parking Provision and Standards

IS8 - Flooding

IS9 - Waste Water Treatment Standards and Sustainable Urban Drainage

## **OTHER PLANNING CONSIDERATIONS:**

- Scottish Planning Policy (SPP) 2014

Approved Supplementary Planning Guidance Notes on;

- Landscape and Development
- Trees and Development
- Biodiversity
- Local Biodiversity Action Plan

Other related considerations;

- Scottish Borders Tourism Strategy (2013 – 2020)
- Visit Scotland consultation paper on National Tourism Development Frameworks for Scotland (updated 2016)

## **KEY PLANNING ISSUES:**

The main determining issue with this application is whether the proposal represents an appropriate form of tourism and recreation development in the countryside and whether the landscape, visual and environmental impacts are considered acceptable.

## **ASSESSMENT OF APPLICATION:**

### Planning Policy

The site is located in a rural location outside of the Newcastleton Settlement Boundary. The principal Local Development Plan Policy is ED7 Business, Tourism and Leisure Development in the Countryside. This policy is supportive of business, tourism and leisure development where the use is appropriate to rural character of the area and it accords with the Scottish Borders Tourism Strategy and Action Plan.

Whithaugh Park Holiday Centre is a recognised tourist, recreation and leisure facility. This development seeks to improve the accommodation and associated facilities at this site. The proposals are tailored to the specific type of tourism that Whithaugh offers, centred on group activities whilst also providing improved family accommodation. The development will remain wholly related to the purposes of tourism and recreation at a site where this land use already operates successfully in

this rural location. The proposals expand the area of the existing development however these extensions remain contained within the grounds of the existing holiday park and do not lead to the diversification of neighbouring land uses. The expansion of the accommodation and facilities at this site does not adversely affect either of the neighbouring agricultural or forestry land uses.

The proposals do not relate to the creation of a new business therefore a business case is not required to support these proposals. They can be considered to be expansions and improvements of a long and well established facility. Economic Development colleagues recommend that the development will comply with the strategic targets of the Scottish Borders Tourism Strategy 2013-2020 as a result of;

- Significantly improving visitor experience
- Increasing occupancy levels (with the potential to accommodate up to 261 guests and 18 members of residential staff)
- Providing better quality accommodation which meets consumer demand
- Providing a range of accommodation across the region
- Building on the success of existing activities
- Supporting direct employment

In addition, the proposed improvement of the accommodation at this site also complies with a Visit Scotland Consultation Paper on a National Tourism Development Plan for Scotland.

Given that the proposals are to be used to provide holiday and staff accommodation it would be appropriate to specifically control the occupation of these premises. The holiday accommodation should only be used for holiday purposes and avoid a scenario where the lodges are capable of being lived in all year round as dwellinghouses which would contravene their justification against Policy ED7. It is understood that the predominant use of the accommodation is to provide short term breaks however there are occasions when visitors stay for longer periods. The standard SBC holiday occupancy condition permits stays of no more than 4 weeks in every 13 week period. Having discussed this with the applicants it was determined that this period would not allow them to accommodate bookings which seek to stay for a longer consecutive period in the year, normally over the summer months. Instead, an allowance for the accommodation to be used by a visitor for up to 3 months in total within any consecutive 12 month period would appear more suitable and the applicants have advised this would be their preference. This restriction would still protect the accommodation being used more permanently so that the premises can only be used for holiday purposes.

The application also seeks to create new and extended staff accommodation at Site B. A separate planning condition which limits the use of this accommodation for staff members only is recommended. This will provide suitable control so that this accommodation cannot be used as permanent residential units which are not related to the operation of the holiday park and also that their use is not confused with the use of the holiday accommodation. The applicants have not raised any issues in discussions about a condition of this nature.

In light of this assessment, it is considered that the proposed re-development and extension of the accommodation and facilities at this existing holiday park will remain appropriate to this countryside location and satisfies the main qualifying criteria of Policy ED7. The suitable occupation of the new guest and staff accommodation buildings can be controlled by appropriately worded planning conditions which are specific to each of these uses. Policy ED7 has a series of criteria that must also be



met by proposals and these will be addressed in the relevant subject sections of this report below.

### Landscape and Visual Impact

The proposals are also required to be assessed against specific landscape and rural amenity criteria of Policies ED7 and PMD2, ensuring the development respects the amenity and character of the surrounding area. Parts of the site are populated by tree cover; therefore Policy EP13 seeks to ensure that woodland resources are not lost where they contribute positively to the amenity of the area.

The site is not located within any designated landscape areas as defined by the LDP. The existing development at Whithaugh Park Holiday Centre has minimal visual impact from surrounding public areas which include Newcastleton and the surrounding public road network. The most significant part of this development (Site A) extends the holiday park on moderately rising ground towards the B6399 and B6357 to the north. Despite the location of development on higher ground, it is considered that existing screening from the planting strips and intervening rising ground will contain the proposals from surrounding public receptors, particularly Newcastleton to the west and the identified public roads. The proposals at Sites B and C are of a small scale and will remain contained in their landscaped surroundings. The overall visual effects of this proposed development on the receiving landscape are judged to be minimal.

The northern expansion at Site A extends out on to an area of rich grass land which is populated by semi natural woodland away from the more densely populated mature woodland towards the bottom third of Site A. A woodland context is also evident at Site B and C. The development works will result in the removal of some tree cover, however any trees which will be lost are located internally within the site and the outer tree cover will be retained which will help contain and screen the development. No objection has been raised by the Landscape Architect about the anticipated loss of existing tree cover.

The expansion does generally seek to position the proposals around existing planting which is welcomed. Further details are required to confirm the extent of construction works, trees which are to be removed and trees which are to be retained. This information will inform where fencing to protect trees is needed before development is commenced. There is also potential to provide additional planting and seeding across the site to enhance its landscape setting. These works can however be agreed by a planning condition covering a detailed landscape plan.

The Design and Access Statement identifies that it is the intention for the site to be developed in a phased manner, justified for a development of this scale. The precise proposals for the phased construction of the site can be agreed by way of a suspensive planning condition to ensure that the site is being developed in a logical manner which limits the impact of the development works on the landscape setting of the site.

It is anticipated that a development of this scale will require a scheme of lighting around the site to provide navigation in the dark. This could be through external lighting fitted to the building, a form of lighting columns or mixture of both. Developments which introduce external lighting on sites where there is no or limited lighting at present can have a visual impact on the wider landscape. Provided the lighting proposals are designed sympathetically, the impact on the landscape will not

be adverse. To retain control over this it is recommended that a suitable lighting management strategy is agreed via a suspensive planning condition.

In principle the impact of the development on the character and appearance of the rural landscape and this sites woodland cover is acceptable. Planning conditions are recommended to agree a detailed landscape plan to ensure that suitable tree works are undertaken and the character and amenity of the rural area is enhanced by additional site landscaping along with a lighting management strategy. The relevant parts of Local Development Plan Policies PMD2, ED7 and EP13 are judged to be satisfied by the proposals.

### Design

Policy ED7 requires developments to satisfy design and siting standards which are set by Policy PMD2.

The siting of the proposals at Site A take advantage of the space available to the north of the existing site. The arrangement of the buildings in clusters with spacing in between allows for the retention of existing planting which helps to create a sense of place. The central hub and the hub building are strategically located centrally within the site next to existing recreational and administrative buildings which will maximise their functionality. The layout neatly links into the existing road layout with the outer road providing a sense of enclosure within the park. The internal road provides links between the clusters and the sites central area.

The siting of the proposals at Site B seeks to keep the new buildings within the flatter part of the site before the land rises more steeply to the south minimising their appearance on approach into the site. The positioning of the new buildings at Site B forms a cluster at this prominent location straddling the sites access and enhancing site security and surveillance. The siting of the new bike shed at Site C is suitably located next to a track which will make it accessible and maximise its usability.

The buildings are of a bespoke design tailored to meet the operational requirements of the holiday park. The different appearance of the various accommodation buildings, the Day Lodges and the hub building make the buildings distinct and help visitors understand their respective use. Some of the footprints of the buildings are large but low heights ranging from 5 metres to 7m in places help the buildings to appear less visually dominant. Importantly, the large landscape setting of the site has the capacity to readily accommodate a development of this scale.

Compared to the buildings which presently occupy this site, the proposals have a relatively contemporary appearance away from the standard Scandinavian style chalets. Visually, the proposals are judged to have an interesting design which is contributed to by the different appearances, roof pitches, building forms, use of glazing and covered terraced areas.

The existing buildings are generally finished with timber walls and tiled roofs with the roofs of the recreation buildings clad using metal sheeting. The finishes of the proposed buildings integrate with the palette of materials already evident at this site. The proposals will lead to a greater use of metal sheeting as a roof finish however this material is judged to compliment the contemporary style of the buildings proposed and is not harmful to the amenity of this rural area. Care will have to be taken to ensure that the precise specifications of the proposed materials are appropriate to this rural location and in particular the metal roof finishes do not have a reflective appearance. This matter can however be addressed via an appropriately

worded planning condition which seeks to agree samples of the materials which are to be used. Provided suitable materials are agreed, the design of the proposed buildings is considered to respect the character of the rural area and the surrounding woodland setting.

The new staff accommodation buildings at Site B have been designed specifically to respond to the topography of the land upon entrance into the site. This design response provides visual interest at this part of the site. Generally the new buildings at Site B and C are in keeping with the architectural theme of other new buildings across the wider development. The extension to the existing accommodation at Site B will have limited visual impact albeit the design of this proposal respects the appearances of the existing building.

While the design of the new buildings differs from the appearance of the existing buildings, this design response illustrates an evolution of building styles at this holiday park. The use of similar materials will help to link the existing and proposed accommodation together. The design of the proposals is recommended to respect the woodland character of this rural location and satisfies relevant placemaking requirements contained in Policies EP7 and PMD2, subject to a condition covering material finishes.

#### Access

Local Development Plan Policies PMD2 and ED7 require safe access to proposed developments, supported by Policy IS7 on parking provision.

When fully complete, the development will increase the volume of accommodation available which will generate more traffic visiting the site. The site is primarily focused on organised group excursions so visitors predominantly arrive by mini-bus, coach with only some car journeys. Due to this means of transportation, it is not anticipated that the development will result in a significant increase in the volume of traffic visiting the site. The majority of traffic will arrive using the B6357 in Newcastleton Main Street then minor roads after crossing the Liddle Water. The minor roads are narrow but are well surfaced and provide opportunities for passing. The Roads Planning Service is satisfied that the existing road network can still accommodate the predicted traffic levels from the proposed development.

The new site layout consists of a single road around the outer edges of the layout. Passing places are provided as part of this road. Roads Planning have not raised any issues with this layout and their recommendation for this new private access road to be constructed to their recommended specification to ensure that the surface is smooth, free draining and capable of accommodating heavier vehicles can be addressed by a suitably worded planning condition.

One of the aims of the proposed layout is to remove the reliance on cars and, as suggested above, the majority of visitors access the site by coach or mini bus. This reduces the number of car parking spaces required to serve the new guest accommodation. The laybys will provide opportunities for buses to drop off visitors at each cluster and park if necessary. There are some opportunities for car parking within the new layout which will be aided by the new parking provision at the hub area. This will also serve visiting members of the public who can use the sports facilities.

The management of the parking will be a role for the site operators. In the unlikely event that parking problems arise, the site has the scale and capacity to address this

without any issues on the public road network. The suggested planning condition to agree the phased construction of the site will ensure that the private access road is completed to a sufficient point to provide access to each unit before it is brought into use.

Subject to the conditions covering the specification of the access road and phasing, it is recommended that the development can be considered compliant with Policies PMD2, ED7 and IS7.

### Ecology

Policies EP1 to EP3 seek to protect sites and species afforded international and national protection from adverse forms of development and also aim to safeguard and enhance local biodiversity.

The application site is not located within or has been identified to impact on any designated nature conservation sites. The grass cover on the site expansion to the north is not considered by the Ecology Officer to be of any botanical note, thus development of this ground does not have a significant impact on any ecological assets. The removal of cabins from the existing wooded area to the south is welcomed as it may enhance the use of this area as a habitat.

Species surveys have been provided and the Ecology Officer is satisfied with the findings of these surveys. A number of bat roosts were found both within lodges which are to be removed and other buildings across the site. SNH and the Ecology Officer have confirmed that under European Protected Species legislation, works to remove the guest lodges will impact on bat habitats, determining that these works will require a licence from SNH. This matter can be addressed by a planning condition to ensure that a sufficient licence is in place before these buildings are removed. In addition SNH have also identified that works to refurbish existing lodges, the sports hall and swimming pool may also need a licence. These refurbishment works do not constitute development and no detailed information of these proposals is included within this application. As protected species legislation is separate from planning legislation and whilst consent may not be required for these works, the developers will still have to abide by parallel regulatory requirements. An applicant informative is recommended to alert the developers of the need for a licence from SNH to should bats be present within these buildings.

A Species Protection Plan for bats is contained within the Bat Report. The Ecology Officer is satisfied with the working approaches and measures to address the loss of bat roosts within these proposals. A planning condition is recommended to ensure that the works are undertaken in accordance with the agreed Species Protection Plan which is judged to suitably mitigate the impact of the development on bats and their habitats.

The ecological appraisals have identified that the development has the potential to impact on breeding birds and badgers. Provided that suitable mitigation to protect both of these species is agreed and the development is undertaken in accordance with the agreed works the development will not have any adverse impact on either of these species. If members are minded to approve this application it is recommended that this matter can be addressed by a planning condition to agree a Species Protection Plan.

Subject to conditions to mitigate the impact of the development on the identified species, the development can be considered to be in compliance with Policies EP1 - EP3 of the Local Development Plan.

### Infrastructure

The main issues with regard to infrastructure provision on the site relates to adequate water and drainage. Local Development Plan Policy IS9 is the most relevant to ensure that adequate site services are in place.

Foul drainage at the site is currently serviced by a septic tank. Following SEPAs objection on grounds of lack of information, it has been clarified that this tank is to be replaced with a new treatment plant to provide the capacity to accommodate the additional units. These works will involve the siting of a new septic tank to the south west of the Family Lodges and the existing services at Site B and C are to be upgraded. Discharge is to be directed towards the Liddle Water with a SEPA licence required for this. SEPA are content with these proposals and their objection has been removed. A planning condition is recommended to ensure that adequate drainage arrangements are in place to service the development before it becomes operational. This can be accompanied by an informative note to ensure that the system is maintained appropriately and that the applicant seeks to have an appropriate SEPA licence in place to operate this system without causing any harm to the water environment.

Surface Water Drainage for the completed development will be handled via a range of run off systems, drainage channels and infiltration into the Whithaugh Burn. These methods are all SUDS compliant. SEPA have identified that the greatest possibility of surface water issues would be at construction stage. No details of the handling of surface water from this process have been provided therefore it is recommended that method to handle surface water in a SUDS-compliant manner for these construction processes is agreed by a suspensive condition.

It is proposed that the development will be served by the existing private water supply. There are no known issues with this existing supply nor has it been suggested that there would be any significant issues with accommodating the additional consumers. It is recommended that confirmation that a suitable supply can be provided is agreed by a suspensive planning condition and related applicant informative.

Subject to appropriate conditions, the developments can be considered to be in compliance with Policy IS9 of the Local Development Plan.

### Other Issues

The application site is located away from any residential properties. The proposed development will not detract from the amenity of any residential properties and will comply with the requirements of Policy HD3 covering the protection of residential amenity.

Policy IS8 seeks to discourage development from taking place in areas which are or may be subject to flood risk. SEPA consider that the site is at some low risk of flooding primarily from the Whithaugh Burn and possibly other small tributaries. The potential flood risk is however below the category of 1 in every 200 years which is referenced as the acceptable threshold for flood risk potential by Policy IS8.

Generally, the development is considered to decrease the prospect of flooding as the proposals involve removing a number of buildings which are close to a tributary of the Whithaugh Burn with the new accommodation and facilities constructed further away from existing watercourses. While SEPA and SBC Flood Protection do not precisely agree on the exact possibility of a flood event at this site, importantly they do concur that the proposal should not be opposed on grounds of flood risk, therefore the proposals are recommended to satisfy the requirements of Policy IS8

Environmental Health Officers have advised that construction works should only be carried out during specific times in accordance with The Control of Pollution Act 1974 and all contractors abide by noise control measures endorsed by the British Standard covering these operations. If Members are minded to approve this application it is recommended that an Informative Note is added to this effect.

## **CONCLUSION**

The proposals are considered to represent a suitable form of tourism and leisure development in the countryside, enhancing and expanding an established tourist and recreation facility in a manner that would contribute positively to the local economy. The proposals specifically respond to the operational requirements of Whithaugh Park Holiday Centre while being designed and sited in a manner that is sympathetic to the character and amenity of the developments rural location. Subject to compliance with the schedule of conditions and informatives, 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 and informatives:

1. The occupation of the lodges shall be restricted to genuine holidaymakers/tourists for periods not exceeding 3 months in total by any particular person or party within any consecutive period of 12 months. The lodges shall not be used as permanent residential occupation. A register of holidaymakers shall be kept and made available for inspection by an authorised officer of the council at all reasonable times.  
Reason: Permanent residential units in this location would be contrary to the Scottish Borders Local Development Plan housing in the countryside policies.
2. All new and extended staff accommodation buildings shall only be occupied by persons employed by Whithaugh Park Holiday Centre, including partners and dependants of such employees.  
Reason: Permanent residential use unrelated to the holiday development in this location would conflict with the established planning policy for this rural area.
3. The development hereby approved shall only be carried out in strict accordance with a programme of phasing which has first been submitted to and approved in writing by the Planning Authority.  
Reason: To ensure that the development of the proceeds in an appropriate manner which respects the landscape setting of the holiday park.
4. No development shall commence until a detailed landscape plan has 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. The plan(s) shall include the following information:

- a) Identifying the extent of ground excavation works for all new and extended buildings, roads and hard standings.
- b) Identifying trees to be removed and retained.
- c) The location of protective fencing in accordance with BS5837:2012 which is to be erected around the trees identified for retention. Once approved the fencing shall be erected before development works commence and shall only be removed when the development has been completed.
- d) A programme of soft landscaping works.

Reason: Further information is required regarding tree removal and protection to ensure impacts on trees are minimised and to enable the effective assimilation of the development into its wider surroundings.

5. 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.

6. No development to be commenced until samples of all external materials to be used on all buildings throughout the site are submitted to, and approved by the Planning Authority and thereafter no development shall take place except in strict accordance with those details.

Reason: To safeguard the visual amenity of the area and the character of the landscape.

7. All new private access roads within the site shall be constructed with a smooth free draining, well compacted running surface capable of withstanding a minimum axle loading of 14 tonne unless otherwise agreed in writing with the Planning Authority.

Reason: To ensure that the development is served by an adequate means of access.

8. All exterior lighting on buildings and throughout the site and the design of cabins to be fully in accordance with the details submitted in a Lighting Management Strategy which shall first be submitted to, and approved by, the Planning Authority.

Reason: To safeguard the visual amenity of the area and the character of the designated landscape.

9. All development works shall be undertaken in strict accordance with the development processes and means of mitigation detailed within the Species Protection Plan for Bats contained within the Bat Survey (Findlay Ecology Services, October 2017) unless otherwise agreed in writing with the Planning Authority.

Reason: To ensure that bats and their habitats which are affected by the development are afforded suitable protection for the construction and operation of the development.

10. No development shall commence until a Species Protection Plan for breeding birds and badgers has 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: To ensure that species and habitats affected by the development are afforded suitable protection for the construction and operation of the development.

11. Prior to the commencement of development, the developer shall provide to the Planning Authority:

- a) a copy of the relevant European Protected Species licence, or,
- b) a copy of a statement in writing from Scottish Natural Heritage (licensing authority) stating that such a licence is not necessary for the specified development.

Reason: To ensure that the development is carried out appropriately and does not adversely affect the ecological interests of the site.

12. No development should commence until the applicant has provided evidence that arrangements are in place to ensure that the private drainage system will be maintained in a serviceable condition

Reason: To ensure that the development does not have a detrimental effect on amenity and public health.

13. No development shall commence until the means of surface water drainage to serve the construction operations associated with this development which complies with Sustainable Urban Drainage Systems (SUDS) regulation has been submitted to and agreed in writing with the Planning Authority and thereafter the development shall be completed in strict accordance with the agreed details:

Reason: To agree suitable means of surface water drainage from the site for potentially contaminative construction operations.

14. No development is to commence until a report has been submitted to and approved in writing by the Planning Authority, demonstrating the provision of an adequate water supply to the development in terms of quality and quantity. The report must also detail all mitigation measures to be delivered to secure the quality, quantity and continuity of water supplies to properties in the locality which are served by private water supplies and which may be affected by the development. The provisions of the approved report shall be implemented prior to the occupation of the building(s) hereby approved.

Reason: To ensure that the development is adequately serviced with a sufficient supply of wholesome water and there are no unacceptable impacts upon the amenity of any neighbouring properties.

#### Informatives

1. With reference to Condition 12, private drainage systems often cause public health problems when no clear responsibility or access rights exist for maintaining the system in a working condition.

Problems can also arise when new properties connect into an existing system and the rights and duties have not been set down in law.

To discharge the Condition relating to the private drainage arrangements, the Applicant should produce documentary evidence that the maintenance duties on each dwelling served by the system have been clearly established by way of a binding legal agreement. Access rights should also be specified.



The applicants should also be aware that a separate licence will be required to be obtained from SEPA for these works.

2. With reference to Condition 14 it is recommended that as the development may result in the general public consuming the water from the private water supply, the supply will be classed as a Type A. This will mean that the supply will be subjected to annual water testing and a risk assessment of the supply. The applicant should contact an Environmental Health Officer before becoming operational to discuss testing of the water.
3. The Control of Pollution Act 1974 allows the Council to set times during which work may be carried out and the methods used.  
It is recommended that any noise generating work is only undertaken between the hours specified below;  
Monday – Friday 0700 – 1900  
Saturday 0700 – 1300  
Sunday (Public Holidays) – no permitted work (except by prior notification to Scottish Borders Council.

Contractors will be expected to adhere to the noise control measures contained in British Standard 5228:2009 Code of practice for noise and vibration control on construction and open sites.

4. With reference to Condition 11, it is recommended that demolition of the existing lodges will require a licence to destroy the bat roosts present in these buildings before development commences. Any renovation of the sports hall, swimming pool and remaining lodges, may require disturbance/destruction licences depending on the work to be carried. The applicant should liaise with SNH regarding this. Further information on the licensing application process and the European Protected Species licensing tests can be found via the following link:-  
<https://www.nature.scot/professional-advice/safeguarding-protected-areas-and-species/licensing/species-licensing-z-guide/bats-and-licensing/bats-licences-development>

#### DRAWING NUMBERS

Location Plan	2211-(PL)001
Site Plan	2211-(PL)002
Existing Site Plan	2211-(PL)003
Site Plan A	2211-(PL)004
Site Plan B	2211-(PL)005
Site Plan C	2211-(PL)006
Elevations	2210-(PL)007
Elevations	2210-(PL)008
Elevations	2210-(PL)009
Elevations	2210-(PL)010
Elevations	2210-(PL)011
Elevations	2210-(PL)012
Roof/Floor Plans	2210-(PL)013
Elevations	2210-(PL)014
Elevations	2210-(PL)015
Existing Elevations	2210-(PL)016
Elevations	2210-(PL)017
Elevations	2210-(PL)018
Drainage Details	16011-52-050

Below Ground Drainage      16011-52-002  
Water Mains Proposals      16052 (90)001

**Approved by**

Name	Designation	Signature
Brian Frater	Service Director (Regulatory Services)	

The original version of this report has been signed by the Service Director (Regulatory Services) and the signed copy has been retained by the Council.

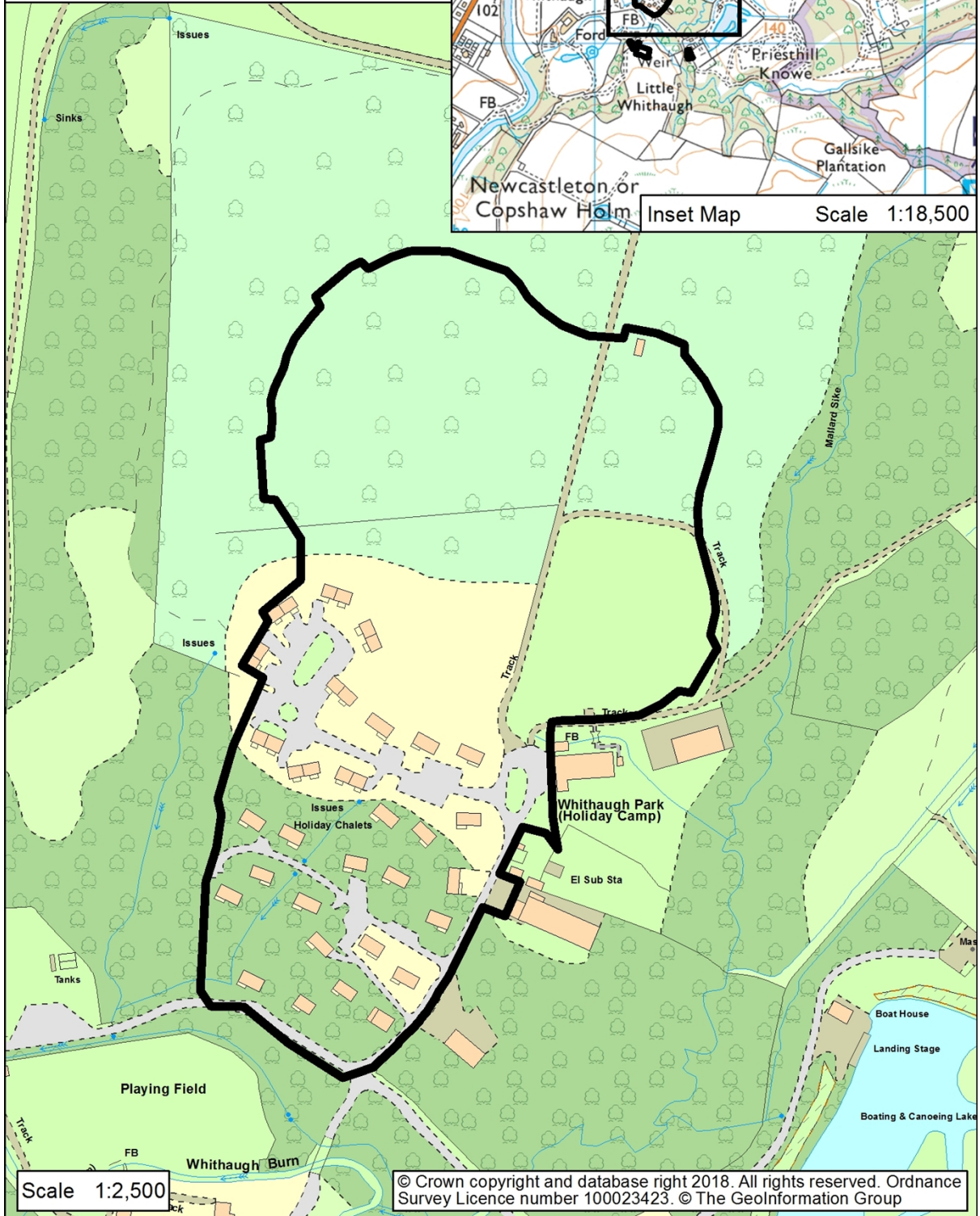
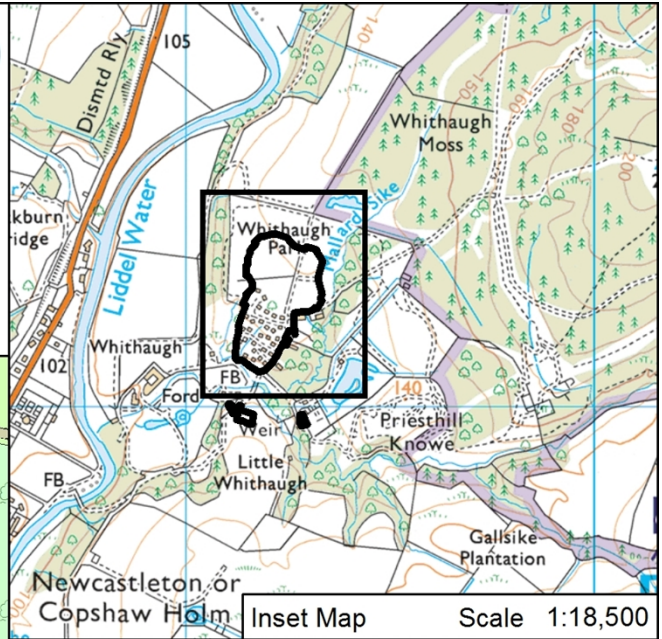
**Author(s)**

Name	Designation
Scott Shearer	Peripatetic Planning Officer



17/01740/FUL

Whithaugh Park Holiday Centre  
Newcastleton



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**SCOTTISH BORDERS COUNCIL**

**PLANNING AND BUILDING STANDARDS COMMITTEE**

**30 APRIL 2018**

**APPLICATION FOR PLANNING PERMISSION**

**ITEM:** 17/01602/PPP  
**OFFICER:** Paul Duncan  
**WARD:** East Berwickshire  
**PROPOSAL:** Erection of dwellinghouse  
**SITE:** Land South Of Rossleigh, Horndean  
**APPLICANT:** Mr Robert Sloan  
**AGENT:** Mr Melvin Winter

**INTRODUCTION**

This application was scheduled for consideration by the Planning & Building Standards Committee in March. However, late evidence was submitted by a third party to demonstrate that a small proportion of the site was not within the ownership of the applicant and therefore that the correct legal notices had not been served on the landowner in question. Consideration of the application was therefore deferred in order for this matter to be addressed. In response, the applicant has amended the site boundary to exclude the area of land in question, meaning no new notices are required.

**SITE DESCRIPTION**

The proposed site is located at Horndean, a mainly residential hamlet located roughly half a mile south of the B6461 road. Horndean is an established building group of 13 dwellinghouses which sit off a minor public road which winds through the hamlet. The building group is traditional in character. Dwellinghouses are mainly of stone construction under slate roofs, mostly fronting onto or set a short distance back from the minor public road in an informal pattern.

Whilst most land which abuts the minor road within Horndean is in residential use, the proposed site is arable land and is understood to have been farmed for many years. The site is irregular in shape, and forms a far corner extension of a much larger field to the north-west.

Two dwellinghouses (Rossleigh and The Wyld) sit in garden ground immediately to the north of the site. An informal pedestrian access to the north of the site serves Rossleigh. To the east, Homefield fronts the minor public road directly opposite the site. A further dwellinghouse (Ashfield) sits to the south of the site. Trees and hedging border the site to the south and east, and overhead lines cross the site at the minor public road and to the south of the site.

**PROPOSED DEVELOPMENT**

The application is for planning permission in principle for the erection of a single dwellinghouse. As the proposal is in principle only, no elevation drawings are required and none have been provided. Indicative site layout plans have been submitted which confirm that access would be taken directly from the minor road,

opposite Homefield. An earlier iteration of the indicative site plan showed the existing pedestrian access to Rossleigh within the site. This has now been superseded following a land ownership dispute by a new site plan which shows this path located outwith the application site.

## **PLANNING HISTORY**

There is no recent planning history on the site. Two new dwellinghouses have been built within the building group in recent years, as summarised per site below:

- **Orange Tree Cottage, Horndean**  
08/01715/FUL - Erection of dwellinghouse and detached double garage
- **Swallowdene, Horndean**  
10/01447/FUL - Erection of dwellinghouse and detached garage

Earlier approvals within Horndean at land east of Westfield (06/00175/OUT & 07/00269/REM) and Plot 2, Land North East of Rossleigh Cottage (08/00788/OUT) were granted permission in 2007 and 2013 respectively but have since timed out. A fresh application for the erection of a dwellinghouse on Plot 2, Land North East of Rossleigh Cottage (18/00438/FUL) was submitted earlier this month and is currently pending consideration.

## **REPRESENTATION SUMMARY**

Eight households have lodged objections to the proposed development. One household has lodged comments in support the application. These are available for Members to view in full on Public Access however the principal grounds of objection can be summarised as follows:

- Contrary to Policy HD2
- Development would conflict with the established land use
- Alternative/ brownfield sites preferable
- Precedent/ intentions for further residential development
- Adverse impact on historic building group
- Adverse impact on landscape setting
- Impact on neighbouring residential amenity
- Noise and disruption from construction
- Loss of Prime Agricultural Land
- Gate into site is newly erected/ access did not previously exist
- Impact on wildlife
- Road safety/ increased traffic
- Passing places would be required
- Danger to pedestrians
- Lack of infrastructure/ amenities within the village
- Impact on neighbouring drainage arrangements
- Poor drainage/ surface water flooding
- Site not suitable for septic tank soakaway
- No public transport would result in reliance on private motor vehicle resulting in carbon emissions
- Risk of septic tank run-off into neighbouring garden ground
- Increase in surface water run-off and flood risk

- Mains water pressure insufficient to accommodate further housing
- Loss of open space
- Uninhabited houses and derelict historic cottages should be developed first
- Limited opportunities to design out energy needs or utilise sustainable resources
- The proposed plot creates a less accessible area of agricultural land
- The new footprint does not accord with the established pattern of dwellings in Horndean
- There is no general pattern of development in Horndean
- The drawings lack detail with no mention of the position of the windows
- The retention of a 3 metre space between the proposed plot and the existing buildings is a concern. The applicant previously planned to retain an access to the land to the side and rear of this proposed plot with a view to further development. If the current proposal is considered acceptable a condition to use this space to plant, maintain and retain a 3 metre wide hedge, in perpetuity, should be added to the existing conditions
- Loss of view (*not a material planning consideration*)

The application was advertised in the Berwickshire News.

### **APPLICANTS' SUPPORTING INFORMATION**

The applicant wrote a statement in response to the concerns expressed by objectors. This can also be read in full on public access. A summary of the some of the points made are listed below:

- The site is an awkward corner of the field, suitable for growing only a narrow range of crops
- A properly designed and constructed sewage facility is intended, to SEPA regulations and guidelines
- The gardens on the North Boundary are a lot higher than the site and would never take water from the site.
- The site slopes down towards the East and there is no chance it will flood. I have not seen water gushing on to the main road.
- It is incorrect to say that my 19 acre field is all drained through the site. The field drains enter the stream north of the village. Only that small corner of the field is drained to the east.

### **CONSULTATION RESPONSES:**

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

**Roads Planning:** No objection, subject to the delivery of a suitable means of access; a passing place on the minor public road; two parking spaces and turning within the site; and measures to be put in place to prevent the flow of water onto the public road.

**Education:** No objection. The proposed development is within the catchment area for Swinton Primary School and Berwickshire High School. A contribution of £3,428 is sought for the High School. Contributions are sought to raise capital to extend or improve schools or where deemed necessary to provide new schools in order to ensure that capacity issues are managed and no reduction in standards is attributed to this within the Borders Area.

**Environmental Health:** No objection, subject to conditions relating to drainage systems and water supply.

**Flood Officer:** No objection. Review of the application shows that the proposed site is located outwith SEPA's 1 in 200 year and is not considered at risk of fluvial or surface water flooding. Boundary drainage could be considered to intercept any overland flow. Ground levels surrounding the dwelling should also be designed to convey overland flow away from the development and any neighbouring properties.

**Ecology Officer:** No objection, subject to a condition requiring a Preliminary Ecological Appraisal (PEA) and Species Protection Plan. Habitats that may be affected by the development could support protected species such as bats, badger and breeding birds. The roadside trees appear to be semi-mature ash and sycamore, and as such appear to offer negligible bat roost potential. Any FUL or AMC application would need to be supported by a Species Protection Plan informed by a Preliminary Ecological Appraisal (PEA). It is unlikely that a development of this scale and type would have a significant adverse impact on the ecological interest at this site.

### **Statutory Consultees**

**Swinton and Ladykirk Community Council:** Provided the application meets the regulations of Scottish Borders Council Planning and Roads departments, as well as SEPA and Scottish Water, the Community Council has no objection to this application. The Community Council is aware that there is strong local objection to the application.

### **Other Consultees**

None.

## **DEVELOPMENT PLAN POLICIES:**

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

PMD1 - Sustainability  
PMD2 - Quality Standards  
ED10 - Protection of Prime Quality Agricultural Land and Carbon Rich Soils  
HD2 - Housing in the Countryside  
HD3 - Protection of Residential Amenity  
EP1 - International Nature Conservation Sites and Protected Species  
EP2 - National Nature Conservation and Protected Species  
EP3 - Local Biodiversity  
EP13 - Trees, Woodlands and Hedgerows  
IS2 - Developer Contributions  
IS7 - Parking Provision and Standards  
IS8 - Flooding  
IS9 - Waste Water Treatment Standards and Sustainable Urban Drainage

### **Other considerations:**

Scottish Planning Policy (SPP)  
New Housing in the Borders Countryside SPG  
Privacy and Sunlight SPG  
Trees and Development SPG



### **KEY PLANNING ISSUES:**

Whether, in principle, a dwellinghouse could be accommodated at the proposed site without conflicting unacceptably with planning policies relating to (a) new housing in the countryside; (b) placemaking; (c) residential amenity; and (d) road safety.

### **ASSESSMENT OF APPLICATION:**

#### Background

As this application is for planning permission in principle only, no proposals for the design of the proposed house have been requested or put forward. The consideration of this application should rest solely on the question of whether a dwellinghouse could, in principle, be accommodated on the site. Should Members approve this application, detailed matters would be considered by a subsequent application(s) for the approval of matters specified in conditions attached to the consent granted or approval of a full planning application. The recommended conditions are listed at the end of this report.

#### Policy Principle

The Council's planning policies direct most housing development to towns and settlements where services and public transport connections are most readily available. Rural housing proposals may however be supported, where they can be accommodated in accordance with the principles of Local Development Plan Policy HD2 (Housing in the Countryside) and the New Housing in the Borders Countryside Supplementary Planning Guidance (SPG). Part (A) of this Policy (Building Groups) is most relevant in this instance and aims to support suitable new rural housing where it is associated with existing building groups of three units or more. It is accepted that there is an established building group of 13 dwellinghouses at Horndean. Policy HD2 sets a maximum number of 2 additional dwellings within or adjacent to an established building group within the Local Development Plan period, or a 30% increase in the group, whichever is higher. As there are no existing planning approvals, or new dwellings constructed at Horndean since the current local development plan was adopted, a single additional dwellinghouse would comfortably meet the numerical limit within Policy HD2.

The remaining tests of HD2(A) seek to ensure a good relationship between proposed sites and their respective building groups. These tests are supplemented by the additional guidance and interpretation provided by the New Housing in the Borders Countryside SPG. Policy HD2(A) requires new building group development to be well related to existing building groups. The SPG requires such development to be either within or adjacent to existing building groups. Most land sitting off the main road through Horndean is either built on or forms garden ground. The proposed site - an undeveloped corner of a field - is an exception to this prevailing development pattern. It could reasonably be argued that the site is either within the building group, in the sense that it is within the prevailing boundary of Horndean, or, on the basis that it is undeveloped farmland, adjacent to it the group but still contained within the established sense of place. Either interpretation could satisfy the SPG policy test. More critical to establishing suitability is the relationship between the proposed site and the existing building group, which is mostly defined by assessing the extent of the prevailing sense of place. It is considered that it is the relationship of land to the

minor road that defines this more than anything else. The proposed site sits just off the minor road, well within the hamlet, with only partial intervening natural boundaries, and minimal man-made boundaries. There is unobstructed visibility from the road into the site. Overall, it is considered that the site falls within the area contained by the prevailing sense of place, and that the site is well related to the existing building group.

The New Housing in the Borders Countryside SPG provides further guidance which defines what factors should be taken into account in assessing the suitability of any particular building group to accommodate new housing. The proposed site would not result in sprawl or extensions of ribbon development, which the SPG seeks to avoid. The site is within a reasonable distance of existing properties, and reflects the spacing between existing properties. Whilst the site is undeveloped agricultural land, the field is of an irregular shape. No precedent would be set if this site was developed. It is unlikely that further housing development to the rear of the plot would be acceptable. Members should be aware that the site is greenfield land, but rural housing policies do not preclude greenfield development. There would be no conflict with the main established land uses in the vicinity. Policy HD2(B) has been referenced by one objector but this applies only within the Southern Market Area in the south-east of the Scottish Borders.

There is some overlap between the aims of requirements of Policy HD2(A) and the New Housing in the Borders Countryside SPG and the Council's Placemaking policies, which are considered below.

#### Placemaking

Horndean is an attractive building group of a traditional character. Objectors have quite understandably expressed concern at how the site may be developed and the risk that development undermines the special qualities and character of the hamlet. It is agreed that any proposals will require very careful consideration and must be wholly sympathetic to the existing context. The impact of the proposed development must not result in an unacceptable adverse impact on the character of the group or on the landscape and amenity of the surrounding area. This is also one of the key tests for compatibility with Policy HD2 (A).

It has been established above that the proposed site is physically well-related to the existing building group at Horndean. As this application is in principle only, there is only a limited capacity to assess proposals for their impact on the character of the building group. Given the constraints on the site however, which include overhead lines and neighbouring amenity considerations, it would be prudent to explore how such a sensitive site might be developed. In order to do so, the applicant was invited to submit a site plan showing the position of the proposed house to demonstrate how it would relate to its context. The submission of the original indicative site layout was helpful in addressing the presence of overhead lines and showing consideration to impacts on residential amenity. Some concerns remained about the approach that was envisaged. The proposals underlined the need for careful positioning and design to ensure that the development reflects the existing context at the building group, in that the indicated footprint of the build was at odds with the pattern of development at Horndean, being set far back from the road. The pattern of development within Horndean is irregular in nature, but most dwellings either front onto the road, or are set a shorter distance back. A wide and prominent site entrance and driveway was also indicated, which would again be inconsistent with the established development pattern. Further revised site plans have been submitted which go some way to addressing these concerns. The detailed scheme will

however require very careful attention to demonstrate that it will be a sympathetic addition to the group. That will require consideration not just of position and design, but also early attention to integrated landscaping as mature trees play an important part in the setting of the building group and the wider sense of place.

The context at Horndean will need to be reflected in both the siting and design of the proposed house, should Members support this application. The submission of a site plan has confirmed that the site could – in principle – be developed satisfactorily without resulting in unacceptable adverse impacts on the character of the group or the surrounding landscape and amenity. Given the prevalent character of the group, a traditional form and design is likely to be most successful here. Careful consideration of design will be required and a planning condition is recommended to ensure the AMC application is supported by a comprehensive design statement.

#### Traffic and road safety

Objectors are concerned that existing road safety issues would be exacerbated by the proposal. Concerns include the speed at which vehicles travel through Horndean; poor visibility; poor provision for pedestrians; and reference has been made to a recent road traffic accident. The proposal has been assessed by the Roads Planning Officer. Various improvements to local infrastructure and site access are required, including an additional passing place on the minor road and measures to prevent the flow of water onto the public road. Conditions are recommended to ensure suitable control over these points. In principle however, the Roads Planning Officer has no objection to the proposal.

#### Residential and Neighbouring Amenity

Neighbouring properties to the north (Rossleigh and The Wyld) and east (Homefield) face directly onto the site. Side windows on the neighbouring property to the south (Ashfield) also face towards the site. Neighbours are concerned that the erection of a dwellinghouse on the site could adversely affect their privacy. As no detailed proposal is under consideration there is no proposal to assess against the Council's standards for privacy and loss of light. It is however possible to determine whether a dwellinghouse which meets those requirements could be achieved on the site. Assuming the resulting dwelling house faces the minor road, there will be no strict requirement for windows on the north and south side elevations. Alternatively, obscure glazing could be utilised, if necessary. The screening benefit of bounding trees and hedging would also be factored into any subsequent assessment. There is a greater potential for impact on Homefield, which sits directly opposite the proposed site. The Council's Privacy and Sunlight SPG recommends at least 18m should be maintained between directly opposite windows of principal rooms, although local context can allow for standards to be relaxed. The design of the house would need to meet both privacy standards and the expectations in terms of Placemaking described above. This will be possible, but will need careful thought.

The proposal is less likely to raise concerns in relation to access to light, but such impacts will also be formally assessed at the AMC stage. Boundary walls and hedges should reflect the local context at Horndean. It is not anticipated that they would adversely affect access to light as per objector concerns.

It is noted that the south side of the Rossleigh property benefits from an informal footpath access. The applicant has amended the proposed site plan accordingly to remove this area from the application site. As this informal access will be retained

it will maintain pedestrian access to Rossleigh and will not have an adverse impact on the amenity on neighbouring dwellings.

Vehicular access arrangements will be formally considered at the AMC stage.

#### Flood risk and drainage

Objectors have raised concerns that the erection of a dwelling could exacerbate poor drainage on the site, increasing surface water run-off and flood risk and potentially impacting neighbouring foul drainage arrangements. As this application is at the PPP stage there is no detailed proposal to assess. The policy test is therefore whether, in principle, a dwellinghouse could be erected on the site without leading to unacceptable impacts. The Council's Flood Officer has assessed the proposals and notes that the site is not considered to be at risk of fluvial or surface water flooding as shown on SEPA flood mapping. The Flood Officer has no objection to the principle of development on this site, but does advise that boundary drainage be considered to intercept any overland flow. The Roads Officer has similarly requested that measures be put in place to prevent the flow of water onto the public road. The Flood Officer also advises that ground levels surrounding the dwelling should be designed to convey overland flow away from the development and any neighbouring properties. These matters can be assessed and addressed in full at the AMC stage. There is no reason to believe a dwellinghouse could not be delivered on the site without adverse drainage or flooding impacts. It would be for the applicant to ensure that any proposal that comes forward at the AMC stage suitably addresses these issues. The AMC application should provide details of development levels relative to existing levels so these impacts can be properly assessed. The recommended conditions have been worded accordingly.

Similarly, there is no requirement for the applicant to finalise foul drainage arrangements at the PPP stage. Objectors are concerned about septic tank run-off and the suitability of the site for such arrangements. The applicant has outlined an intention to deal with foul drainage arising from the development by way of a septic tank with discharge to land via a soakaway, but precise foul drainage arrangements for this proposal would be considered at a later stage and will be controlled by an appropriately worded condition. It should be noted that SEPA are no longer providing planning consultation responses on small scale proposals such as this. Instead any proposal would be assessed in full at the building warrant process. Members will note the requested condition to control future maintenance of any approved drainage system from Environmental Health. The future maintenance of any private drainage system would be controlled under environmental health legislation however there are no planning reasons why the suggested condition cannot be added to any consent that may be granted.

#### Natural Heritage

Existing trees border the site and contribute its setting. The applicant has confirmed that there is no intention to remove any of these trees but it would be appropriate to ensure their protection during construction. Indicative planting was shown on the site plan but is not considered adequate to ensure the sensitive integration of the development into the surrounding landscape and local streetscape. Planning conditions are proposed to require the agreement and implementation of a scheme for soft landscaping, and to ensure protection of trees during construction. A condition to control the felling of trees is also recommended. It is not considered that any adverse landscape impact should arise so long as these requirements are met.

The proposed site is mostly an arable field with limited ecological value. The Ecology Officer has been consulted and has no objection to proposals in terms of potential impacts on wildlife or ecological interests generally. Nevertheless it is considered that local habitats could support protected species and could potentially be affected by the development. A Species Protection Plan, to be guided by the results of a Preliminary Ecological Appraisal (PEA) has been requested. A planning condition is recommended to cover this.

### Other matters

Concerns regarding local mains water pressure are noted. A condition is recommended to require the applicant to provide written confirmation from Scottish Water at the AMC stage that suitable mains water supply is available. Private arrangements would otherwise be required.

Whilst the site is arable land it is not recorded as prime agricultural land. The related policy provisions (Policy ED10 - Protection of Prime Quality Agricultural Land and Carbon Rich Soils) do not apply in this instance.

Opportunities to design out energy needs and utilise sustainable resources can be addressed when detailed proposals are being considered.

It is appreciated that local residents would be affected by any future construction phase. This is the case with most development proposals. The circumstances in which a new gate and/or access at the entrance to the site were formed are not determining factors in this application.

A development contribution of £3,428 is sought for Berwickshire High School which the applicant has indicated a preference to address by way of a Section 69 legal agreement.

### **CONCLUSION**

It is considered that a dwellinghouse could be accommodated satisfactorily at the proposed site which is well related to the established building group at Horndean in compliance with policy HD2 and the New Housing in the Borders Countryside SPG. Development of the site could be achieved without adversely affecting the character of the building group, the landscape and amenity of the surrounding area, road safety or neighbouring amenity, subject to satisfactory design and landscaping.

Detailed proposals will need to be supported by a design statement, demonstrating that the proposed house is sympathetic to the character of the building group, in terms of design, position and landscaping.

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

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

1. No development shall commence until details of the layout, siting, design and external appearance of the building(s); the means of access thereto; all finished ground and development levels relative to existing levels; parking for two cars within the site; foul and surface water drainage arrangements, including

measures to prevent the flow of water onto the public road and details of boundary drainage; and, the landscaping and boundary treatment of the site, have been submitted to and approved in writing by the Planning Authority.

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

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

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

3. The first application for Approval of Matters Specified in Conditions shall include a scheme of details for site access. The details shall include the design of the new site access on to the public road. Thereafter the development shall be carried out in strict accordance with the agreed details and the site access shall be completed before the dwellinghouse hereby approved is occupied.

Reason: To facilitate safe access to the site and ensure that the public road network can safely cater for the development.

4. The first application for Approval of Matters Specified in Conditions shall be accompanied by a detailed design statement which shall inform the details required by Condition 1 above, but which makes specific reference to consideration of building design, position within the plot and landscaping to demonstrate that the development reflects and is sympathetic to the character of the wider building group.

Reason: To ensure a satisfactory form of development, acknowledging the sensitive nature and location of the site and the character of the building group.

5. No development shall commence until a passing place has been provided on the minor public road at a precise location and specification that shall first be agreed in advance with the Planning Authority.

Reason: in the interests of road safety.

6. Parking and turning for a minimum of two vehicles, excluding any garages, must be provided and retained in perpetuity within the curtilage of the property. Parking and turning must be provided prior to the occupation of the dwellinghouse.

Reason: To ensure adequate on-site parking and turning space is provided within the plot.

7. Before any part of the development hereby approved is commenced, the trees on the boundary of the site shall be protected by a protective barrier to a standard and format compliant with BS 5837 2012, placed at a minimum radius of one metre beyond the crown spread of each tree adjacent to the site, 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; and
- (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 adjacent to the development site, the loss of which would have an adverse effect on privacy of the neighbouring property.

8. No development shall take place except in strict accordance with a 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 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.

9. No development shall commence until detailed drawings showing which trees are to be retained on the site shall be submitted to, and be approved in writing by the Planning Authority, and none of the trees so shown 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. The first Approval of Matters Specified in Conditions application lodged shall be supported by a Preliminary Ecological Appraisal (PEA) which shall, where necessary, set out mitigation for adverse impacts on protected species in the form of a Species Protection Plan. Thereafter, the development to be completed wholly in accordance with an agreed Species Protection Plan.

Reason: in the interests of biodiversity.

11. No development shall commence until:
- (a) the Applicant has first submitted to the Planning Authority under an AMC application, either (i) a report by a suitably qualified person, demonstrating the provision of an adequate water supply to the development in terms of quality, quantity and the impacts of this proposed supply on the water supplies of surrounding properties; or (ii) documentary evidence from Scottish Water, demonstrating that the dwellinghouse hereby approved is capable of being served from the public mains; and
  - (b) this same report or documentary evidence (whichever is applicable) has itself first been approved in writing by the Planning Authority.

Thereafter, the water supply arrangements for the dwellinghouse hereby approved, shall then be implemented in accordance with the approved details,

and the same dwellinghouse shall not be occupied until this water supply is first fully functional in accordance with the approved details.

Reason: To ensure that the site is adequately serviced without any detrimental effect on the water supplies of surrounding properties.

12. No water supply other than the public mains shall be used to supply the Development without the written agreement of the Planning Authority. Written confirmation from Scottish Water is required to demonstrate that a connection to the public supply is available to serve this site.

Reason: To ensure that the Development is adequately serviced with a sufficient supply of wholesome water and there are no unacceptable impacts upon the amenity of any neighbouring properties.

13. No development should commence until the applicant has provided evidence that arrangements are in place to ensure that the private drainage system will be maintained in a serviceable condition

Reason: To ensure that the development does not have a detrimental effect on amenity and public health.

#### Informative

1. In relation to Condition 13 above, private drainage systems often cause public health problems when no clear responsibility or access rights exist for maintaining the system in a working condition. Problems can also arise when new properties connect into an existing system and the rights and duties have not been set down in law. To discharge the Condition relating to the private drainage arrangements, the Applicant should produce documentary evidence that the maintenance duties on each dwelling served by the system have been clearly established by way of a binding legal agreement. Access rights should also be specified.
2. In relation to Condition 3 above, the means of access to the site shall be by way of a service layby, in accordance with approved detail DC-3, or similar approved. It should be borne in mind that only contractors first approved by the Council may work within the public road boundary.
3. Stoves and Use of Solid Fuel can cause smoke and odour complaints and any Building and Planning Consents for the installation do not indemnify the applicant in respect of Nuisance action. In the event of nuisance action being taken there is no guarantee that remedial work will be granted building/planning permission. Accordingly this advice can assist you to avoid future problems. The location of the flue should take into account other properties that may be downwind. The discharge point for the flue should be located as high as possible to allow for maximum dispersion of the flue gasses. The flue should be terminated with a cap that encourages a high gas efflux velocity. The flue and appliance should be checked and serviced at regular intervals to ensure that they continue to operate efficiently and cleanly. The appliance should only burn fuel of a type and grade that is recommended by the manufacturer. If you live in 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 at [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**

<u>Reference</u>	<u>Plan Type</u>	<u>Drawing date</u>	<u>Received date</u>
RS2017	Location Plan	28/03/18	10/04/18
RS2017	Site Plan	28/03/18	10/04/18

### **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.

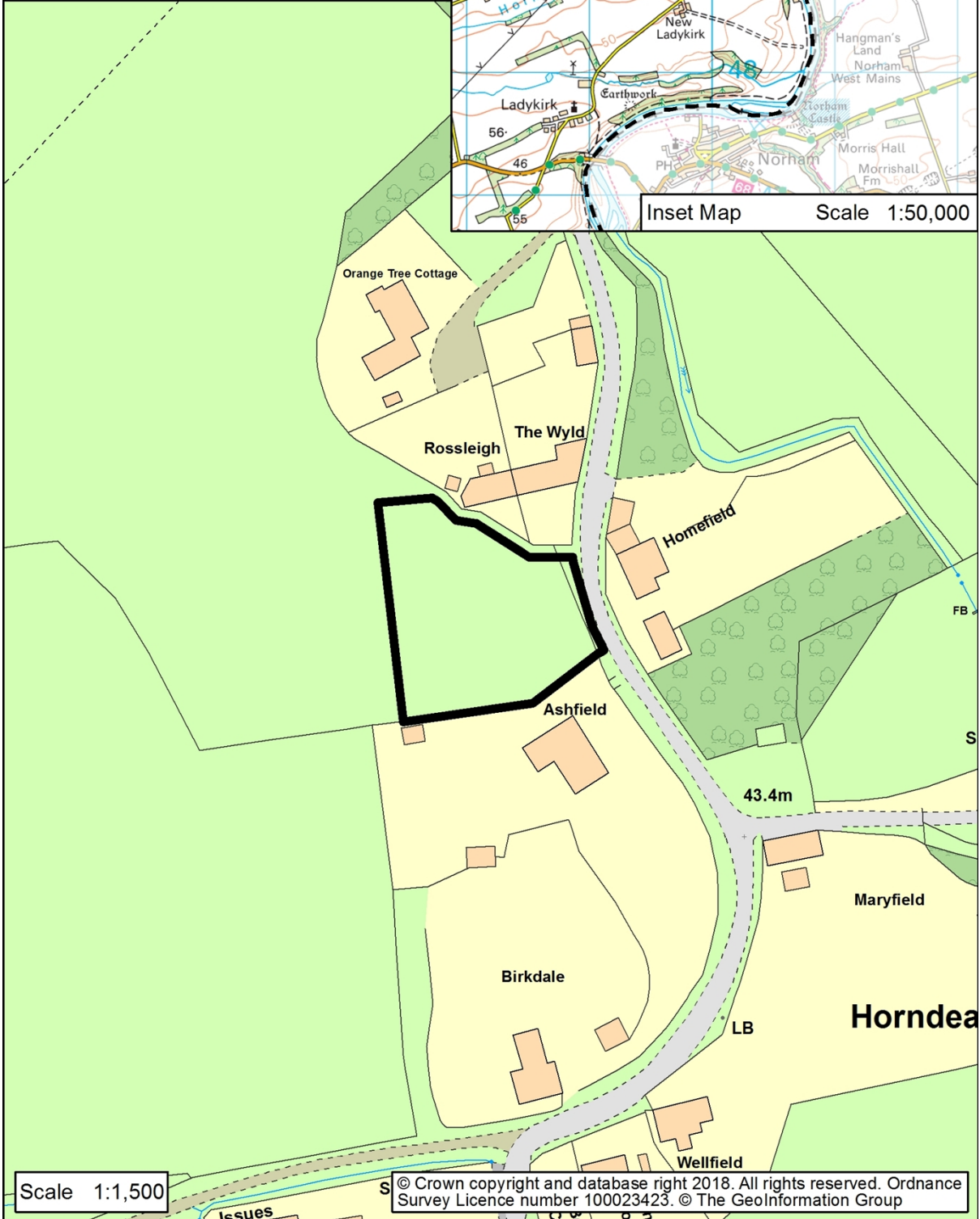
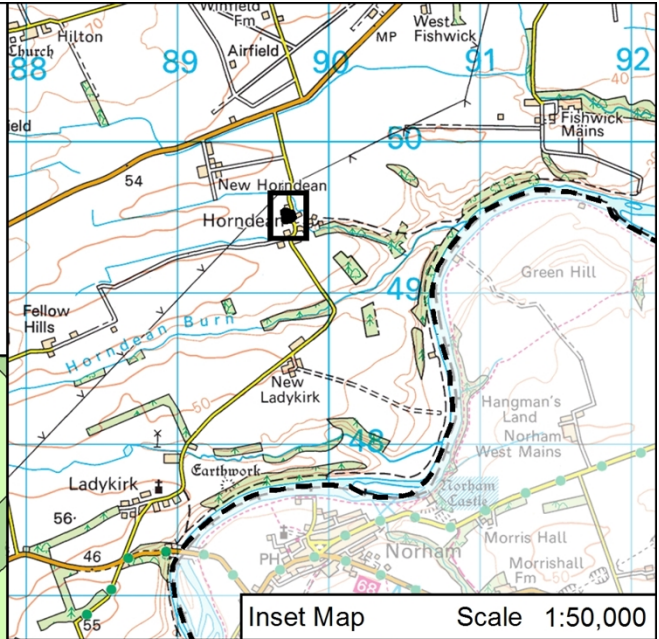
### **Author(s)**

Name	Designation
Paul Duncan	Assistant Planning Officer



17/01602/PPP

Land South of Rossleigh  
Horndean



**SCOTTISH BORDERS COUNCIL**

**PLANNING AND BUILDING STANDARDS COMMITTEE**

**30 APRIL 2018**

**APPLICATION FOR PLANNING PERMISSION**

<b>ITEM:</b>	<b>REFERENCE NUMBER:</b> 17/00923/PPP
<b>OFFICER:</b>	Andrew Evans
<b>WARD:</b>	Selkirk and District
<b>PROPOSAL:</b>	Erection of two dwellinghouses
<b>SITE:</b>	Land West Of Peelgait, Selkirk
<b>APPLICANT:</b>	Beaton Forestry
<b>AGENT:</b>	Stuart Davidson Architecture

**SITE DESCRIPTION**

The application relates to a site on the south western edge of Selkirk, to the north east of the existing dwellings at Peelgait. The site is located within the Development Boundary as defined by the Local Development Plan 2016. The application site comprises a broadly triangular area of sloping grass paddock currently used for grazing.

To the North of the site is located existing housing at Deer Park. The rear of these houses overlooks the application site. To the South is located existing housing at Peelgait. The frontages of these houses face towards the application site, though there is a significant change in levels between the existing housing and the application site. To the East of the site is located sloping parkland, forming part of the Haining Designed Landscape.

**PROPOSED DEVELOPMENT**

This is an application for planning permission in principle. The latest set of indicative plans for the application would see two dwellings erected on the site. This is a reduction from the three dwellings originally proposed. An access road to the site would be taken from the existing road serving Peelgait.

**PLANNING HISTORY**

The site has been subject to previous applications as follows:

11/00039/PPP - Proposed erection of dwellinghouse. The application was withdrawn following an objection from Historic Scotland.

**REPRESENTATION SUMMARY**

In total 19 letter and emails of objection were received, along with two general comments.

The objections were received from 10 separate Households. The points raised in objection can be summarised as follows:

- Adverse impact on neighbouring private water supply. This development will clearly overlay the pipe run from the well to objector's properties.

- The water supply should be surveyed / checked during construction and checked thereafter.
- The access to piping for maintenance purposes must not be impaired and this would be significantly adversely affected by the proposed development.
- Find it inconceivable that Scottish Borders Council (SBC) would consider a planning application without taking account of the private water supply, the fact the well is privately owned and none of the properties on the private water supply were consulted.
- Queried who is liable for in future if water contamination arises
- There is insufficient access to serve the site
- the access road along Peel Gait is too narrow to allow any more housing
- No sufficient parking space
- Inadequate drainage
- The proposed road would be too steep, particularly in winter
- The well should be protected
- The owner of the well would not agree to seating or development around it.
- Loss of light
- Loss of view
- No sufficient parking space
- Overlooking
- Privacy of neighbouring properties affect
- Subsidence
- Complaints people served by the water supply were not notified of the planning application (Note this is not a notifiable interest – only postal premises within 20m are notifiable)

The general comments can be summarised as follows:

- The well owner had concerns about the house nearest it (this house was since removed in the revised drawings)
- Concerns (but no objection) registered to the application – Including concerns about ownership.

#### **APPLICANT'S SUPPORTING INFORMATION**

- Photomontage showing the edge of settlement.
- Further details relating to the private water supply within the site which serves neighbouring dwellings (objectors)

This supporting information is available for members to view in full on Public Access.

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

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

PMD1 Sustainability  
 PMD2 Quality Standards  
 PMD3 Land Use Allocations  
 PMD5 Infill Development  
 HD3 Protection of Residential Amenity  
 BE3 Gardens and Designed Landscapes  
 IS2 Developer Contributions  
 IS3 Developer Contributions Related to the Borders Railway  
 IS5 Protection of Access Routes  
 IS6 Road Adoption Standards

IS7 Parking Provision and Standards  
IS9 Waste Water Treatment Standards and Sustainable Urban Drainage  
EP1 International Nature Conservation Sites and Protected Species  
EP13 Trees, Woodlands and Hedgerows

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

Scottish Planning Policy 2014  
Designing Streets 2010  
SPG Affordable Housing 2015  
SPG Development Contributions 2011 (updated 2018)  
SPG Trees and Development 2008  
SPG Landscape and Development 2008  
SPG Green Space 2009  
SPG Placemaking and Design 2010  
SPG Guidance on Householder Development 2006  
SPG Waste Management 2015  
SPG Designing out Crime in the Scottish Borders 2007

#### **CONSULTATION RESPONSES:**

Scottish Borders Council Consultees

##### **Roads Planning Service: First Response:**

When the development at Peelgait was built, the design standard at that time for the road constructed was suitable for a development of up to 15 houses. Current design policy, 'Designing Streets', encourages informal layouts and shared surfaces which naturally calm traffic movements. Whilst the existing infrastructure does not include pavements this is over a relatively short section and the road geometry at present does not encourage high traffic speeds. When taking this into consideration the principle of adding a further three houses is acceptable.

Notwithstanding the above, the main concern with developing this land is the gradient of the access road serving the plots. No part of the new private road shall be steeper than 1 in 8 (1 in 15 for the junction and turning area) and I must request that a long section and cross sections of the proposed road are submitted for consideration before I am able to make an informed decision. The proposed layout will also need to allow for turning for emergency service vehicles and swept path analysis should be provided to demonstrate that this is achievable. Provision for visitor parking and for vehicles passing one another on the road also needs to be accounted for. Given the topography of the site, I will require this information to be submitted prior to determination as I have concerns in particular over whether the required gradients are achievable. Until I receive this additional information, I must withhold my support for this proposal.

##### **Final Response:**

Following the latest submission, drawing P449-Sk-001 Rev F, I am content that appropriate access can be achieved to serve these two plots in principle. Should this application be approved, more details would be required as part of any detailed planning application. These details would include construction specification, drainage details, earthworks and embankment details including retaining structures. A suitably worded condition should be attached to any approval of the outline consent requesting a scheme of details to be submitted for the detailed design of the private access road.

**Education and Lifelong Learning:** Confirm that the site is located within the catchment area for Knowepark Primary School, St Joseph's RC Primary School and Selkirk High School. There are no contributions sought for this application.

**Environmental Health:** Amenity and Pollution

Confirm assessment of the application was carried out in terms of air quality, nuisance and water supply. Proposed two conditions on Drainage, Two conditions relating to Mains Water Supply, and a condition relating to Wood Burning Stoves (If a stove is to be installed as part of the development and so long as it is less than 45kW no further information needs to be provided). An Informative on stoves and use of solid fuel is proposed. The EHO agrees with the application in principle, subject to conditions.

The Contaminated Land Officer considered the proposals and makes no Comment

The EHO issued a subsequent response, following complaints from neighbours about their private water supply advising that Standard Conditions and Applicant Informative may be of use

**Landscape Architect:** No objections. The landscape architect produced a sketch plan of a proposed planting scheme which could be developed for this site, to indicate how a future application could be considered.

**Archaeology Officer:** There are archaeological implications for this development and I cannot support the application. The site coincides with the known site of St Mungo's Well. This is a historically significant site and of regional historic interest, and is still in use as a water source for nearby properties. There is the potential for direct and indirect impacts to archaeology and the setting of St Mungo's Well.

I do not feel the current proposal is appropriate or justified per SPP or Policy EP8 and I object to the overall principle of this development. A smaller development proposal, such as that proposed in 2011, may be more sympathetic to the setting of the well. In summary, I object to this proposal. I may be prepared to accept smaller scale development within the site as well as a more modest scheme of interpretation and access to the well itself. In any event, archaeological investigation of the well site and the surrounding area may be required if development were to eventually proceed.

Second Response:

I have reviewed the new proposal for two houses, associated infrastructure and landscaping. I note that a third house and plans to elaborate St Mungo's well have been abandoned and I am now broadly content with the principle of development.

However, I am still concerned that the appreciation of the site from the Designed Landscape will be impacted by landscaping. I question if the semi-mature belt along the north-western edge of the site is necessary and would prefer to see open views into the well area maintained. This would mitigate against the enclosure of the site, further eroding its historic links to the Designed Landscape and the town, which was a concern on the first design.

I am also concerned that the planting of trees near the well could cause inadvertent damage long term through root penetration. Ensuring that planting is at least 10 metres from the edge of the well would mitigate this effect.

In my earlier responses to this application, and in 2011, I highlighted the archaeological potential of the area around the well including the current development footprint. To

investigate this I recommend an archaeological evaluation of at least 10% of the development area. This evaluation will form a baseline of the site's potential and may lead to further investigation if archaeological deposits or features are located.

During development, I recommend that the site of the well is temporarily fenced off to prevent accidental damage. This should ideally be erected under archaeological supervision and can be done at the same time as the evaluation.

Finally, while the original proposal for elaborating the well-head was unacceptable there is still a desire to see some form of more limited interpretation and access. This can be achieved through a condition seeking an approved interpretative scheme.

To conclude, I can now support the principle of development but would recommend conditions and applicant informatives requiring a programme of archaeological works and protective fencing to be erected around the area of archaeological interest.

### Statutory Consultees

**Historic Environment Scotland:** The proposals have the potential to affect The Haining Historic Garden and Designed Landscape. SBC should seek advice from your archaeology and conservation service for matters including unscheduled archaeology and category B and C-listed buildings. HES have considered the information received and do not have any comments to make on the proposals. Our decision not to provide comments should not be taken as our support for the proposals.

**Selkirk and District Community Council:** No response received.

### Other Consultees

**Scotland's Garden and Landscape Heritage:** Scotland's Garden and Landscape Heritage is grateful to be included in the above consultation which will have an impact on The Haining designed landscape, included in the Inventory of Gardens and Designed Landscapes in Scotland and therefore assessed by Historic Environment Scotland to be of National significance.

Historic Environment Scotland last assessed The Haining designed landscape and designated the current Inventory boundary in June 2011. In the 'Importance of Site' assessment for the Inventory the landscape is accorded 'Some' Scenic value but it is noted that 'the encroachment of suburban housing at the northern boundary of the designed landscape has made a negative scenic impact...'. The current proposals would be located within the northern boundary of the designed landscape which can only increase the erosion of the scenic value in this area of the landscape.

We note that in the Scottish Borders Development Plan 2016 the development boundary for Selkirk does include the proposed site, however it is not allocated for housing or any other development during the lifetime of the plan. Within the plan four alternative sites, allowing for a total of up to 106 units, have been identified as suitable locations for future housing. In addition, Policy BE3 GARDENS AND DESIGNED LANDSCAPES of the Scottish Borders Local Development Plan states that

'Development will be refused where it has an unacceptable adverse impact on the landscape features, character or setting of sites listed in the Inventory of Gardens and Designed Landscapes'. As noted above further erosion of the northern boundary will be an unacceptable adverse impact.

To summarise, Scotland's Garden and Landscape Heritage wish to object to this application and would advise that the proposed houses be accommodated within one of the sites allocated for future housing under the Local Development Plan. We would be grateful to remain included in any future consultations affecting The Haining and other Inventory and non-Inventory designed landscapes in Scottish Borders.

### **KEY PLANNING ISSUES:**

Whether or not the proposed development would comply with development plan policies and guidance, particularly with regard to infill development; impacts on archaeology; residential amenity; water supply, and road and pedestrian safety.

### **ASSESSMENT OF APPLICATION:**

#### **Principle**

The site is located within the development boundary for Selkirk as set out in the Local Development Plan 2016.

The principal issue here is whether the proposed dwellings are acceptable in terms of their impact on the neighbouring existing housing and surrounding area. Aside from ensuring the additional units can be adequately serviced with parking and infrastructure (as considered below), the key considerations are whether there is sufficient information to enable a decision, accounting for representation and objections made about neighbours private water supplies. These matters are considered in more detail further in this assessment, which is guided by other LDP policies and related supplementary guidance as appropriate.

As noted above, the site is located within the Selkirk Development Boundary set out in the Scottish Borders Local Development Plan 2016. The site is also located within "The Haining" designed landscape. A previous application was withdrawn. The current application requires to be assessed principally in terms of policy PMD5 of the LDP on infill development. As the site is located within the development boundary, the principle of a dwelling on the site is generally acceptable. Consideration is also required against the provisions of other relevant policies of the Development Plan including but not limited to road safety and impacts on neighbouring private water supply. Members should be aware that third party representations were made specifically in respect of these matters and will be discussed later in this report.

#### **Supporting information and Revisions**

The original proposals sought consent for the erection of 3 dwellings but this has been revised to show indicative plans for a two house development. The application was supported by a design statement. Visuals of the edge of the settlement were also produced to demonstrate the ultimate position of the site on the edge of the Designed Landscape.

#### **Placemaking and Design**

Policy PMD1 of the LDP sets out relevant sustainability criteria applicable to all development proposals. In determining planning applications and preparing development briefs, the Council will have regard to the sustainability principles in Policy PMD1 which underpin all the Plan's policies. In addition, Policy PMD2 sets out the Council's position in terms of quality standards for all new development and sets out specific criteria on Placemaking & Design.

The application is for planning permission in principle. However, sufficient information accompanies the application to inform decision making and assessment of the positioning of



housing, road, and landscaping works on the site, and impacts upon surrounding housing and land. The application is supported by an indicative layout for the proposed development. This originally showed the positioning of three detached dwellings. The latest revised plan is now for the erection of two dwellings. It is considered that the site, subject to the submission and approval of a subsequent detailed application is suitable for residential development.

### **Infill Development**

As stated above, Policy PMD5 sets out the land use planning position in term of infill development proposals within settlement boundaries. Development on infill sites, within settlement boundaries will be approved where the policy criteria are met. In this case, it is considered that a two house development would not conflict with the established land use of the area, and would not detract from the character and amenity of the surrounding area. Subject to suitably designed house types being submitted at detailed application stage a development would be possible respecting the scale, form, design, materials and density found in the surrounding area. It is considered, subject to conditions, that adequate access and servicing would also be possible. It is considered that detailed proposals could be developed for the erection of two houses on this site that would meet approved amenity and privacy standards.

### **Layout**

The indicative site plan shows a layout with a new road serving the two dwellings. The original layout was reduced from three dwellings to two, and the details of the proposed layout and access were improved, with additional supporting section drawings produced by the agent.

The houses are set in the same basic scale as the approved development to the north at Peelgait, albeit incorporating split level houses, set into the sloping land. However, the layout and scale of the houses will fit with the existing townscape. The areas of garden ground are of suitable scale, and comparable with the neighbouring housing development to the site. The house types will be subject to later consideration at the detailed stage, should Members be minded to approve this application. It will be possible to ensure that the 2 new houses on these plots are similar to each other and with the other houses in the overall development.

Level information suggests cut and fill across the site, with retaining walls in selected places. During the processing of the application, more indication of retaining wall and underbuilding requirements has been provided, suggesting the visual effects will be reasonable. A full levels scheme will, in any case, be required as part of the detailed application stage. Further details of all boundary treatments are required and this can also be considered at the detailed stage.

### **Neighbouring amenity**

The proposals demonstrate that there will be no adverse impacts on neighbouring amenity. Policy HD3 of the Local Development Plan sets out that residential amenity will be afforded protection. The Council has adopted supplementary planning guidance on Householder Development which sets out standards for privacy and amenity. Policy HD3 sets out that development that is judged to have an adverse impact on the amenity of existing or proposed residential areas will not be permitted.

The Council's supplementary guidance on householder developments sets out criteria in relation to privacy, sunlight and residential amenity to ensure that any overshadowing or

overlooking is to an acceptable level. Existing neighbours as well as proposed dwellings are entitled to a degree of protection of amenity and privacy.

The relationship of the proposed development to all existing housing has been considered. As this is a planning application in principle there are no detailed proposals to assess against the Council's standards for residential amenity and privacy. It is however possible to determine whether, in principle, those requirements could be achieved on the site. It is considered that the nearest existing dwellings are sufficiently distant from the site that the proposed dwellings would not have an unacceptable adverse impact on the residential amenities of occupants of these properties.

The approved SBC Supplementary Planning Guidance on householder development considers the level of private garden amenity space suitable for family accommodation. The amount of private outdoor space required should reflect the size of the dwelling. It is considered that the proposed layout would provide for suitable garden and amenity space adjoining the proposed individual dwellings and housing development more widely. The requirements of the householder SPG and Policy PMD2 are achieved.

As regards daylight and sunlight, the applicant has submitted sectional drawings which are of some assistance in making a judgement on light loss. Accounting for these plans and the known level differences, the department is content a suitable scheme can be brought forwards at AMC stage, meeting amenity requirements.

Effects on views and property values are not material planning considerations.

### **Access and Parking**

Road safety is a material consideration. Policy IS7 on Parking Provision and Standards sets out that the development proposals should provide for car and cycle parking in accordance with approved standards. Policy PMD2 of the LDP sets out (amongst other matters) criteria on accessibility. Criteria (o) requires that street layouts must be designed to properly connect and integrate with existing street patterns and be able to be easily extended in the future where appropriate in order to minimise the need for turning heads and isolated footpaths. Criteria (q) requires that development ensures there is no adverse impact on road safety, including but not limited to the site access, Criteria (r) requires that development provides for linkages with adjoining built up areas, Criteria (s) requires that development incorporates adequate access and turning space for vehicles including those used for waste collection purposes.

The Roads Planning Service was consulted on the application and initially objected, seeking the submission of additional detail and information on the gradient and access arrangements to serve the site.

Following the submission of revised drawings RPS advises that the proposed development can be supported subject to conditions. The proposed new access road serving the site will involve cutting into the existing slope and the access road is positioned away from the position of the water supply pipe serving neighbouring dwellings. A full scheme of details for the dimensions of this new access track will require to be provided at detailed application stage. The current plans do demonstrate that a suitable access to the site is achievable and the number of spaces proposed complies with LDP standards.

### **Landscape**

The site is located on the edge of The Haining Designed Landscape. Historic Environment Scotland advises that they have assessed the application for historic environment interests

and consider that the proposals have the potential to affect The Haining Historic Garden and Designed Landscape. HES also advised that we should seek advice from the Council's own archaeology and conservation officers for matters including unscheduled archaeology, category B and category C listed buildings. HES have considered the information received in relation to the application and do not have any comments to make on the proposals.

Scotland's Garden & Landscape Heritage consider the development will have an impact on The Haining designed landscape. Members will note from the consultation responses that SGDL advise that HES last assessed The Haining designed landscape in June 2011 and concluded that the landscape has 'Some' Scenic value but notes 'the encroachment of suburban housing at the northern boundary of the designed landscape has made a negative scenic impact...'. The current proposals would be located within the northern boundary of the designed landscape which can only increase the erosion of the scenic value in this area of the landscape.

As noted above SGLH consider further erosion of the northern boundary will result in an unacceptable adverse impact of the designed landscape and accordingly object to the proposed development.

Notwithstanding objections raised by the SGLH, it is considered that while the site would project the built edge of the settlement into adjacent fields, it does so in a manner consistent with the adjacent pattern of existing housing developments with which they would eventually form part. It would be appropriate for a scheme of landscape planting however to be developed to provide a degree of enclosure round the site. A suitable landscaping condition is set out following this report to achieve this. A strong landscaping treatment to this site would provide enhanced separation between the designed landscape and the existing and proposed housing on the edge of Selkirk. This would ensure that the proposed housing could be accommodated in the landscape without significant adverse impacts on the nearby designed landscape, ensuring compliance with Policy EP10 of the LDP.

### **Trees**

The LDP requires that all new development accounts for trees, woodland, and hedgerows. These are given protection under Policy EP13 of the LDP to maintain the character and amenity of settlements and the countryside. The Council has also adopted Supplementary Planning Guidance on Landscape and Development, and on Trees and Development, which are both relevant to these proposals. It is contended that the proposed dwellings can be accommodated on the site without adverse impact on existing trees or hedging. There are no trees within the immediate vicinity of the proposed plots or the access and it is considered that the proposed development meets the principal aims of policy EP13.

### **Affordable Housing and development contributions**

Policy IS2 Developer Contributions of the LDP is relevant to this application. The policy is further set out in the adopted SPG on development contributions. In line with policy, the proposed development would attract development contributions towards Education and Lifelong Learning as well as affordable housing. The precise details of these contributions are set out in the relevant consultee responses above.

The applicant has confirmed their acceptance of the development contributions. Subject to a suitable agreement being concluded, the application will comply with the requirements of policies HD1 (affordable housing) and IS2 (development contributions) of the LDP.

## **Archaeology**

Members will note that the Council's Archaeology Officer initially objected to the proposed application and felt that the original proposal was not justified as per Scottish Planning Policy or Policy EP8 of the LDP. A smaller development proposal, such as that proposed in 2011, may be more sympathetic to the setting of the nearby St Mungo's Well. The initial proposals would have in effect surrounded the well with houses and access arrangements that are out of keeping with its current setting. In particular, the desire to site a house to the west of the well and cross the small valley in which it sits will directly break the visual link to the rest of the designed landscape and this runs counter to both the designation and Historic Scotland's views in 2011. Objections were also raised to the proposed seating area at the well head. This is also out of keeping with the site's setting, and potentially destructive to archaeological deposits and features that are best left in situ. A smaller scale development within the site as well as a more modest scheme of interpretation and access to the well itself may be more appropriate to ensure compliance with local and national policy. In any event, archaeological investigation of the well site and the surrounding area will be required if development were to go ahead.

As noted above and in representations and objections, the site adjoins St Mungo's Well. Objectors to the application highlight the position of St Mungo's Well within the site. Indeed, it is highlighted that one of the originally proposed dwellings would be positioned directly impacting the well. St Mungo's Well is marked on Ordnance Survey mapping, and is located within the site. This is not a listed structure, and carried no heritage designation or protection.

The proposals as originally lodged would have seen more of a feature made of St Mungo's Well. This was in line with the advice given to the 2011 planning application. However the Council Archaeologist was not keen on the approach set out in 2017. The proposals were revised, with less alteration proposed to the well site. It is considered that the development of two dwellings on this site can be supported in archaeological terms, subject to the imposition of planning conditions as noted.

## **Ecology**

The site is not designated and is already subject to neighbouring development. No tree removal is proposed. There are, therefore, no notable ecological implications associated with the proposed development that would constitute a departure from LDP policy.

## **Waste**

Supplementary Planning Guidance on Waste Management requires that developments adequately accommodate bin storage. This proposal can provide for suitable storage for two bins within each plot behind their frontages. This will be considered in detail at AMC stage.

## **Services**

Public foul drainage and water supply connections are proposed. A condition is necessary to ensure the connections will be provided. This will satisfy Policy IS9.

Policy IS9 of the Local Development Plan on Waste Water Treatment Standards and Sustainable Urban Drainage is relevant to this application. The Local Development Plan sets out that development proposals should make satisfactory arrangements for dealing with foul and surface water drainage. SUDS (Sustainable Urban Drainage Systems) principles should be incorporated in the development.

## **Water supply to dwellings**

In terms of water supply to the dwellings proposed, the submitted application form sets out that the water would be via public supply. Objections were received citing concerns that the proposed development would adversely impact upon the private water supply serving neighbouring dwellings at Hartwoodburn, which comes from a source within the application site. The Council's Environmental Health Service has a degree of legislative involvement with regards to private water supplies and was consulted on the application. The Environmental Health Officer (EHO) advises that the application can be approved subject to suitable conditions.

Clarification was sought from the EHO in terms of the requirements in relation to development impacting upon an existing private water supply. The agent has undertaken further mapping work to plot the location of the pipe serving the application site. The agent's additional submissions can be viewed on the *Public Access* website. The details of the proposed development have been clarified, and the agent has lodged further information, plotting the water supply pipe within the private water supply taken from the land above the pipe.

Whilst the supply pipe does not appear to be directly impacted by the proposed development, it is of note that the pipe is in very close proximity to the embankment which would serve the access road to the site. It is imperative that the water supply of existing neighbours is not compromised as a result of these development proposals.

Discussions with the Council EHO have established that it would be acceptable for full, detailed plans and technical information for the drainage arrangements to be required via planning condition. Subject to suitable water and drainage conditions, it is considered that these matters can be suitably dealt with and the site suitably serviced however precise details can be secured through planning condition.

A suitably worded condition will also ensure that the objector's private supply is not adversely impacted.

## **CONCLUSION**

The proposed development will provide for a suitable infill housing development in accordance with LDP policies. Following amendments, the layout, design and density of the houses suggest they will relate sympathetically to the existing residential development and the surrounding area. Subject to conditions, the development will not have a significantly adverse effect on the amenity of neighbouring properties or existing private water supplies. The development will also be adequately served by proposed access road and proposed parking. Subject to a legal agreement covering development contributions towards education and affordable housing as well as 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 a legal agreement and the following conditions and informatives:

## Conditions

- 1 No development shall commence until the details of the layout, siting, design and external appearance of the building(s), the means of access, and the landscaping of the site have been submitted to and approved in writing by the Planning Authority.  
Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.
- 2 No development shall commence until all matters specified in conditions have, where required, been submitted to and approved in writing by the Planning Authority. Thereafter the development shall only take place except in strict accordance with the details so approved.  
Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.
- 3 No development should commence until the applicant has provided evidence that arrangements are in place to ensure that any private drainage system will be maintained in a serviceable condition  
Reason: To ensure that the development does not have a detrimental effect on amenity and public health.
- 4 Two parking spaces, not including any garage, and turning within the curtilage of the site are to be included in any subsequent detailed application.  
Reason: Interests of road safety on the access road serving the site.
- 5 Also accompanying the first application for approval of matters specified in condition is to be a construction specification, drainage details, earthworks and embankment details including retaining structures. A scheme of details also to be submitted for the detailed design of the private access road. All of these details are to be approved in writing by the planning authority prior to the commencement of development on site.  
Reason: To ensure that the site is adequately serviced.
- 6 No development shall take place except in strict accordance with a 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:

  - i. existing and finished ground levels in relation to a fixed datum preferably ordnance
  - ii. location and design, including materials, of walls, fences and gates
  - iii. soft and hard landscaping works
  - iv. existing and proposed services such as cables, pipelines, sub-stations
  - v. full details of an enhanced planting belt for the boundary treatment and landscaping finishes formed at the boundary of the site with the Haining Designed Landscape.
  - vi. a programme for completion and subsequent maintenance.

Reason: To ensure the satisfactory form, layout and assimilation of the development with its surroundings.
- 7 No development shall take place within the development site as outlined in red on the approved plan until the developer has secured a Written Scheme of Investigation (WSI) detailing a programme of archaeological works. The WSI shall be formulated and implemented by a contracted archaeological organisation working to the standards of the Chartered Institute for Archaeologists (CIfA). The WSI shall be submitted by the developer no later than 1 month prior to the start of development works and approved by the Planning Authority before the commencement of any development. Thereafter the developer shall ensure that the programme of archaeological works is fully

implemented and that all recording, recovery of archaeological resources within the development site, post-excavation assessment, reporting and dissemination of results are undertaken per the WSI.

Reason: The site is within an area where development may damage or destroy archaeological remains, and it is therefore desirable to afford a reasonable opportunity to record the history of the site.

- 8 No development shall take place until fencing has been erected, in a manner to be agreed in writing by the Planning Authority, about the identified area of archaeological interest and no works shall take place within the area inside that fencing without the prior written consent of the Planning Authority.  
Reason: To safeguard a site of archaeological interest.
- 9 No development is to commence until a report has been submitted to and approved in writing by the Planning Authority that the public mains water supply is available and can be provided for the development. Prior to the occupation of the building(s), written confirmation shall be provided to the approval of the Planning Authority that the development has been connected to the public mains water supply.  
Reason: To ensure that the Development is adequately serviced with a sufficient supply of wholesome water and there are no unacceptable impacts upon the amenity of any neighbouring properties.
- 10 No water supply other than the public mains shall be used to supply the Development without the written agreement of the Planning Authority.  
Reason: To ensure that the Development is adequately serviced with a sufficient supply of wholesome water and there are no unacceptable impacts upon the amenity of any neighbouring properties.
- 11 No development is to commence until a report has been submitted to and approved in writing by the Planning Authority, demonstrating all mitigation measures to be delivered to secure the quality, quantity and continuity of water supplies to properties in the locality which are served by private water supplies and which may be affected by the development. The provisions of the approved report shall be implemented prior to the occupation of the building(s) hereby approved.  
Reason: To ensure that the development is adequately serviced with a sufficient supply of wholesome water and there

## **Informatives**

1. In relation to Condition 3 above, private drainage systems often cause public health problems when no clear responsibility or access rights exist for maintaining the system in a working condition. Problems can also arise when new properties connect into an existing system and the rights and duties have not been set down in law. To discharge the Condition relating to the private drainage arrangements, the Applicant should produce documentary evidence that the maintenance duties on each dwelling served by the system have been clearly established by way of a binding legal agreement. Access rights should also be specified.
2. In relation to Condition 6 above, the Archaeology Officer suggests consideration to be given in the final design to removing or limiting the creation of a shelter belt along the northwest edge of the site. This should seek to further minimise impacts to the setting of St Mungo's Well. Consideration should also be given in the final design to the retention of a 10 metre buffer between tree planting and the site of St Mungo's Well.

3. In relation to Condition 11 above:
  - a. A description of the source(s) / type of the supply - i.e. whether the supply is taken from a watercourse, loch, spring, well or borehole, or any other source or combination of sources.
  - b. The location of the source(s) of the supply - i.e. the appropriate eight figure Ordnance Survey National Grid Reference(s).
  - c. The name and address of every relevant person in relation to the supply.  
NB. A "relevant person", in relation to a private water supply, means a person (or persons) who: (a) provide the supply; (b) occupy the land from, or on which, the supply is obtained or located; or (c) exercise powers of management or control in relation to the supply.
  - d. The estimated maximum average volume of water provided by the proposed supply, in cubic metres per day (m<sup>3</sup>/day), and the details of any pump tests/flow rate tests undertaken to determine this estimate.  
NB. For boreholes/wells refer to BS ISO 14686:2003 "Hydrometric determinations - Pumping tests for water wells - Considerations and guidelines for design, performance and use".
  - e. Any water treatment that is intended to be carried out in relation to the proposed supply for the development.
  - f. Where there are existing users of the proposed supply, the addresses of all such properties.
  - g. Where there are existing users of the proposed supply, the existing and proposed occupancy levels of all such properties, as far as is reasonably practicable.  
NB. As a minimum, the provision of the number of bedrooms per property will allow an estimate to be made of occupancy levels.
  - h. Where there are existing users of the proposed supply and / or there are other properties' private water supplies in the vicinity of the development that may be affected thereby (e.g. neighbouring boreholes, wells, springs, etc.), information advising if and how the proposed development will impact on the existing users and / or the other properties' supplies.
  - i. If the development is to be used for commercial purposes and / or members of the public will use / consume the water, the private water supply will be classed as a Type A supply. This will mean that it will require to be sampled / monitored by the local authority on at least an annual basis and a risk assessment of the supply will also be required. As such, prior to commencement of the commercial / public activity, the applicant should contact the Environmental Health Department of Scottish Borders Council to ensure that compliance with the legislative provisions is able to be secured.
  - j. For clarification, the minimum daily volume of water that requires to be supplied by a private water supply must be equivalent to 200 litres of water per person per day who will be using the supply. A reserve storage capacity of three days' supply should be provided. Also, the quality of the water throughout the building(s) must conform to the requirements of The Private Water Supplies (Scotland) Regulations in order for it to be classed as wholesome.
4. If a stove is to be installed as part of the development and so long as it is less than 45kW no further information needs to be provided.



**DRAWING NUMBERS**

<b>Plan Ref</b>	<b>Plan Type</b>	<b>Plan Status</b>
P449-001 REV G	Planning Layout	Approved
WATER SUPPLY ROUTE	Other	Approved
EXISTING AND PROPOSED VISUALS	Photos	Approved

**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.

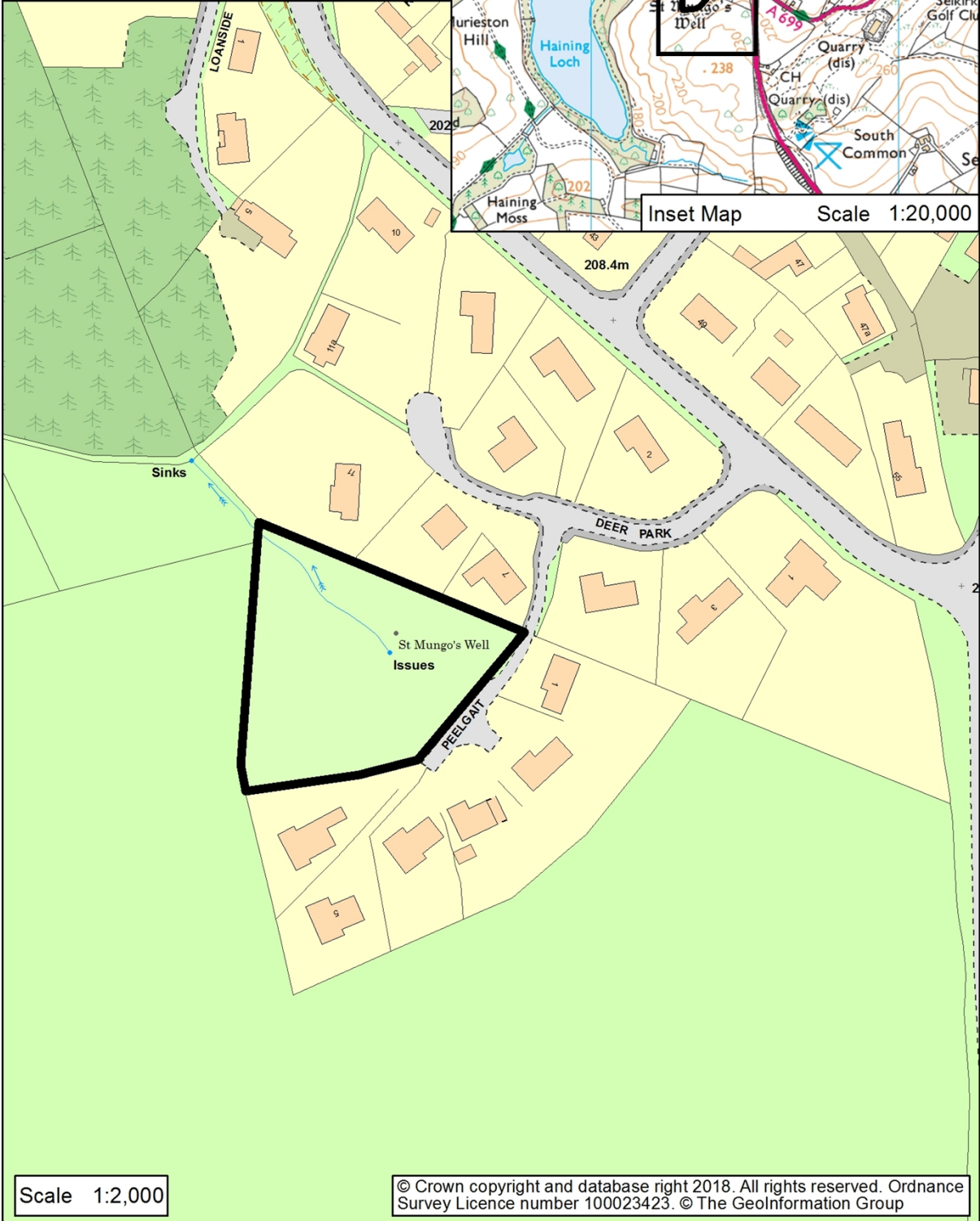
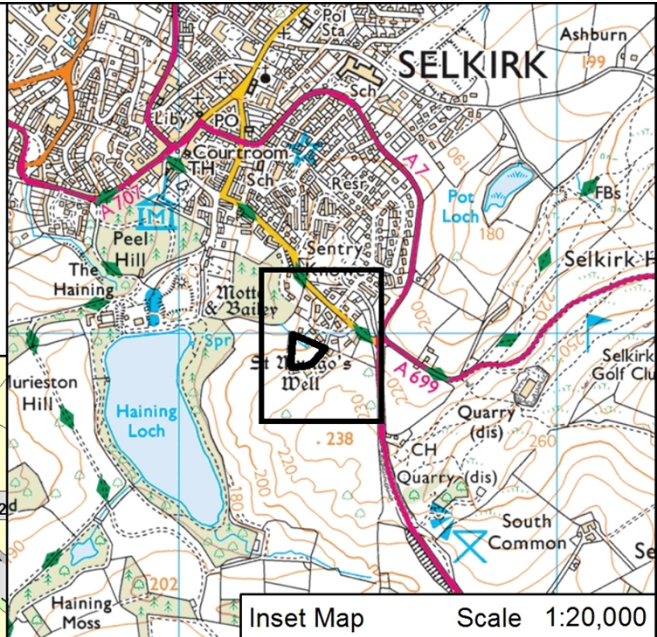
**Author(s)**

Name	Designation
Andrew Evans	Planning Officer (Development Management)



17/00923/PPP

Land West Of Peelgait Selkirk



Scale 1:2,000

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**SCOTTISH BORDERS COUNCIL**

**PLANNING AND BUILDING STANDARDS COMMITTEE**

**30 APRIL 2018**

**APPLICATION FOR PLANNING PERMISSION**

**ITEM:** 18/00134/FUL  
**OFFICER:** Paul Duncan  
**WARD:** East Berwickshire  
**PROPOSAL:** Erection of general purpose agricultural building  
**SITE:** Lumsdaine Farm, Coldingham  
**APPLICANT:** Cllr J Fullarton  
**AGENT:** John Thorburn & Sons (Construction) Ltd

**CONSIDERATION BY PLANNING AND BUILDING STANDARDS COMMITTEE**

This planning application has been submitted by an elected Member of Scottish Borders Council and therefore, in accordance with national regulations and the Council's own Scheme of Delegation, the application must be determined by the Committee rather than under delegated authority. In this case, the application has attracted a sufficient number of objections to require referral to the Committee in any event.

**SITE DESCRIPTION**

Lumsdaine Farm is situated around 4km north-west of Coldingham, in a remote location at the end of a minor public road. The farm is comprised of a number of agricultural buildings including one very large principal building with other smaller farm buildings and a farmhouse located around it. The farm is at the centre of a larger building group, with 9 further dwellinghouses located nearby, to the south-east, north-west and north-east of the farm.

The proposed site is located south-west of the principal agricultural building in a cleared, sheltered area with an established hardcore surface which is partially enclosed by trees. The site is flat. A moderately sized former mill pond sits to the rear (south-west) of the proposed site at a distance of around 30m. Associated watercourses and overhead lines are located to the south of the site and a water tank sits immediately north of where the proposed agricultural building would be erected.

Lumsdaine Farm is located within the Berwickshire Coast Special Landscape Area (SLA).

**PROPOSED DEVELOPMENT**

The application seeks planning permission for the erection of a steel portal-framed cattle court building measuring roughly 49m by 12m in footprint, to a ridge height of 6.5m. The building would be partially enclosed with treated timber boarding and concrete panels. The roof would be clad in profiled steel.

## PLANNING HISTORY

Relevant planning history within the vicinity of the site can be summarised as follows:

- Planning application reference number: 08/00888/AGN  
Agreement of siting and design was sought and received through the prior notification mechanism for the erection of a general purpose storage shed to the north-west of the aforementioned principal agricultural building. This building has since been built.
- Planning application reference number: 09/00927/FUL  
Full planning permission was sought for the erection of a cattle court on the currently proposed site. This application was approved by the Planning and Building Standards Committee but the building was not built.

## REPRESENTATION SUMMARY

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

6 objections to this application were received from 6 separate households. The issues raised are summarised below:

- Adverse landscape impact
- Overdevelopment of a rural area
- No detail has been provided on flooring of the building
- No detail on how waste would be moved from the site
- Environmental impact on local residents, tourists and walkers
- Potential pollution impact on the nearby pond/ watercourses
- Loss of residential amenity
- Potential impact on archaeological remains on the proposed site
- Environmental Health and SEPA should be consulted.
- A full Environmental Impact Assessment should be carried out.
- No water supply details listed
- Animals should be free to choose the way they want to live [*not a material planning consideration*]

## APPLICANTS' SUPPORTING INFORMATION

Other than the application form, plans and drawings, no specific written items of support have been submitted.

## CONSULTATION RESPONSES:

### Scottish Borders Council Consultees

**Environmental Health:** No objection but a condition to require compliance with an agreed nuisance control management plan is recommended.

**Ecology Officer:** No objection but conditions to require a construction management plan and badger protection plan are recommended. An adjacent pond is raised (approximately 1m) above the farmyard area with drainage to sinks to the south-west and north-west of the farmyard. The pond is long-established and features as a mill pond in the 1<sup>st</sup> Edition OS map (1843-1893). There is no obvious drainage

connectivity between the proposed development site and the pond. Protected species such as great crested newt are known to occur at sites in the wider landscape but are not known at this site. Reasonable avoidance measures should ensure that terrestrial habitats are not damaged or disturbed. On a site visit the Ecology Officer noted significant signs of badger activity in adjacent habitat areas including dung pits, a latrine, snuffle holes, signs of digging, old hole entrance (filled in-not in use), a footprint and well-worn badger paths. Breeding birds may also use adjacent scrub habitat and farm buildings.

Mitigation will be required to ensure that terrestrial and freshwater habitats are not disturbed or damaged by the development. Measures can be set out in a proportionate construction method statement and a badger protection plan. A construction method statement will be required so that habitat areas are demarcated or fenced off to prevent damage and disturbance by machinery, chemicals and oils and debris and ensure that works are contained within the hardstanding area of the farmyard.

**Archaeology Officer:** No objection. There are no known archaeological implications for this proposal. The proposed development sits to the south-west of the existing steading, and to the north-east of the former mill pond for the farm. Historic mapping shows Lumsdaine may date from at least the late 16<sup>th</sup> century where it appears to be depicted as a small settlement called Easter Lumsdenn. Lumsdaine was gifted to Coldingham Priory in the 11<sup>th</sup> century, with Wester Lumsdaine (no longer in existence) appearing in documents from the 13<sup>th</sup> century. It is possible that likewise Easter Lumsdaine dates from the same period.

While there is a low to moderate potential for encountering medieval archaeology in undisturbed deposits within the farm, later historic mapping shows that the proposed building footprint has already seen development. A building is shown here on OS mapping from 1972. This may have been a post-war structure. This building still appears in aerial photos taken in 2008. There is a low potential for encountering buried archaeological features or deposits during development. An informative is recommended.

### **Other Consultees**

None.

### **DEVELOPMENT PLAN POLICIES:**

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

PMD1 - Sustainability  
PMD2 - Quality Standards  
ED7 – Business, Tourism and Leisure in the Countryside  
ED10 - Protection of Prime Quality Agricultural Land and Carbon Rich Soils  
HD3 - Protection of Residential Amenity  
EP2 - National Nature Conservation and Protected Species  
EP3 - Local Biodiversity  
EP5 – Special Landscape Areas  
EP8 – Archaeology  
EP14 – Coastline  
EP15 – Development Affecting the Water Environment  
IS9 - Waste Water Treatment Standards and Sustainable Urban Drainage

**Other considerations:**

Scottish Planning Policy 2014  
Biodiversity Supplementary Planning Guidance 2005  
Planning Advice Note 39 - Farm and Forestry Buildings 1993

**KEY PLANNING ISSUES:**

Would the erection of an agricultural building on the proposed site comply with planning policies with respect to (a) the siting and design of agricultural buildings; (b) residential amenity and (c) biodiversity.

**ASSESSMENT OF APPLICATION:***Principle*

In principle, Local Development Plan policy ED7 (Business, Tourism and Leisure in the Countryside) is supportive of development which will be used directly for agricultural purposes. This is subject to assessment against criteria relating to local character and amenity; scale; and impacts on neighbouring uses. These considerations are assessed later in this report. In principle however, there is clear policy support for the proposals given the intended agricultural use of the proposed building.

*Siting and Design*

Local Development Plan policy PMD2 (Quality Standards) sets out the Council's overarching expectations for the siting and design of development. For farm buildings, specific guidance is provided by Planning Advice Note 39 (Farm and Forestry Buildings). Although this document was produced some years ago the principles it sets out remain relevant.

The guidance recommends that visual impact is reduced by siting new farm buildings close to existing farm buildings. The guidance notes the potential impact of new farm buildings both on local and wider landscape settings. The proposed site is considered to be suitable in these respects. The proposed development would be clearly related to the existing farm buildings and the building would be well contained visually, being largely screened from wider view. The building will sit discreetly in the landscape and cannot be considered to represent overdevelopment.

The design of the proposed farm building reflects standard contemporary agricultural developments, which are often very large in scale for operational reasons. The proposed building would be subservient to the existing principle farm building. Given the well contained nature of the site and the existing context for large buildings at the farm, the scale of the proposed building is not a concern. The form and massing is appropriate for a building of this type. The proposed materials are typical for farm buildings of this kind and the most prominent south west elevation will be finished with timber space boarding which should help soften the appearance of the building and integrate it in visual terms with the surrounding woodland. No details have been provided on flooring for the building but this would be assumed to be concrete or any other operationally suitable material.

Overall, the proposals are considered appropriate in design, scale and materials. There will be minimal visual impact overall and no adverse impact on the Berwickshire Coast Special Landscape Area.

### *Residential and Neighbouring Amenity*

Members will be familiar with LDP policy HD3 (Protection of Residential Amenity) which seeks to protect residential amenity in both predominantly residential areas, but also in rural situations. The policy applies to all forms of development.

At Lumsdaine Farm there are numerous existing residential dwellings located at a distance of around 100m from the site. Lumsdaine Farmhouse is situated closer but is owned by the applicant. It should be noted that the proposed site is no closer to these properties than the existing agricultural buildings are. The main potential amenity impacts arising from this development would be odour and noise nuisances. The Environmental Health Officer has no objections to the proposals in principle, but has suggested a condition is attached to require the agreement and implementation of a nuisance control management plan to manage potential nuisances. This is considered appropriate.

Overall, subject to compliance with the proposed condition it is not considered that there would be any significant difference to the amenity presently enjoyed by nearby residents. No unacceptable amenity impact can be anticipated on any other potential receptors such as walkers.

### *Biodiversity*

Local Development Plan policies EP2 (National Nature Conservation and Protected Species) and EP3 (Local Biodiversity) are relevant to this application. These policies aim to provide protection for protected species and local biodiversity interests.

The proposed site is located close to a former mill pond and other potential habitat areas are located in the vicinity of the site. The pond is located at a distance of around 30m from the site and on higher ground, approximately 1m above the ground level on the proposed site and associated watercourse are located to the south of the site at a short distance.

The Ecology Officer has been consulted on this application and visited the site as part of his assessment of the proposals. To avoid possible impacts on habitat areas, mitigation measures are recommended during the construction phase to ensure habitats are not disturbed or damaged by the development. This can be controlled by a suitably worded planning condition to require the implementation of an agreed construction method statement. This would require measures such as the fencing off of habitat areas during construction.

The Ecology Officer identified signs of badger activity on the site and also requires mitigation for potential impacts on this protected species. A planning condition is recommended which would require the agreement and implementation of a badger protection plan to minimise any potential impacts that could arise during the construction phase of the development. Standard mitigation methods would include simple practical measures such as covering trenches and open pipes overnight to help protect the animals should they venture into the construction site. Subject to compliance with these two proposed conditions, no adverse ecological impacts should arise through the construction phase of the development.

Concerns have been raised about potential pollution impacts on the nearby pond and other watercourses including one which is located a short distance from the application site. The Scottish Environmental Protection Agency (SEPA) no longer

invites consultation requests for applications such as this. They do however provide general standing advice which this proposal is considered to comply with. The aforementioned construction method statement will help ensure potential pollution impacts are avoided during the construction phase.

Once the development is operational activities on the site should comply with the Scottish Government's Code for the Prevention of Environmental Pollution from Agricultural Activity (PEPFAA). The code's main emphasis is on preventing or minimising water pollution and the code sets out both mandatory and voluntary measures which should be adopted by farmers. Compliance with the code will ensure no pollution impacts arise on either the nearby pond or watercourses. There is no requirement for the applicant to confirm how waste would be moved from the site and it is assumed that existing practices will be continued. The code also sets out guidance on how this can best be undertaken to avoid pollution or any other adverse environmental impacts. There is no requirement for Environmental Impact Assessment for this proposal. The proposal is not considered to qualify as an intensive livestock installation.

The Ecology Officer has no objection to these proposals and overall, subject to compliance with the proposed scheme of conditions, biodiversity interests should be adequately protected.

#### *Archaeology*

The Coldingham area is rich in archaeological interests and this has been noted in objection comments. Local Development Plan policy EP8 (Archaeology) aims to give strong protection to archaeological and historic assets, which are an irreplaceable part of the heritage of the Scottish Borders and possess educational, recreational and tourism value.

The Archaeology Officer has been consulted on this application and has assessed the proposed site for its archaeological potential. There are no known archaeological implications at this site, but this does not preclude what is considered to be a low potential of encountering unknown archaeological features. The Archaeology Officer is satisfied that this can be suitably addressed by use of an Informative to ensure the applicant is aware of this potential, and the steps that should be taken in the event any features or artefacts are found. Given the low potential for archaeological features, Policy EP8 is considered to be satisfied by this approach.

#### *Other matters*

Local Development Plan policy ED10 aims to protect prime agricultural land, which is a valuable and finite resource. The proposed site is recorded within the register of Prime Agricultural Land but has a long history of development. It offers no potential for arable farming.

The applicant has confirmed that the existing water supply – a private spring – will serve the new development. This is supplemented by a borehole pump for drier months. New houses at Lumsdaine are understood to be served by the public water mains and should not be affected by the proposals.

#### **CONCLUSION**

Subject to compliance with the proposed schedule of conditions listed below, the erection of a general purpose agricultural building on the proposed site would comply



with the relevant provisions of the development plan, including policies with respect to the siting and design of agricultural buildings, residential amenity, and biodiversity, and there are no material planning considerations that would justify a departure from the development plan.

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

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

#### Conditions

1. No development shall commence until a plan for the management and control of potential nuisances (including noise, odour, air quality, flies, waste and other pests) that would be liable to arise at the site as a consequence of and/or in relation to the operation, individually and/or cumulatively, has been submitted to and approved in writing by the Planning Authority. Thereafter the approved nuisance control management plan shall be implemented as part of the development.

Reason: To ensure that the operation of the buildings has no unacceptable impacts upon the amenity of the surrounding area or upon the amenity of any neighbouring residential properties.

2. No development shall commence until a Badger Protection Plan has been submitted to and approved in writing by the Planning Authority. Any works shall thereafter be carried out in accordance with the approved scheme.

Reason: to ensure badgers are protected adequately during the construction of the proposed development.

3. No development shall commence until a Construction Method Statement has been submitted to and approved in writing by the Planning Authority. Any works shall thereafter be carried out in accordance with the approved scheme.

Reason: to ensure local biodiversity and ecology interests are protected adequately during the construction of the proposed development.

#### Informative

1. There is a low potential for encountering buried archaeology during excavations. If buried features (e.g. walls, pits, post-holes) or artefacts (e.g. pottery, ironwork, bronze objects, beads) of potential antiquity are discovered, please contact the planner or Council's Archaeology Officer for further discussions. Further investigation secured by the development may be required if significant archaeology is discovered per PAN2(2011) paragraph 31. In the event that human remains or artefacts are discovered, these should remain in situ pending investigation by the Archaeology Officer. Human Remains must be reported immediately to the police. Artefacts may require reporting to Treasure Trove Scotland.

**DRAWING NUMBERS**

Reference	Plan Type	Received
4684/21	Elevations	08.02.18
	Location Plan	08.02.18
	Brochure	08.02.18

**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.

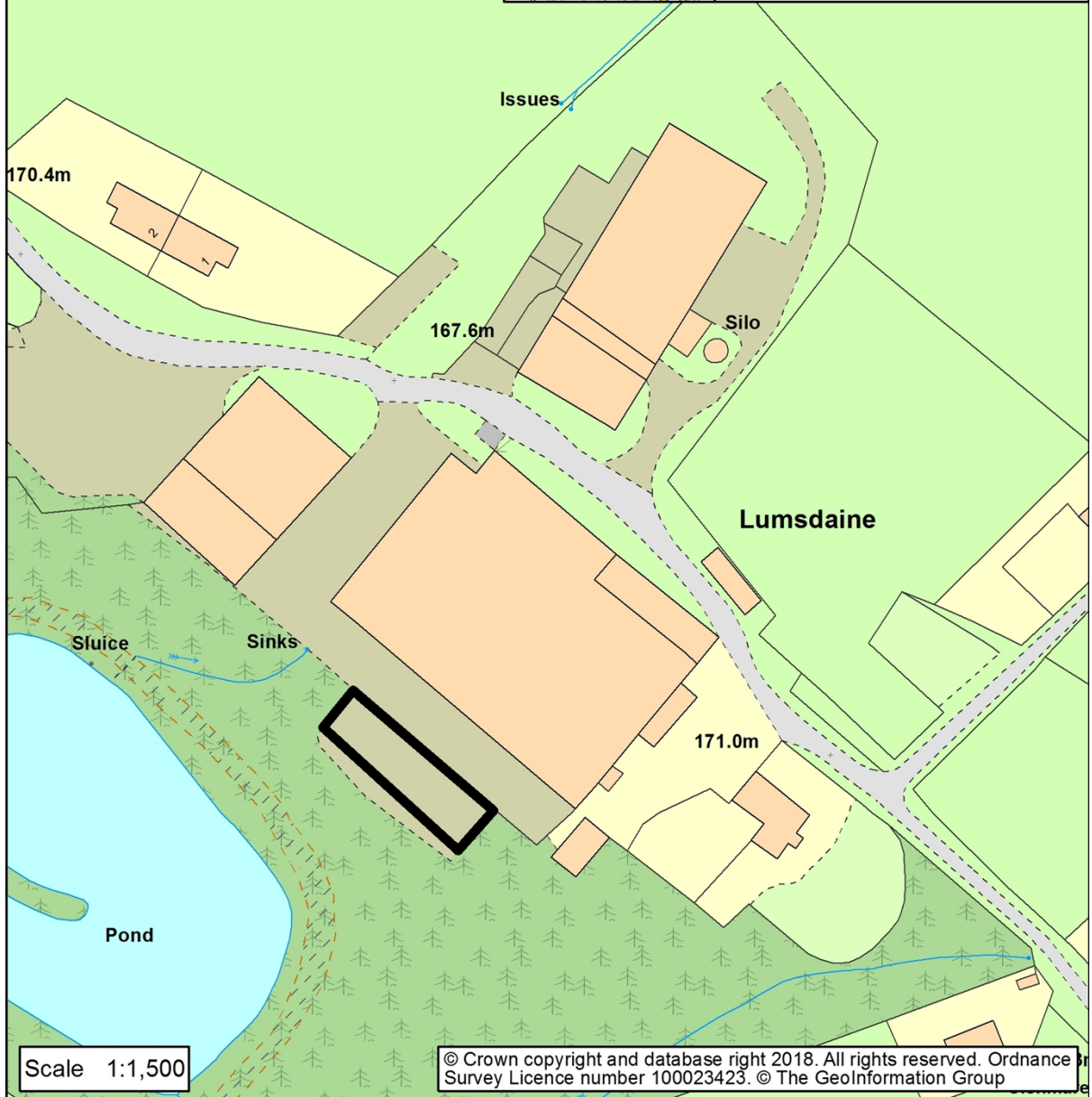
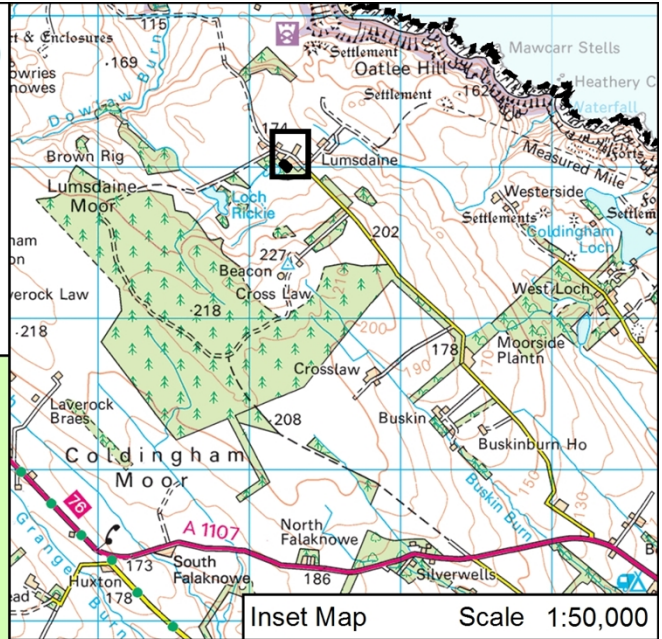
**Author(s)**

Name	Designation
Paul Duncan	Assistant Planning Officer



18/00134/FUL

Lumsdaine Farm  
Coldingham  
Eyemouth



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**SCOTTISH BORDERS COUNCIL**

**PLANNING AND BUILDING STANDARDS COMMITTEE**

**30 APRIL 2018**

**APPLICATION FOR PLANNING PERMISSION**

**ITEM:** **REFERENCE NUMBER:** 18/00253/FUL  
**OFFICER:** Stuart Herkes  
**WARD:** Hawick and Hermitage  
**PROPOSAL:** Erection of 80 metres anemometer mast  
**SITE:** Land North East And North West Of Farmhouse, Braidlie,  
Hawick  
**APPLICANT:** Energiekontor  
**AGENT:**

**SITE DESCRIPTION**

The application site is open upland grazing land at Braidlie, at an elevation of 320mAOD. It is situated approximately 3.5km northwest of Hermitage; 10km north of Newcastleton; and 17km south of Hawick. The surrounding area is characterised by hills and conifer plantations.

The site is located approximately 2.5km from the Langholm – Newcastleton Hills Special Protection Area (SPA), for which breeding hen harrier are a qualifying interest. The Category A Listed Hermitage Castle is 3.5km to the southeast.

**PROPOSED DEVELOPMENT**

The proposal is to erect an 80m high temporary anemometer (wind monitoring) mast. It would 20cm in diameter, tapering to 15cm at the top. This pole would have a dull grey finish, and would be anchored to surrounding land on four sides by four sets of wire rope guys up to 42m from the mast base.

The proposal is to erect the mast for a three year period to collect data on wind speed, wind direction, atmospheric pressure and ambient temperature at various heights.

Following the mast's removal, the land would revert to grazing land in association with all surrounding land. Existing agricultural activities would continue at the site for the duration of the mast's operation, with no other associated development needed to take place at ground level. Vehicular access to the site would be via the B3699 and an existing farm track. No new access tracks or access improvements are proposed.

**PLANNING HISTORY**

**13/00789/FUL:** the current application site is included within the much larger site of a wind farm development, comprising of 9 wind turbines up to 125m high, on Land North East and North West of Farmhouse Braidlie (Windy Edge) Hawick. This development was refused by the Planning and Building Standards Committee, but ultimately approved by the Scottish Government Reporter at appeal on 09 June 2016 (PPA-140-2055). Within the scheme approved under Planning Consent PPA-140-2055 is a permanent anemometry mast, up to 80m in height, which would be sited on, or in close proximity to, the current application site.

**14/01325/FUL:** the site was previously the subject of an application to site a 70m high wind monitoring mast. This proposal was approved by the Planning and Building Standards Committee in March 2015, and allowed the subject mast to be retained in situ for a period of three years. Conditions attached to the consent further required that: (i) the ground should be reinstated to its original condition at the expiry of the three year period within 6 months of the decommissioning of the wind monitoring mast; (ii) bird deflectors should be located along the length of each guy wire at a minimum interval of 5m; (iii) the Ministry of Defence should be given appropriate notification with respect to the location, construction, design and operation of the mast ahead of the commencement of development; and that (iv) appropriate aviation warning lighting should be installed and maintained on the mast.

## REPRESENTATION SUMMARY

The application was advertised in the local press. 9 representations have been received from 8 households. Copies of all representations can be viewed in full, on the Council's Public Access website. The 9 representations received are all in objection. They raise the following concerns:

- **Detrimental to landscape and visual amenities; inappropriate height; poor design; over-provision of facility in area; trees/landscape affected; inadequate screening** – given there is already a consent for a wind farm proposal, there is no requirement for any new or higher mast at this site; wind data has already been gathered at this site, so there is no need for any other mast; developer should be able to make calculations based on existing wind data already gathered, and progress straight to any application for a revised wind farm proposal for the site;
- **Detrimental to environment; density of site** – three years is too long a period for its operation, which should be justified by a specific objective;
- **Detrimental to residential amenity; privacy of neighbouring properties affected; overlooking** – no specific reasons are given for the identification of these issues;
- **Road safety; increased traffic** - no specific reasons are given for the identification of these issues;
- **Light pollution** - from aviation warning lighting required by the Ministry of Defence in a 'dark skies' area that contributes to tourist and visitor attractions;
- **Ecology** – unnecessary disturbance to wildlife; one objector considers that the Applicant has in line with the Ecology Section's advice, failed to demonstrate that its proposal is informed by 'Best Practice' guidance;
- **Economy** – contributes to wind energy development which has adverse impacts on tourism (attractiveness of area to tourists and visitors) and small businesses in the local area;
- **Subsequent Wind Energy Proposal** – account should be had to an intention to amend the wind energy proposal for the site, and the potential implications of this for the site and surrounding area, particularly given the potential for this to involve higher turbines than those consented at appeal for the Windy Edge scheme; approval would only promote a larger wind farm proposal;
- **Health issues; Flood Plain risk; Inadequate drainage; Noise nuisance; Water supply** – no reasons given for the identification of these issues; and
- **Other** – the approval and operation of the mast would contribute to a further period of uncertainty for local residents with respect to the timetable for the delivery of the wind farm.

## APPLICANT'S SUPPORTING INFORMATION

The application is supported by a Planning and Design Statement.

A further statement has been provided by the Applicant in response to the objections received. This advises: (i) that the wind monitoring work that has already occurred in the area is not relevant. The Applicant is seeking to progress beyond this, to further understand the area's wind profile and requires the proposed mast to be at the proposed height, in order to achieve this; (ii) that the current proposal would not in planning terms, be appropriately assessed in terms of either its relationship to the consented wind farm at Windy Edge, or any forthcoming proposals; and (iii) the proposal would in fact be sited on what is to be the site of a consented, permanent anemometer mast.

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

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

Policy 1B: The Spatial Strategy: Development Principles  
Policy 10: Sustainable Energy Technologies

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

Policy PMD1: Sustainability  
Policy PMD2: Quality Standards  
Policy ED9: Renewable Energy Development  
Policy HD3 Protection of Residential Amenity  
Policy EP1: International Nature Conservation Sites and Protected Species  
Policy EP2: National Nature Conservation Sites and Protected Species  
Policy EP3: Local Biodiversity  
Policy EP7: Listed Buildings  
Policy EP8: Archaeology  
Policy IS5: Protection of Access Routes

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

The following are material considerations:

Scottish Planning Policy (SPP) (June 2014)  
National Planning Framework for Scotland (3) (June 2014)  
Scottish Government On-line Renewables Advice

Supplementary Planning Guidance: Wind Energy (May 2011)  
Supplementary Planning Guidance: Biodiversity (December 2005)  
Supplementary Planning Guidance: Landscape and Development (March 2008)  
Supplementary Planning Guidance: Renewable Energy (June 2007)

The Borders Landscape Assessment 1998

Wind Energy Consultancy - Landscape Capacity and Cumulative Impact Final Report (July 2013)

Briefing Note on Meteorological/Anemometer Masts (October 2012)

Assessment and mitigation of impacts of power lines and guyed meteorological masts on birds (SNH, 2016)

#### **CONSULTATION RESPONSES:**

The following were consulted on the application. Their comments are summarised below.

### Scottish Borders Council Consultees

**Ecology Section:** seeks the imposition of conditions upon any consent issued. Firstly, condition is sought to require that the development should not commence during the breeding bird season (March to August) unless in accordance with a Species Protection Plan (SPP) for breeding birds, that has first been submitted to, and approved in advance by, the Planning Authority. Secondly, the Ecology Officer seeks a condition to require that a Construction Method Statement outlining measures to protect terrestrial habitats; including soils and the water environment; be submitted to and approved by the Planning Authority before development is commenced. Lastly, an informative is sought to advise that care should be taken to avoid contamination or pollution of the water environment during construction by following SEPA's published guidance.

**Landscape Architect:** has been consulted, and has responded verbally to advise that given the Scottish Government's approval at appeal of the Windy Edge wind farm, there are no concerns with regard to the landscape and visual impacts associated with the installation of the proposed anemometer mast for a three-year period.

### Statutory Consultees

**Ministry of Defence:** no safeguarding objection. However, in the interests of air safety, it is requested that the structure be fitted with aviation warning lighting. Further, the height of the development would necessitate that aeronautical charts and mapping records should be amended, and a condition requiring the developer to notify the Defence Geographic Centre, should be attached to any consent issued. The MoD would require to be made aware of any wind turbine(s) proposals at the site, should there be any ulterior proposal to site wind turbines of 11m or higher and/or with rotor diameters of 2m or greater, at the site.

**Community Council:** objects to the application on two grounds: (i) the Applicant would not appear to have followed best practice in the erection of meteorological towers by mitigating against bird collisions and bird disturbance during the breeding bird season, as per the advice and recommendations of Scottish Natural Heritage's guidance; and (ii) the Applicant should stipulate that the aviation hazard warning light would be infra-red. With respect to the first point, it is considered that the Applicant should have consulted Scottish Natural Heritage and the Royal Society for the Protection of Birds (RSPB) to establish how this would be most appropriately met within the siting guy line marking of the proposal. With respect to the second point, it is advised that the area is of increasing interest to tourists and visitors because of the quality of dark night skies, which would be adversely affected by the need for aviation hazard warning lighting, and recommended that the Applicant should stipulate that the light should be infra-red to minimise light pollution.

### **KEY PLANNING ISSUES:**

Key planning issues are whether or not the proposal would have any unacceptable impacts upon the landscape character; the visual amenities of the area; the residential amenities of neighbouring properties; or the cultural or natural heritage resources at the site and within the surrounding area.

In considering this application, Members may wish to have regard to the Briefing Note presented to the Committee in October 2012, which provided some general background to applications of this type. This sets out the following points (presented here in summary for):



1. Any mast application must be considered on its own merits, without the Planning Authority giving any weight to the potential for a subsequent application to be made for the accommodation of a wind energy development at the site.
2. In the absence of any specific planning policy, the general rural development and environment policies of the Development Plan should be applied to the consideration of any mast application.
3. The assessment of the application should consider the specific policy criteria and the circumstances of the locus. It is legitimate to analyse in detail the potential impact the mast would have on any natural/built heritage assets and the visual and landscape qualities of the locality. Any application must be determined on its own merits and there will be circumstances, where it is appropriate to refuse planning permission due to those impacts. However, appeal decisions by the Directorate of Environmental and Planning Appeals (DPEA) are a material consideration that Members must take account of.
4. Even in sensitive landscapes, where a mast might be visible to a wide range of receptors, decisions must take appropriate account of the slender design of masts and their temporary nature.
5. It is legitimate to seek information on the proposed development, its impacts and the justification for the mast in the particular locus applied for. However, it is inappropriate to seek a justification for the need for a mast. It is only in the limited situations where there is a specific policy requirement that the need might be questioned.

## **ASSESSMENT OF APPLICATION:**

### **Planning Policy Context**

In general policy terms, this proposal for a temporary meteorological mast does not conflict with any of the principal determining development plan policies, provided that the proposal does not have any unacceptable landscape and visual impacts; avoids causing any adverse impacts upon any cultural or natural heritage resources at the site or within the surrounding area; and/or there are no other material planning considerations that indicate that the proposal would not otherwise be appropriately supported.

There are generally limited material planning reasons for masts to be resisted, particularly as they are, almost without exception, applied for on a temporary basis (in this case, 3 years). Their provision accords with Government's positive approach towards the consideration of sites for renewable energy development, and are generally accepted to be a precursory requirement for any applications for wind energy developments. It should be noted however, that by accepting a proposed met mast, this does not commit the Planning Authority to accepting proposals for wind energy development on this site. Any future proposals for wind energy developments would need to be considered on their own merits and under any forthcoming application which may be submitted.

### **Anemometer Proposals and Wind Energy Development**

The Applicant considers that the proposal should be assessed against Policy ED9 – Renewable Energy Development of the Local Development Plan. Policy ED9 sets out the criteria by which to assess wind energy development, however, there is no specific reference in Policy ED9, or the Council's Supplementary Planning Guidance: Wind Energy, to the installation of wind monitoring masts associated with proposed wind energy developments.

Accordingly, it would not be appropriate to assess the current application against this specific policy or the aforementioned SPG. Instead, the proposal should be considered on its own planning merits, and should be assessed principally against Policy PMD2. This policy contains a number of standards that would apply to all development, and requires that development should be of high quality in accordance with sustainability principles, designed to integrate with its landscape surroundings.

Members should be aware that while objectors may reasonably anticipate the potential for a future application for a new or revised wind farm scheme, the determination of the current application is not an appropriate occasion at which to consider the merits or otherwise of the use of the site and surrounding area for wind energy development. In short, the current application would not be reasonably refused or supported on the basis of its potential to promote, facilitate, or more accurately inform, any ulterior wind energy proposal.

### **Purpose, Design and Function**

The agent has advised that the mast is required, and the type of mast proposed, would provide accurate and representative measurements in terms that it is now seeking to investigate on the site. The view of objectors that the wind farm developers have had sufficient opportunity to gather wind data at the site is noted. However, it is entirely reasonable that the developers may have the need to collect new and different data to that which previously approved anemometer masts would have been able to capture.

The proposal is temporary and therefore its erection and operation should be limited to a clearly defined, finite period. In the event of approval, a condition would therefore reasonably be imposed to limit the planning permission to a temporary period of 3 years. A period of 3 years is both directly sought by the Applicant, and is in line with other wind monitoring masts approved elsewhere in the Borders.

### **Landscape and Visual Impact**

The site is not within any landscape designation.

The Borders Landscape Assessment identifies this site as falling within Landscape Character Type No.4: Southern Uplands Type with Scattered Forest. The key characteristics of this uplands landscape are large scale, rolling heather and grassland covered hills with locally prominent, scattered, large coniferous plantations. The surrounding landscape includes a number of larger hills in the surrounding area which provide natural screening in all directions.

Notwithstanding its height, the visual impact of the proposal is limited due to the mast's lightweight, slender nature, which would make it difficult to see at distance, in the wider landscape. Furthermore, it is not designed to be a permanent structure. At the end of its useful life, the mast would be removed from the site, and the land reinstated to its former condition.

Although the mast would be visible from the immediate area it is not considered that it would have any significantly detrimental impacts upon the landscape character of the site or wider surrounding area. The mast would not be prominent when viewed from local roads, such as from the B6399 or from the minor road between the B6399 and the A7 to the south of Hermitage Castle. This is due to the distances involved, surrounding topography and the conifer plantations. The single slender structure would only be visible in closer views; and, as the development is reversible, there would be no lasting visual or landscape impacts. On this basis, the mast would have no unacceptable landscape or visual impacts.

## **Cumulative Landscape and Visual Impacts**

There is potential for cumulative landscape and visual impacts involving the proposed mast and at least some of the structures, including wind turbines, approved under Planning Consent PPA-140-2055. However, the proposal is temporary so any cumulative impacts would certainly be finite. As such, these are not considered to be unacceptable; particularly given that there would be a mast on the site in the longer-term, when the Windy Edge scheme is developed out in full. It is in this respect that positive significant regard might be had to the fact that there is an existing approval for an equivalently-sized but more substantial mast on the site.

It is on balance, considered to be highly unlikely that the Applicant would seek to accommodate the temporary and long-term anemometry masts on the site at the same time, owing to the potential for them to compromise each other's operations. Given the longer-term programme relating to the delivery of the Windy Edge Scheme, the potential for any overlap in time, even if practicable, would be liable to be for a short interval. As such, there are not considered to be any unacceptable risks of any long-term unacceptable landscape and visual impacts occurring as a consequence of two masts being sited next to one another.

## **Residential Amenities**

The mast would be sited in an isolated rural area characterised by scattered houses and communities. However, there are no residential properties in the immediate vicinity of the mast that would be affected by the proposal, in terms of loss of light, privacy or outlook: the nearest residential property, is at Old Braidlie, over 1km to the south.

## **Access**

With respect to technical and safety aspects, there would be no unacceptable impacts upon road safety or the safety of any members of the public using any designated Core Path or Right of Way. The mast would be located more than topple height from any Public Right of Way, footpath, building or road.

Vehicular access to the site would be via the B3699 onto an existing farm track and field access. No access improvements or new access tracks are proposed as part of the development. The mast would be transported to site using 4x4 all-terrain vehicles with trailers and no specialist vehicles, cranes or lifting equipment are required for the installation. During the operational phase of the mast, access would only be required intermittently for inspection and maintenance.

## **Natural Heritage**

The site lies within 2.5km of the Langholm - Newcastleton Hills Special Protection Area (SPA); and the Ecology Section has advised that the site is within 2km of recorded sightings of several protected species. The surrounding habitat includes semi-improved acid grassland, wet heath and marshy grassland, on top of carbon-rich deep peat soil in priority peatland habitat.

The Ecology Section has assessed the potential for there to be impacts upon breeding birds and birds in flight, in and around the site. In accordance with the view taken at the time of the previous application, Ecology request that the guy lines should be equipped with bird deflectors, and that these should be appropriately monitored and maintained. It does however state a specific concern that all of these arrangements should occur within the

context of a broader Species Protection Plan (SPP) for breeding birds, to be submitted to, and approved in advance by, the Planning Authority.

Additionally, a Construction Method Statement, outlining measures to protect habitats; during the construction phase is required. Ecology advises that drive-in anchors would be less disruptive to habitat and carbon-rich soils than dug-in anchors. This specific matter might be considered within the Construction Method Statement, and an informative could provide guidance in this respect.

It is understood that the bird deflectors should be fitted and operated *in any event*; rather than in accordance with a Species Protection Plan were the development to commence during the breeding bird season. The two matters – provision and maintenance of bird deflectors, and construction during the breeding bird season – are reasonably separate matters, albeit that both could reasonably be addressed appropriately within the same Species Protection Plan. A suitably worded planning condition could appropriately allow for this.

Although it was previously consulted at the time of the public consultation on the earlier anemometer mast, Scottish Natural Heritage (SNH) has not been consulted on this occasion. The site is not the subject of any national natural heritage designations, and SNH has released guidance on mitigation requirements with respect to the erection of anemometer masts, and 'best practice' within the construction of such developments. SNH did not previously identify any objections to the earlier mast proposal on the same site, and its concern then that bird deflectors should be installed is commensurate both with standing advice and the requirements identified by our Ecology Section. Ultimately, the development is capable of being progressed in a way that would meet the requirements of SNH's 2016 guidance subject to the conditions requested by the Council's Ecology Section.

Noting the advice of the Ecology Section in its consultation response relating to the current application, the Community Council, and also one objector, have identified the fact that the proposal has apparently not been informed by 'best practice' guidance as set out by Scottish Natural Heritage in its 2016 guidance note. However, as the Ecology Section's response explicitly advises, both of its concerns in this respect are nonetheless matters which can be regulated by planning conditions in the event of approval.

### **Built Heritage and Archaeology**

Policy EP7 requires that Listed Buildings should be protected against works which would have a detrimental effect on their listed character, integrity or setting. Hermitage Castle is a Category A Listed Building situated 3.5km from the site. It is considered that the proposal would not adversely affect the setting of the castle due to the distance involved, topography and slim nature of the mast.

Policy EP8 seeks to protect Scheduled Ancient Monuments, nationally important sites not yet designated or any other archaeological or historic site. However, there are no known archaeological sites in the immediate vicinity.

### **Aviation Lighting**

The Ministry of Defence has requested that the mast should be fitted with aviation lighting at the highest practicable point. A planning condition would therefore reasonably be placed upon any consent issued, requiring the warning lighting to be fitted, and thereafter retained for the entire duration of the development period, to minimise impacts upon aviation safety.

Objections have been received from the Community Council and from members of the public, on the basis that there would be unacceptable light pollution from the aviation warning lights required by the MoD in association with the operation of the mast. These concerns are primarily raised with respect to light pollution adversely impacting the quality of dark skies in the surrounding area, which it is advised, are of sufficient quality to attract tourists and visitors to the area with an interest in astronomy. In the event of approval, the Community Council has asked that the Applicant in fact be required to fit an infra-red warning light to minimise light pollution. The Applicant might certainly be encouraged by way of an informative, to use an infra-red light to minimise such light impacts, but in relation to a temporary siting of the mast outwith any landscape or natural heritage designation, it would not be reasonable to insist that the Applicant should fit an infra-red light. However, if the application is approved, Members may wish to consider whether or not an infra-red warning light should in fact be required by planning condition.

### **Site Restoration**

No significant restoration of the site would be required following removal of the wind monitoring mast from the site, but there may be notably greater superficial damage associated with dug-in rather than drive-in anchors; and in either event, there would be a requirement to fill in the holes that previously accommodated the anchors.

It would be appropriate to require by condition that the Applicant carry out all works that would be necessary to restore the original ground levels, in order to allow the land within the site to continue in agricultural use, beyond the decommissioning of the proposed mast.

### **Other Issues**

Since the proposal is temporary, with a relatively small footprint compared to the larger agricultural use, there would be no unacceptable conflict in terms of land use; and the surrounding agricultural use of the land would continue as before in the event of approval.

Objections with respect to drainage and water supply are noted, but no watercourse crossings are required. There is no surface water feature within the immediate area of the proposed development. Accordingly, none of these matters is considered to be reasonably objectionable. No trees or hedges would be impacted.

Objections based on potential adverse impacts upon the quality of landscape or dark skies, affecting the local tourist and visitor economy, are noted. However, beyond the subjective views or anecdotal accounts of individuals, there is no evidence that anemometers, masts or wind turbines, do have any significant effect in either the discouragement or promotion of tourism within an area. Moreover, it is not tenable in this particular case, that a single temporary mast at the site of an approved wind farm would have any particularly notable effects in this respect.

### **CONCLUSION**

The mast is a lightweight structure of unobtrusive design and temporary nature, required to establish the technical feasibility of a potential wind energy development. It would be sited on land that is not subject to any environmental designations or specific site constraints. It would have no significant adverse long-term impacts on the landscape character of the area as a consequence of its temporary siting and slender nature.

This development would therefore not result in any significant adverse impacts upon the amenity or environment of the surrounding area, including the surrounding landscape, and the area's natural heritage and cultural heritage resources. The proposed mast is consistent

with the development plan and national renewable energy planning policies. Accordingly, the proposal to erect a wind monitoring mast in this location is considered to comply with the policies of the Scottish Borders Local Development Plan; including Policy PMD2.

This conclusion should not be taken as an indication of the acceptability of a wind farm development on this site.

**RECOMMENDATION BY CHIEF PLANNING OFFICER:**

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

1. Approval is granted for a limited period of three years from the date of this consent and, unless an application is made and further consent obtained, the wind monitoring mast shall be removed from the site at the expiry of this same three year period.  
Reason: To ensure the satisfactory regulation of a temporary development on the site, in the interests of safeguarding the amenity of the site and surrounding area.
2. Unless otherwise agreed in writing by the Planning Authority in advance of the commencement of decommissioning works, following the removal of the anchors, the holes that accommodated the anchors shall be filled in (backfilled, in the case of dug-in anchors) back to the original height (ground level) of the ground prior to the insertion of the anchors at the time of the erection of the development hereby consented. Further, this reinstatement of the site shall be completed within no more than 2 months from the date of the completion of the decommissioning of the wind monitoring mast itself.  
Reason: To ensure the satisfactory restoration of the site in the interests of safeguarding the amenity of the site and surrounding area.
3. No development shall commence until the Developer has first provided the Planning Authority with documentary evidence that the UK DVOF & Powerlines at the Defence Geographic Centre, has received, and confirmed its acceptance of, appropriate notification of the following details:
  - a. Precise location of development;
  - b. Date of commencement of construction;
  - c. Date of completion of construction;
  - d. The maximum height above ground level of the tallest structure;
  - e. The maximum extension height of any construction equipment; and
  - f. Details of aviation warning lighting fitted to the structure.Reason: in the interests of aviation safety, to allow the records of the Ministry of Defence to be amended and updated for safeguarding purposes.
4. Aviation warning lighting shall be fitted at the highest practicable point on the meteorological mast. The lighting device so installed, shall either be a minimum intensity 25 candela omni-directional flashing red light or an equivalent infra-red light. It shall be maintained in good working order at all times for the entire duration of time that the mast remains in situ. Please see **Informative Note 1** for related advice.  
Reason: Appropriate aviation warning lighting requires to be fitted to the meteorological mast in the interests of aircraft safety.
5. No development shall commence until a Species Protection Plan (SPP) for breeding birds, has first been submitted to, and approved in writing by, the Planning Authority. This same SPP shall include provision for mitigation and monitoring of the development hereby approved in relation to the protection of breeding birds, including (as a precaution) hen harrier. It shall specifically include the following:

- a. a scheme of details, including elevation drawings, describing the installation and maintenance of bird deflectors located along the length of each guy wire, positioned relative to one another, at a minimum interval of 5m, with these arranged on adjacent wires such that the resulting pattern of deflectors is staggered to provide maximum visual impact to birds;
- b. a scheme of details describing how the bird deflectors shall be monitored regularly, and maintained throughout the period of operation of the structure. This shall identify specific action-points and timescales for the operation of these same measures (that is, what specifically, will be carried out and when it will occur); and
- c. a scheme of details identifying all mitigation measures that shall be employed to minimise disruption to breeding birds during the breeding bird season (March to August).

Thereafter, (i) the development shall only be carried out and operated in accordance with the provisions of the approved Species Protection Plan; and (ii) the provisions of the Species Protection Plan shall all be implemented and operated in accordance with the approved details for the duration of the development hereby approved. The approved bird deflectors installation shall moreover, be fully installed at the time of the erection of the anemometer mast, and this installation shall thereafter be maintained in full and at all times, in accordance with the approved details for the duration of the development hereby approved.

Reason: To prevent adverse impacts on breeding birds, including hen harrier, and to help conserve the natural heritage interests safeguarded by the Langholm - Newcastleton Hills Special Protection Area (SPA).

- 6. No development shall commence until a Construction Method Statement has first been submitted to, and approved in writing by, the Planning Authority. This Construction Method Statement shall:
  - (a) identify measures to protect terrestrial habitats, including soils and the water environment at the time of, and for the duration of, works at the time of construction and at the time of the decommissioning works; and
  - (b) address the concerns of **Informative Note 2** attached to this same planning consent.

The development shall then be implemented in full accordance with the provisions set out within the approved Construction Method Statement, including at the time of its initial construction and then at the time of the decommissioning works.

Reason: To ensure that all construction operations are carried out in a manner that minimises their impacts on terrestrial habitats and the water environment.

### Informatives

It should be noted that:

#### **INFORMATIVE NOTE 1:**

In respect of **Condition 4**, the Developer is encouraged to install infra-red lighting so that the lighting would not result in an unacceptable level of light pollution.

#### **INFORMATIVE NOTE 2:**

Care should be taken to avoid contamination or pollution of the water environment during construction by following SEPA's published guidance, e.g. GPP 5.

The Council's Ecology Section considers that drive-in anchors would be less disruptive to habitat and carbon-rich soils than dug-in anchors. Accordingly, and within the Construction Method Statement, the Developer should consider the potential to employ a drive-in method

of anchoring, and describe the employment of such a method, wherever this is possible. (If a dug-in method of anchoring is proposed, it should be justified and evidenced within the Construction Method Statement that a drive-in method, is not feasible for environmental reasons).

**DRAWING NUMBERS**

<b>Plan Ref</b>	<b>Plan Type</b>
1	Location Plan
2	Site Plan
3	Elevations
4	Planning Layout

**Approved by**

<b>Name</b>	<b>Designation</b>	<b>Signature</b>
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)**

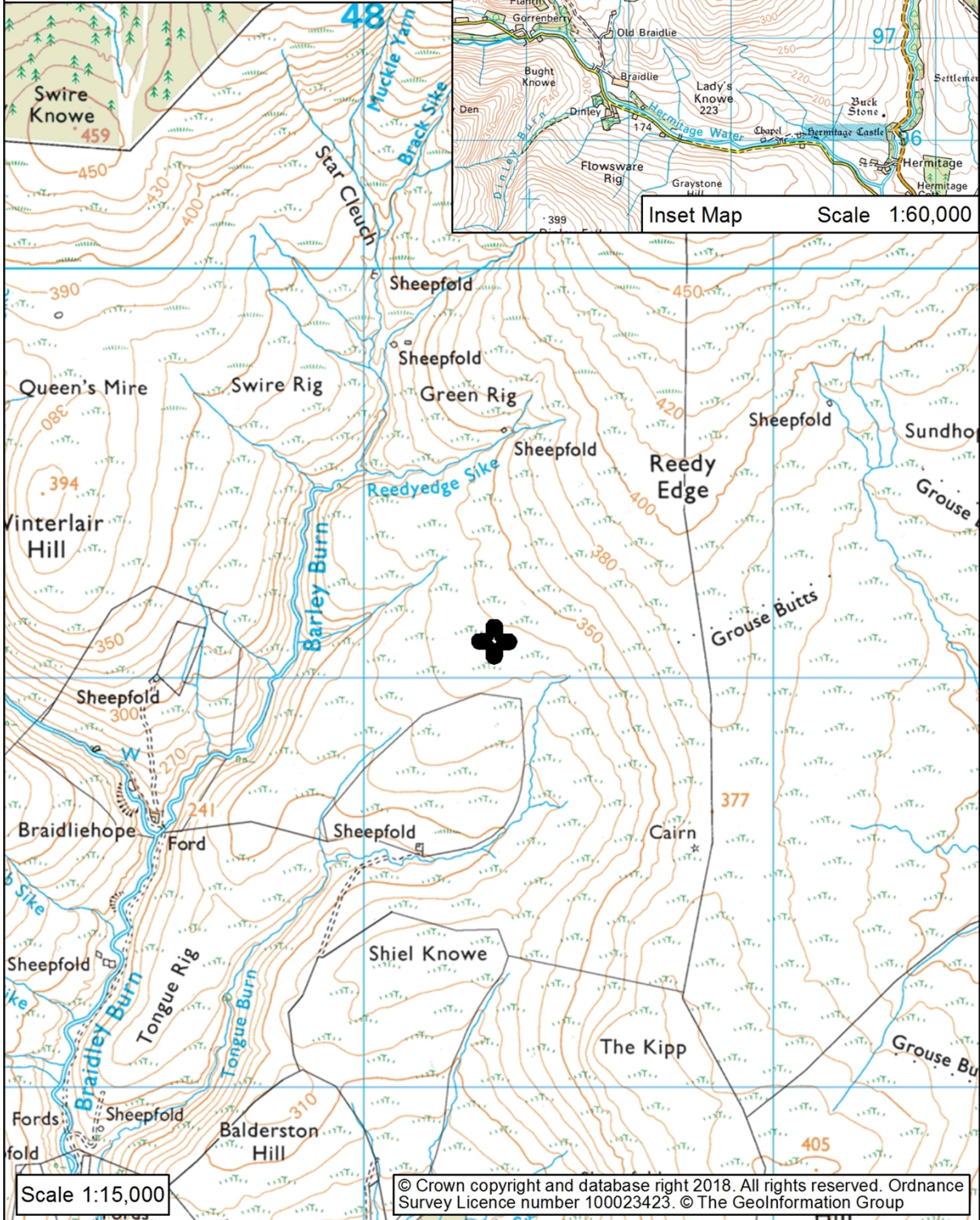
<b>Name</b>	<b>Designation</b>
Stuart Herkes	Planning Officer





18/00253/FUL

Land North East And North West -  
Of Farmhouse Braidlie  
Hawick



Scale 1:15,000

Inset Map Scale 1:60,000

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**"CONSULTATION ON FEES CHARGED FOR APPLICATIONS UNDER THE ELECTRICITY ACT 1989"**

**Report by Service Director Regulatory Services**

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**PLANNING & BUILDING STANDARDS COMMITTEE**

**30 APRIL 2018**

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**1 PURPOSE AND SUMMARY**

- 1.1 **This report seeks approval of the response prepared by the Chief Planning Officer on behalf of Scottish Borders Council in respect of the changes to the fees regime for applications to the Scottish Government's Energy Consents Unit under s36 and s37 of the Electricity Act 1989.**
- 1.2 Scottish Ministers are seeking views on their proposals to substantially increase the fees applicable for such applications and for their proposed new fee structure. The fee structure is set out in Annex1 to the consultation document which is attached as Appendix B.
- 1.3 The proposals seek to deliver full recovery of costs for the Energy Consents Unit enabling it to maintain service delivery and support future service improvement. Whilst the general provisions of the new fee regime are acceptable, controversially, the proposals specifically state that there will be no reciprocal increase in the fee payable to Local Planning Authorities for the work they undertake in the determination and assessment of such applications. There will also still remain a significant discrepancy between the fees charged in Scotland and the rest of the UK for such development.
- 1.4 The report seeks approval for the response to the consultation set out in Appendix A, which requires to be submitted to Scottish Government by 14 May 2018.

**2 RECOMMENDATIONS**

- 2.1 **I recommend that the Council approves the consultation response set out in Appendix A as the Scottish Borders Council's formal response to the consultation on the fees charged for applications under the Electricity Act 1989.**

### **3 BACKGROUND**

- 3.1 In February 2017, Scottish Borders Council responded to the consultation on raising planning fees in Scotland (Appendix C). This specifically related to fees for planning applications and ultimately led to the planning fee cap being raised to £125,000 (for most categories of development) to better reflect the level of resources they demand. The maximum fee for Planning Permission in Principle applications was also raised to £62,500. The changes did not affect the current fee structure and the new cap only comes into consideration if the development is of a scale to trigger a fee beyond the previous maximum caps. There was no across the board increase in fees. Once the full implications of the changes being introduced by the Planning Bill are understood the wider planning fee regime will be reviewed.
- 3.2 The Council's response to the consultation highlighted that the proposals were silent on fees for applications made under Section 36 and 37 of the Electricity Act. In the Scottish Borders, numerous applications have been processed for windfarms that fall within the provisions of Section 36. This has placed a significant strain on existing staff resources and associated budgets. Whilst the Energy Consents Unit is the determining body a significant part of the assessment of the application is undertaken by the Planning Authority. The Council's response set out clearly that Planning Authorities should receive a fee commensurate with the work carried out and that it should, at the very least, be on par with the new fee charged for major applications (up to £125,000).
- 3.3 Following the implementation of the new planning fees regime last year it was intimated that a review of fees for s36 and s37 applications was to be undertaken and that it would acknowledge the substantial work carried out by Local Planning Authorities. It is therefore deeply disappointing that the published proposals effectively freeze payments at current levels and do not include a deserved proportionate increase in the fee payable to the relevant Local Planning Authority. This would mean that SBC would continue to receive only £12,000 (2/3rds of the current maximum fee to ECU of £18,000) for applications exceeding 50MW but not exceeding 100WM (which are the majority received in the Borders) for which the Energy Consents Unit would now receive a fee of £190,000.

### **4 KEY PROPOSALS**

- 4.1 The consultation recommends increasing the application fee tariffs dependent on the size of the proposed project in terms of its MW output or the length of the overhead line. The introduction of a simple and understandable fixed fee structure is supported.

- 4.2 The proposed increase in fee level is significant and merited. This is a move in the right direction in terms of ensuring that they more accurately reflect the costs of processing such applications. However, the proposals acknowledge that they fail to address the significant discrepancy between the fees charged in Scotland and those in other part of the UK. Scotland has a large proportion of renewable power activity in the UK and its regulators are being penalised financially due to the fee regime operated in Scotland. The resultant lack of resources to deal with this work will undoubtedly continue to have an impact on the ability to respond to this agenda.
- 4.3 A fundamental flaw of the consultation proposals is how the fees are apportioned between central and local, as they do not reflect the extent of the work carried out by Planning Authorities in the assessment of such applications, in their scoping and in supporting the appeal process. Local Planning Authorities are also responsible for the purification/enforcement of deemed planning consent conditions. The effective freezing of the fee payable to Local Planning Authorities to a maximum of £12,000 (2/3rds of fee currently payable to ECU) is unreasonable, unfair and ill-judged.
- 4.4 It is also proposed to introduce phased payments of fees at screening and scoping stage for proposals subject to Environmental Impact Assessments (EIA) and that this payment will form part of an instalment toward the total application fee. In principle this is a logical and sensible proposal designed to enable early and productive pre-application dialogue and that regulators are recompensed for this work. Tellingly, no reference is made as to whether any of this fee will be available to Local Planning Authorities. This omission will potentially discourage and reduce the ability of authorities to engage at this early stage of the process.
- 4.5 Whilst recognising that fees for all Electricity Act applications need to increase, the consultation recommends introducing a distinction between the fees charged for EIA and non-EIA development. This is to reflect the differing complexity of the information and resources required to administer EIA proposals. This appears to be a reasonable and logical approach.
- 4.6 The consultation recommends that a fee be charged for the variation of consent. The fee would be at the same level as the original application and subject to the caveat about the Local Planning Authority receiving an appropriate portion of the increase fee, this proposal is supported. The varied application will require a full and detailed assessment, on par with the original analysis and suitable recompense for that work should be sought.
- 4.7 The consultation sets out the context for the proposed changes and seeks answers to 8 set questions. The response to the questions is set out in Appendix A.

## **5 RESPONSE TO CONSULTATION**

5.1 The response to the consultation questions is set out in Appendix A.

## **6 IMPLICATIONS**

### **6.1 Financial**

There are no cost implications arising for the Council in responding to the consultation.

Scottish Borders Council has processed numerous applications for windfarms that fall within the provisions of Section 36. This has placed a significant strain on existing staff resources and budgets. There are serious concerns that freezing the fee payable to Planning Authorities at a maximum level of two thirds of the current fee level will have on SBC's ability to respond effectively to such applications. SBC will potentially not benefit from the proposed increase in fees proposed in the document but will be expected to continue to improve performance and provide resources to process such applications.

SBC will be financial disadvantaged unless a fee is received commensurate with the work it carries out and that should, at the very least, be on par with the planning application fee charged for major applications.

Scottish Ministers have increased the maximum fee cap for major planning applications, which will potentially generate substantial fees for windfarm applications in the Scottish Borders. However, it would be perverse if the position is reached where the fee received by SBC for considering S36 applications (£12,000 maximum), which by definition are of greater scale and complexity, is significantly lower than that which it will receive for a major planning application (£125,000 maximum).

### **6.2 Risk and Mitigations**

The key risks to the Council if the Scottish Government's proposals are implemented are stated in Section 6.1, in addition to references throughout the main body of the report. It is hoped that by highlighting specific concerns in our response, the Scottish Government will reconsider the proposals that have a negative financial and resource impact on the Council.

### **6.3 Equalities**

After considering the requirement for Equalities Impact Assessment the Scottish Government concluded that there would be no disadvantage created between equalities groups and no assessment was necessary.

**6.4 Acting Sustainably**

There are no significant adverse effects on the economy, community or Environment and there will be real potential for the more effective delivery of sustainable economic development.

**6.5 Carbon Management**

There are no significant adverse effects on carbon management or emissions arising from the proposals.

**6.6 Rural Proofing**

This report does not relate to new or amended policy or strategy and as a result rural proofing is not an applicable consideration.

**6.7 Changes to Scheme of Administration or Scheme of Delegation**

There are no changes to be made to either the Scheme of Administration or the Scheme of Delegation as a result of the proposals in this report.

**7 CONSULTATION**

7.1 The Chief Financial Officer, the Monitoring Officer, the Chief Legal Officer, the Chief Officer Audit and Risk, the Chief Officer Human Resources and the Clerk to the Council are being consulted and any comments received will be incorporated in the final report.

**Approved by**

**Brian Frater**  
**Service Director Regulatory Services**

**Signature .....**

**Author(s)**

Name	Designation and Contact Number
Ian Aikman	Chief Planning Officer

**Background Papers:**

APPENDIX A – CONSULTATION ON FEES CHARGED FOR APPLICATIONS UNDER THE ELECTRICITY ACT 1989 - PROPOSED RESPONSE BY SCOTTISH BORDERS COUNCIL - APRIL 2018

APPENDIX B - FEES CHARGED FOR APPLICATIONS UNDER THE ELECTRICITY ACT 1989 – SCOTTISH GOVERNMENT CONSULTATION - FEBRUARY 2018

APPENDIX C - CONSULTATION ON RAISING PLANNING FEES - RESPONSE BY  
SCOTTISH BORDERS COUNCIL - FEBRUARY 2017

**Previous Minute Reference:**

**Note** – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Jacqueline Whitelaw can also give information on other language translations as well as providing additional copies.

Contact us at Jacqueline Whitelaw, Place, Scottish Borders Council, Council Headquarters, Newtown St Boswells, Melrose, TD6 0SA, Tel 01835 825431, Fax 01835 825071, email [eitranslationrequest@scotborders.gov.uk](mailto:eitranslationrequest@scotborders.gov.uk)



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## APPENDIX A

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### CONSULTATION ON FEES CHARGED FOR APPLICATIONS UNDER THE ELECTRICITY ACT 1989

#### Response by Scottish Borders Council

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#### 1 Comments on Proposals

- 1.1 The re-examination of the fees payable for Section 36 and 37 applications is welcomed, although it is long overdue. As things stand, there is a two tier system for the calculation of fees for electricity generating applications in Scotland, which is illogical and unfair. In addition, as is acknowledged in the consultation paper, there is also currently a significant discrepancy between the fees charged in Scotland and those in England and Wales that will still not be addressed, even if the proposals in the consultation are introduced.
- 1.2 Scottish Borders Council made representations on the consultation on planning fees in February 2017 in which it recommended government re-examine the fee regime for section 36 & 37 applications. The need for this re-examination was also set out in the consultation response submitted on behalf of Heads of Planning Scotland.
- 1.3 There had been encouraging feedback from government that this review would not just address the need to cover the costs of the Energy Consents Unit in managing such applications but that it would also acknowledge the substantial work carried out by local authorities. It is therefore deeply disappointing that the proposals freeze payments to Local Planning Authorities at current levels and do not include a deserved proportionate increase in the portion of the fee payable to the relevant authority. The reference in "*Footnote – Local Planning Authorities*" that: "*...the cost to planning authorities of undertaking their statutory function in the consultation process is included in the local authority settlement.*" is ill-judged and does little to maintain the excellent existing working arrangements between the unit and planning authorities.
- 1.4 The principle of seeking full recovery of costs for public services is supported. However, the proposals, as they are drafted, fail to recognise the significant costs incurred by Local Planning Authorities in responding to S36 & S37 applications. Local Planning Authorities play a major part in the determination and assessment of such applications, in their scoping and in supporting the appeal process; as well as the purification/enforcement of deemed planning consent conditions.
- 1.5 Scottish Borders has processed numerous applications for windfarms that fall within the provisions of Section 36. This has placed a significant strain on existing staff resources and budget. Whilst the Energy Consents Unit is the determining body in reality a significant part of the assessment of the

application is undertaken by Local Planning Authorities. The relevant Local Planning Authority should receive a fee commensurate with the work carried out and that should, at the very least, be on par with the planning application fee charged for major applications.

- 1.6 It would be perverse if a position is reached where the fee received by the Planning Authority for considering S36 applications, which by definition are of greater scale and complexity than major applications, is significantly lower than it would receive for considering a major planning application.

<b>CONSULTATION QUESTIONS</b>
<p><b>1. Do you agree or disagree the application fees should be revised to maintain and improve our service levels?</b></p> <p>Agree.</p> <p>It is agreed that the fees charged by the Energy Consents Units should be increased to help improve and expand its services. However, as set out above, there needs to be an acknowledgement of the role of and work carried out by Local Planning Authorities in support of the process. The fee payable to Local Planning Authorities should be subject to a similar analysis which should result in an appropriately increased fee being received.</p>
<p><b>2. Do you agree or disagree that we should continue to have a fixed fee structure as proposed?</b></p> <p>Agree.</p> <p>The fixed fee structure is simple to operate, is understandable and generally reflects the fee mechanism operated in the planning system. The reference to generating capacity and length of line are sensible and avoid red line boundaries being manipulated to reduce the fee.</p>
<p><b>3. Do you agree or disagree with the proposal that application fees should be phased in the manner proposed, to spread the risk associated with potentially abortive or unsuccessful application costs?</b></p> <p>Agree.</p> <p>However, it is not all about reducing risks to developers but the recognition of potentially abortive costs to the Energy Consents Unit and Planning Authorities at the pre-submission stage.</p> <p>A considerable amount of work and effort is expended at the pre-application stage by the Consents Unit and Local Planning Authorities (this pre-engagement is actively encouraged by the Planning Bill). The proposals should perhaps include a provision for a pre-application stage payment that would be split between the Consents Unit and the relevant Planning Authority. It could be argued that the ability to charge discretionary fees proposed in the Planning Bill will allow planning authorities to recoup some of this cost.</p> <p>A phased payment at screening and scoping request stage is a sensible proposal but again, as the latter process involves the Planning Authority, then a payment to the planning authority would also be appropriate. It is agreed that the fees payable at screening and scoping stage be subtracted from the eventual application fee.</p>

**4. Do you agree or disagree the existing arrangement should continue where the same fee is required for overhead lines exceeding 15km in length whether or not there is EIA development? If you disagree please provide a proposed alternative and expand on this in your answer to question 6.**

Agree

There will undoubtedly be a greater level of assessment required for an EIA development but experience of proposals for overhead lines in the Scottish Borders does not lead to the conclusion that a different fee structure would be justified. However, a commensurate proportion of the fee should be made available to the relevant Planning Authority.

**5. Do you agree or disagree with the introduction of a fee for processing applications for variations of consent, whether for EIA or non-EIA development? If you disagree please provide a proposed alternative and expand on this in your answer to question 6.**

Strongly Agree.

The amount of work undertaken by the Consents Unit and the Local Planning Authority for the revised application is on par with that required to assess the original application and the introduction of a fee is fully justified. Again, a commensurate proportion of the fee should be made available to the relevant Planning Authority.

**6. On balance, do you agree or disagree with the fee levels proposed? If you disagree, please specify which fee in Annex 1 you think should be reconsidered and provide a proposed alternative.**

Agree.

In general they are appropriate but they are only a first step toward what should be the aim of parity of fees throughout the UK for similar types of development. It is perverse that just a few miles further south over the border planning applications and applications under the Electricity Act will be charged at significantly differing levels. There is no justifiable reason for this differential and there is certainly no less a level of assessment required by the Consents Unit and Local Planning Authorities in Scotland.

Scotland has a large proportion of the renewable activity in the UK and its regulators are being penalised financially due to the fee regime operated in Scotland. The resultant lack of resources to deal with this work will undoubtedly have an impact on the ability to respond to this agenda.

**7. Do the proposals in this consultation have any financial, regulatory or resource implications for you and/or your business (if applicable)? If so please explain these.**

There are financial and resource implications for Local Authorities.

It is considered that the Business & Regulatory Impact Assessment does not adequately cover the impacts on Local Planning Authorities and is focussed too narrowly on the impacts on applicants/developers. The payment of a fair portion of the increased fees to Local Planning Authorities would allow investment in staff and resources and the building of capacity to deal more effectively and efficiently with such applications.

Capping fees to Local Planning Authorities to their current level will act as a

disincentive to Local Planning Authorities to be more actively involved in pro-active pre-submission dialogue. This may result in poorer quality submissions with less chance of success and ultimately more refusals, all of which would contributed towards slowing down the application and consultation process and meeting renewable targets.

**8. Do you have any other comments?**

See 1 - Comments on Proposals above.

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Ian L Aikman  
Chief Planning Officer  
Scottish Borders Council

30<sup>th</sup> April 2018

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# CONSULTATION ON RAISING PLANNING FEES

## Response by Scottish Borders Council

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### 1 Introduction

- 1.1 Scottish Borders welcomes the opportunity to respond to the consultation on raising planning fees in Scotland.
- 1.2 The consultation seeks views on a revised fee cap for major planning applications. Planning fees are currently capped at £18,270, £20,055 and £30,240 depending on the category of development. The Scottish Government's proposal is to raise the current planning fees cap (for most categories of development) to £125,000 to better reflect the level of resources they demand. It is also proposed to raise the fee cap for Planning Permission in Principle applications to £62,500. The proposed changes do not affect the current fee structure and the new cap only comes into consideration if the development is of a scale to trigger a fee beyond the existing maximum caps. The proposals do not contain an across the board increase in fees.
- 1.4 This paper sets out Scottish Borders Council's response to the consultation.

### 2 Response to Consultation

- 2.1 There have been numerous research papers produced examining the fee regime in Scotland in recent years. Planning Authorities and Heads of Planning Scotland have also provided detailed evidence to Scottish Government on the operating costs of planning services. In the Council's view, there is already sufficient evidence to justify raising planning fees as proposed and moving towards a position where full cost recovery for all planning services can be achieved; not just for Development Management.
- 2.2 It is clear that there is a significant disparity in the fees applicable in England to those in Scotland, with the maximum payable south of the Border set at £250,000. A recent assessment undertaken by Dumfries & Galloway Council identified that for a range of similar applications in Carlisle the fee payable would be in the region of £1.5m, in contrast to a fee of £330,000 payable in Scotland. There is no difference in the work involved in determining such applications

and the absence of a realistic fee in Scotland puts additional pressure on already stretched budgets and resources. The Scottish baseline fees and maximum fee caps should progressively move towards parity with the charges south of the Border.

- 2.3 A preliminary assessment of the impacts of the consultation proposals has been carried out for the Scottish Borders. After examining applications lodged in 2016, it is clear that the increase in the upper threshold would have had an impact on the fees collected last year. The majority of the 1080 applications received fell within the categories where the change would not have been applicable and would have made no difference to the fees generated. Only 5 applications would have incurred increased fees above the existing maximum cap. For those five applications, the additional fees amounted to £2,000 for a housing site, £39,000 for a distillery development, £36,491 for a tourism/chalet scheme and a significant additional fee of £104,950 each for two windfarms. This makes a grand total of £287,391. This additional fee income would have been very welcome but would not have fully addressed the underlying budget pressures, or the costs of service provision, facing Planning Services in the Scottish Borders. Until this is addressed Planning Services in the Scottish Borders continue to be subsidised from funds from other hard pressed Council services. It is also likely that, had the new fee structure been in place, the site boundaries of the two windfarm applications would have been modified to reduce the fee burden and therefore the amount payable to the Council.
- 2.4 Scottish Borders Council agrees with the recommendation for a substantial increase in the planning fees for major planning applications but considers that this must be seen as a partial solution towards full cost recovery and one which will have little impact on many Planning Authorities that have few major applications. The fee increase is justified because major applications are more complicated to assess and process and the consultations involved can be complex, involving a wide range of stakeholders and often require specialist advice and guidance. They can also generate significant public interest and representation, as well as challenge to the process and decisions.
- 2.5 The additional income generated by an increase in planning fees should be retained by Planning Authorities as a discrete operating budget. Improvements in Planning Services will be difficult to achieve without the opportunity to reinvest in resources and enhanced levels of service provision, once full cost recovery targets have been met.
- 2.6 It is acknowledged that more fundamental changes to planning fees may take some time to be implemented. Scottish Borders Council

would ask that Scottish Government introduce, at the earliest possible stage, a % increase in the baseline planning fee (of at least 20 – 30%), as a progressive step towards full recovery of fees. There has already been progressive improvement in performance in the recent years to justify this increase, as set out in Scottish Councils Planning Performance Frameworks.

- 2.7 Scottish Borders Council accepts that further increases in planning fees must be linked to continuous improvement in performance. However, performance should not be exclusively related to time taken to determine applications but should also be related to delivering quality outcomes on the ground and the achievement of Placemaking standards. The Council supports the development of the Planning Performance Framework as a means for the link between fees and performance to be maintained and strengthened.

### **3 Additional Comments**

- 3.1 The proposals are silent on fees for applications made under Section 36 and 37 of the Electricity Act. In the Scottish Borders, we have processed numerous applications for windfarms that fall within the provisions of Section 36. This has placed a significant strain on our existing staff resources and our budget. Whilst the Energy Consents Unit is the determining body a significant part of the assessment of the application is undertaken by the Planning Authority. The Planning Authority should receive a fee commensurate with the work it carries out and that should, at the very least, be on par with that charged for major applications.
- 3.2 It would be perverse if we moved to a position where S36 applications, which by definition are of greater scale than major applications, are charged at a significantly lower rate. This could lead to applications being artificially modified to negate paying the major application fee.
- 3.3 Scottish Borders Council welcomes Scottish Government's intention to consider wider changes to the fee structure, including scope for further discretionary charging taking account of changes to the planning system flowing from the review. The Council does not support any of the additional funding generated being used to fund existing central government functions.

### **4 Conclusion**

- 4.1 In conclusion, Scottish Borders Council:
- Supports the proposed increase in the maximum planning fee for major applications, as a first stage of a review of the review of planning fees;

- Highlights that the fee increase, although welcome, will not fully alleviate resource pressure on local authority planning services;
- Acknowledge that the fee increase will benefit authorities who receive more major planning applications. For authorities with few major applications, there will be little benefit as a result of the proposed fee increase;
- Recommend that a percentage increase in fees of at least 20-30% be implemented as soon as possible to bridge the existing funding gap in the period leading to the second phase of the fee review;
- Recommend that there be a progressive move towards fee parity with England. This significant gap will need to be closed if full cost recovery planning costs is to be achieved in Scotland, and
- Agree that the second stage of the fee review should be linked to improved performance but that performance should be gauged using an updated Planning Performance Framework.

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Ian L Aikman  
Chief Planning Officer  
Scottish Borders Council

20th February 2017

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# **Fees Charged for Applications under the Electricity Act 1989**



# FEES CHARGED FOR APPLICATIONS UNDER THE ELECTRICITY ACT 1989

## Introduction

Scottish Ministers are responsible for determining applications for consent for onshore generating stations with installed capacity exceeding 50 MW and overhead power lines in Scotland under sections 36 and 37 of the Electricity Act 1989 respectively. The Electricity (Applications for Consent) Regulations 1990 and Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 apply to such applications, which are processed on behalf of Scottish Ministers by the Scottish Government's Energy Consents Unit. The Scottish Ministers are also responsible for determining applications for consent for generating stations with installed capacity exceeding 1 MW in Scottish Territorial waters and over 50 MW in the Scottish Renewable Energy Zone (REZ). Such applications are processed on behalf of Scottish Ministers by Marine Scotland Licensing Operations Team. We publish details of our applications online at <http://www.energyconsents.scot> and <http://www.gov.scot/Topics/marine/Licensing/marine/scoping>.

In the marine environment in addition to the requirement to obtain a section 36 consent a marine licence with a separate fee structure is required under the Marine Scotland Act 2010 and under the Marine and Coastal Access Act 2009. Details can be checked online at <http://www.gov.scot/Topics/marine/Licensing/marine/feestructure>.

Our ambition in discharging our administrative function is to deliver certainty around our application processes and timescales, to be inclusive and transparent in the work that we do and to deliver an efficient service to all of our stakeholders which focusses on high quality outcomes.

Our draft energy strategy and National Marine Plan signal the opportunities to shape our future energy system, and to help tackle the challenges of climate change, affordability of energy, and the efficiency of our energy use. The supply of safe, reliable energy underpins the continued growth of the Scottish economy and delivery of key services. Our energy industry provides high quality jobs and a vibrant climate for innovation.

We continue to receive a significant volume of applications for complex energy infrastructure proposals, and wish to reflect upon whether we are properly resourced to deliver the standard of service that our stakeholders wish to see, and to promote the development of the wide range of low carbon and onshore and offshore renewable energy technologies in Scotland as part of the increasingly diverse and dynamic energy mix that the Scottish Government wants to achieve.

In accordance with the Scottish Public Finance Manual, the Scottish Government adopts the principle that there should be full cost recovery for all public services, including those associated with discharging consenting functions under the Electricity Act 1989. We have clear evidence that there has been a shortfall in cost recovery for a number of years, which is now impeding our ability to resource our

consenting functions in the manner to which we aspire. We are reviewing the fees that we charge, to maintain service delivery and to support future improvement. This consultation sets out our proposals in detail and seeks your views on them.

## **Assessment of costs**

To inform our review of fee levels, we have undertaken a staged assessment of our current costs.

We began by undertaking a cost of time analysis, by identifying each stage in our process, the time associated with each task and the staff level at which each task is undertaken. Time recording was undertaken across the full range of application types for which fees are charged, looking at applications for different technologies and of different levels of complexity to develop an understanding of typical or average costs to the Energy Consents Unit and Marine Scotland Licensing Operations Team of each stage in our process.

We have critically evaluated where our processes could be made more efficient and could meet the changing priorities due to the diversification of the marine sector. We have already sought to remove duplication from our processes; to ensure that tasks are being undertaken at the appropriate experience/ cost level; and have focussed our resource on those areas which add greatest value to the process and to outcomes.

We have identified further improvements that we would like to deliver. In particular, we would like to respond to demands to more proactively project manage application processes to deliver greater certainty around determination timescales. We intend to continue to support discussion with a range of consultees at pre-application stage to streamline the application process, and to avoid instances where additional information has to be sought from applicants. We intend to continue to proactively engage with communities, interested parties and stakeholders potentially impacted by proposed developments, to increase their confidence in our application processes. We have given in depth consideration and successfully piloted measures to deliver these aims, and have assessed the resource requirement for supporting these services for all applications going forward.

We have considered the wider impact of the introduction of the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017. In introducing these regulations, Ministers sought to minimise any additional regulatory burden and ensure protection of the environment, and there will be some additional process and resource requirements for Scottish Ministers in discharging their regulatory responsibilities.

We have given consideration to alternative models, including charging hourly rates to provide an accurate and application specific cost recovery model. However, we prefer to maintain a fixed fee to avoid uncertainty to applicants and the potential for increasing administrative costs which would be passed on to applicants. We have also given consideration to alternative thresholds for application costs, such as the total area included within red line boundary. However, it is our view that generation capacity or length of line provide a fairer indication of complexity and cost of

processing applications for energy infrastructure. We propose to continue to set fee levels by reference to the consented capacity of generating stations or length of overhead lines.

Having developed a detailed understanding of costs that we would seek to recover through our fees, we have balanced the desire for cost recovery against impacts on industry. We are sensitive to market pressures which currently affect developers in energy industries. We have considered the extent to which Scottish Ministers can continue to bear the shortfall in costs experienced to date, having regard to the standard approach to setting charges for public services as set out in the Scottish Public Finance Manual which is full cost recovery. We have undertaken a comparative assessment of our fees against other consenting authorities and jurisdictions to arrive at proposed fee increases which we consider to be reasonable in the context of current market conditions.

The assessment of application costs is not an exact science, but we have given careful consideration to the fee levels proposed in the consultation paper. On balance, we consider that the proposed fee increases are necessary and proportionate. We would welcome your feedback.

## **Proposed changes to fees and introduction of phased payments**

The Scottish Government is proposing to increase the existing application fee tariffs to more accurately reflect the true costs of processing each application.

We are not the only consenting authority to seek to increase fees. There has been a recent review of fees for planning applications in Scotland and for national infrastructure projects in England and Wales. In Scotland, an application for an electricity generating station with installed capacity not exceeding 50MW made under the Town and Country Planning (Scotland) Act 1997 will now require a fee of £125,000 if the total site area is over 52.5 hectares, whether or not an Environmental Impact Assessment is necessary. The range of fees for an application for a national infrastructure project in England and Wales is likely to be between £255,000 (for the most straightforward cases) and £830,000. Although these different fee structures are not directly comparable, our proposal is in line with a broader trend to seek fees to accurately recover the costs.

To help spread the risk associated with potentially abortive or unsuccessful application costs, we propose to introduce phased payments which bring forward payment of a proportion of the application fee to EIA screening and EIA scoping stages. This will allow us to better support applicants who wish to seek pre-application advice before deciding whether to proceed to full application stage. Fees at pre-application stage will be treated as instalments towards the fee payable at the point of submission of the application.

The fee tariff table (Table 1) at Annex 1 to this document illustrates the proposed changes to the fees structure.

## **Phased payment for EIA screening**

Screening is the process under the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 by which Scottish Ministers determine whether an environmental impact assessment is required in relation to a proposed development.

The Scottish Government proposes the introduction of phased payments for section 36 and 37 applications where a screening request is sought, with a payment of £1000 accompanying the request for a screening opinion. This will act as an instalment towards the total application cost and only the outstanding balance would require to be paid when the application is submitted.

Screening is a voluntary process and will not be appropriate for all applications. However, screening is strongly encouraged in cases where there is uncertainty around whether EIA might be required. This provides certainty to applicants that the correct process is being followed from the outset, reducing potential delays and abortive cost. The phased payment will support Scottish Ministers in continuing to deliver timeous responses in accordance with regulatory requirements.

## **Phased payment for EIA scoping**

Scoping is the process under the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 by which Scottish Ministers determine those matters to be included within an environmental impact assessment.

The Scottish Government proposes the introduction of phased payments for section 36 and 37 applications where a scoping request is sought, with the relevant payment specified in column 4 of Table 1 of Annex 1 accompanying the request for a screening opinion. Our analysis shows a 1:4 ratio of administrative costs between pre-application and application work, which is reflected in the proposal at Table 1. The payment made at scoping stage will act as an instalment towards the total application cost and only the outstanding balance would require to be paid when the application is submitted.

Scoping is not a mandatory process, but is strongly encouraged in all cases where environmental impact assessment is required. By engaging in meaningful scoping discussion, applicants can develop an early understanding of Scottish Ministers' and consultees' views on a proposed development. Scoping is essential to ensure that applications are both proportionate and comprehensive at the point of submission, thereby avoiding the requirement for the submission of supplementary environmental information and associated consultation processes. Scoping is one of the key tools available to both Scottish Ministers and the developer in streamlining the application process.

The phased payment will support Scottish Ministers in continuing to deliver timeous responses in accordance with regulatory requirements, and in delivering enhanced services including attending/chairing meetings with stakeholders and appropriate interested parties, site visits and community engagement.

By investing in scoping up front, applicants can save time and abortive costs at application stage.

## **Fees for applications where an EIA is not required**

We have reviewed the fees required for applications where an EIA is not required, and the resources necessary to support their determination.

The fee tariffs in force for overhead line applications have changed very little since before the introduction of the Overhead Lines (Exemption) (Scotland) Regulations 2013. These regulations have already taken many of the low impact, straightforward overhead line proposals out of the scope of fees entirely, leaving only those which require more examination of information and more of our resources. We consider a fee increase for non-EIA section 37 applications is fair, to recognise the changing nature of applications and shift in resource costs post exemption regulations.

Previous fee scales did not distinguish between section 36 applications where EIA is required and those where it is not. Some projects may fall into the latter category. We consider that new fee tariffs should be introduced which recognise the reduced resources required for processing section 36 application which are not EIA development. We propose setting a minimum application fee for proposals with installed capacity exceeding 50 MW but not exceeding 100 MW equivalent to the planning fee which a development up to 50 MW would require, with proportionate increases as consented capacity increases.

Where section 36 consent is not required for marine projects, a marine licence with a separate fee structure is required under the Marine Scotland Act 2010 and under the Marine and Coastal Access Act 2009. We propose the same regime but for offshore projects the threshold installed capacity exceeding 1 MW in Scottish Territorial waters and over 50 MW in the Scottish Renewable Energy Zone (REZ).

## **Introduction of fees for variations to consents**

Certain electricity generating stations cannot be constructed, extended or operated without a section 36 consent, however, section 36 does not provide for consents to be varied after they are granted. The insertion of a new section 36C into the Electricity Act 1989 introduced a procedure for applications to vary section 36 consents and for planning permission to be deemed in connection with such applications. Following this, regulations came into force on 1 December 2013 which provide for variation applications to take place.

The determination of applications to vary section 36 consents is a function for which Ministers do not currently charge any fee. This process closely mirrors the section 36 application process in that it is likely to require the production of an environmental report and assessment of the likely significant effects of the proposed development. Given the nature of applications that we have received under the Electricity Generating Stations (Applications for Variation of Consent) (Scotland) Regulations 2013, we now consider it necessary to introduce a fee for these applications.

We consider that the fee payable with a request for variation should be based on what the final installed capacity of the development would be as varied. We consider this should apply whether the consent for which a variation is sought is for a stand-alone generating station or an extension to a generating station.

## **Impact Assessments**

### **Partial Business and Regulatory Impact Assessment**

A Partial Business and Regulatory Impact Assessment is included at Annex 2. The responses to this consultation will be used to inform an updated Business and Regulatory Impact Assessment which would be prepared in support of any legislative amendments to change fees.

### **Equalities Impact Assessment**

After considering the requirement for Equalities Impact Assessment it was concluded that there would be no disadvantage created between equalities groups and no assessment was necessary.

### **Footnote – Local Planning Authorities**

Planning authorities within whose borders proposed developments are located are statutory consultees in our application process. For onshore applications the cost to planning authorities of undertaking their statutory function in the consultation process is included in the local authority settlement. At present, in a voluntary arrangement entirely separate from the charging of fees under the Electricity (Applications for Consent) Regulations 1990, we allocate a sum equivalent to two thirds of the application fees received by Ministers for EIA developments to the relevant planning authorities to provide additional assistance in the discharge of their functions.

The proposed fee increases outlined in this paper reflect costs to Scottish Ministers and assume planning authorities will not receive any additional money following the implementation of the revised fees. Ministers intend to maintain the existing voluntary payments at current absolute values and they will cease to be the equivalent of two-thirds of the increased application fees Ministers plan to introduce.

## Examples

**Example 1.** Thermal power station scoped at 160 MW, subsequent application for 160 MW generating station as envisioned at scoping stage.

- A developer is working on a proposal for a gas fired power station with generating capacity of 160MW
- A scoping request is submitted to Scottish Ministers. The fee tariff table indicates that **a fee of £58,500 is required** – as the indicative capacity of the proposal is exceeding 100 MW but not exceeding 200 MW.
- The scoping fee is paid, Ministers complete their processes and provide a scoping opinion. Following consideration of this by the developer, an application is submitted for the 160 MW development. The fee tariff table indicates £234,000, however the developer has already paid £58,500 to receive the scoping opinion. Therefore **there is a balance of £175,500 which must be paid when the application is submitted.**

**Example 2.** Onshore or offshore wind farm scoped at 175 MW, subsequent application for 95 MW.

- A developer is working on a proposal for wind farm A, and is considering around 50 turbines consistent with the size of models currently on the market with capacity in the region of 3.5 MW – therefore a site with around 175 MW capacity.
- A scoping request is submitted to Scottish Ministers. The fee tariff table indicates that **a fee of £58,500 is required** – as the indicative capacity of the proposal is exceeding 100 MW but not exceeding 200 MW.
- The scoping fee is paid, Ministers complete their processes and provide a scoping opinion.
- Following consideration by the developer of the scoping opinion, further dialogue with stakeholders takes place. The developer makes subsequent design iterations, then submits an application deleting a number of turbines to leave a smaller 27 turbine development. The reduction in size brings the proposal into a different tariff, for developments exceeding 50 MW but not exceeding 100 MW. The fee tariff table indicates £190,000, however the developer has already paid £58,500 to receive the scoping opinion. **A balance of £131,500 must accompany the application.**



**Example 3.** Overhead line, 132 kV on wooden poles, 28 km.

- A developer is working on a proposal for an overhead line, and following public consultation has decided on a preferred route. The developer has elected to ask Scottish Ministers to screen whether EIA is required.
- A screening request is submitted to Scottish Ministers. The fee tariff table indicates that **a fee of £1,000 is required**.
- Ministers note the potential impacts of the line and sensitivity of receptors and conclude the proposal would constitute an EIA development.
- A scoping request is submitted to Scottish Ministers. The fee tariff table indicates that **a fee of £43,750 is required** – as the line would be greater than 15 km, but less than 50 km in length.
- The scoping fee is paid, Ministers complete their processes and provide a scoping opinion.
- The developer submits an application for the overhead line. The fee tariff table indicates the total application fee is £175,000, and Ministers accept that the application has been screened with payment of £1,000 and there is a valid scoping opinion for the application for which £43,750 was paid, therefore there is a balance of **£130,250 due which must accompany the application**.

**Example 4.** Overhead line, 33 kV on wooden poles, 8 km.

- A developer is working on a proposal for an overhead line, of 8 km length on wood poles with line voltage of 33 kV. The developer has elected to ask Scottish Ministers to screen whether EIA is required.
- A screening request is submitted to Scottish Ministers. The fee tariff table indicates that **a fee of £1,000 is required**.
- Ministers note the potential impacts of the line and sensitivity of receptors and conclude the proposal would not constitute an EIA development.
- The developer submits an application for the overhead line. The fee tariff table indicates the application fee is £2,100, therefore there is a balance of **£1,100 to be paid which must accompany the application**.

**Example 5.** Variation of section 36 consent for an extension to an electricity generating station.

- A developer holds consent for a 100 MW electricity generating station.
- The developer also holds consent for an extension which would add a further 150 MW to the total installed capacity of the site.
- The developer wishes to make minor changes to the design of the extension which require variation of the section 36 consent. There would be no change to the total installed capacity of the site as a result of the variation.
- The fee tariff table indicates the application fee for variation of a consent for an extension exceeding 100 MW but not exceeding 200 MW is **£234,000**.

These examples illustrate that there is no additional net cost to an application for screening and / or scoping.

## **Our views**

We believe the proposed fee increases are fully justified and recognise the changes to Ministers' administrative functions and working practices, and are a better reflection of the costs of providing and continuing to improve our service.

## **Seeking your views**

Scottish Ministers would welcome your comments and suggestions about the future of the current statutory arrangements for fees payable under sections 36, 36C and 37 of the Electricity Act 1989. Your views will help inform our decision.

The following questions are required to be answered, and you must also complete a respondent information form as directed below.

## **Questions**

With reference to the above and Annex 1 which follows, please answer the following questions, stating your reasons.

- 1. Do you agree or disagree the application fees should be revised to maintain and improve our service levels?**
- 2. Do you agree or disagree that we should continue to have a fixed fee structure as proposed?**
- 3. Do you agree or disagree with the proposal that application fees should be phased in the manner proposed, to spread the risk associated with potentially abortive or unsuccessful application costs?**
- 4. Do you agree or disagree the existing arrangement should continue where the same fee is required for overhead lines exceeding 15km in length whether or not there is EIA development? If you disagree please provide a proposed alternative and expand on this in your answer to question 6.**
- 5. Do you agree or disagree with the introduction of a fee for processing applications for variations of consent, whether for EIA or non-EIA development? If you disagree please provide a proposed alternative and expand on this in your answer to question 6.**
- 6. On balance, do you agree or disagree with the fee levels proposed? If you disagree, please specify which fee in Annex 1 you think should be reconsidered and provide a proposed alternative.**
- 7. Do the proposals in this consultation have any financial, regulatory or resource implications for you and/or your business (if applicable)? If so please explain these.**
- 8. Do you have any other comments?**

## **Responding to this Consultation**

We are inviting responses to this consultation by Monday 14th May.

Please respond to this consultation using the Scottish Government's consultation platform, Citizen Space. You view and respond to this consultation online at <https://consult.gov.scot/energy-and-climate-change-directorate/power-lines-and-electricity-generating-stations>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of Monday 14th May.

If you are unable to respond online, please complete the Respondent Information Form (see "Handling your Response" below) and send it along with your responses to the questions to:

Energy Consents Fees Consultation, Scottish Government, 5 Atlantic Quay, 150 Broomielaw, Glasgow, G2 8LU.

## **Handling your response**

If you respond using Citizen Space (<http://consult.gov.scot>), you will be directed to the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form attached included in this document. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

## **Next steps in the process**

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so.

## **Comments and complaints**

If you have any comments about how this consultation exercise has been conducted, please send them by email to [eConsentsAdmin@gov.scot](mailto:eConsentsAdmin@gov.scot) or by post to:  
Energy Consents Fees Consultation, Scottish Government, 5 Atlantic Quay, 150 Broomielaw, Glasgow, G2 8LU.

## **Scottish Government consultation process**

Consultation is an essential part of the policy-making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (<https://www.ideas.gov.scot>)

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

## ANNEX 1

Table 1. Proposed fee tariffs.

<b>1. Subject matter of application</b>	<b>2. Current application fee</b>	<b>3. Proposed payment due at screening</b>	<b>4. Proposed payment due at scoping<sup>1</sup></b>	<b>5. Proposed total section 36 or 37 application fee<sup>2</sup></b>	<b>6. Proposed total section 36C variation fee<sup>3</sup></b>
Screening opinion in relation to an anticipated application for consent under section 36, 36C or 37 for a development (including any of the following)	N/A	£1,000	N/A	N/A	N/A
Overhead line with a total distance not exceeding 15 km which is not EIA development	£180		N/A	£2,100	N/A
Overhead line with a total distance not exceeding 15 km which is EIA development	£2,400		£6,000	£25,500	N/A
Overhead line with a total distance—					
(a) exceeding 15 km but not exceeding 50 km	£18,000		£43,750	£175,000	N/A
(b) exceeding 50 km but not exceeding 100 km	£30,000		£80,500	£322,000	N/A
(c) exceeding 100 km	£60,000		£146,250	£585,000	N/A
Construction or construction and operation of a generating station, which is not EIA development, of capacity—					
(a) not exceeding 10 MW	£6,000		N/A	£7,600	£7,600
(b) exceeding 10 MW but not exceeding 50 MW	£18,000		N/A	£37,800	£37,800
(c) exceeding 50 MW but not exceeding 100 MW	£18,000		N/A	£125,000	£125,000
(d) exceeding 100 MW but not exceeding 200 MW	£24,000		N/A	£167,500	£167,500
(e) exceeding 200 MW but not exceeding 500 MW	£36,000		N/A	£250,000	£250,000
(f) exceeding 500 MW	£60,000		N/A	£417,000	£417,000
Construction or construction and operation of a generating station, which is EIA development, of capacity—					

<sup>1</sup> The EIA scoping payment is calculated to be the equivalent to 25% of the fee for an application or request for variation of consent for the proposed development.

<sup>2</sup> Where there is a valid scoping opinion in relation to the application being submitted, the payment due will be the total indicated in column 5 minus the total of the payments already made with the screening and scoping of the proposed development.

<sup>3</sup> Where there is a valid scoping opinion in relation to the request for variation of consent being submitted, the payment due will be the total indicated in column 6 for the installed capacity of the development as a result of the intended variation minus the total of the payments already made with the screening and scoping of the proposed development.

<b>1. Subject matter of application</b>	<b>2. Current application fee</b>	<b>3. Proposed payment due at screening</b>	<b>4. Proposed payment due at scoping<sup>1</sup></b>	<b>5. Proposed total section 36 or 37 application fee<sup>2</sup></b>	<b>6. Proposed total section 36C variation fee<sup>3</sup></b>
(a) not exceeding 10 MW	£6,000		£2,700	£10,800	£10,800
(b) exceeding 10 MW but not exceeding 50 MW	£18,000		£13,500	£54,000	£54,000
(c) exceeding 50 MW but not exceeding 100 MW	£18,000		£47,500	£190,000	£190,000
(d) exceeding 100 MW but not exceeding 200 MW	£24,000		£58,500	£234,000	£234,000
(e) exceeding 200 MW but not exceeding 500 MW	£36,000		£87,500	£350,000	£350,000
(f) exceeding 500 MW	£60,000		£135,000	£540,000	£540,000
Extension or extension and operation of a generating station, which is not EIA development, resulting in increase in capacity—					
(a) not exceeding 10 MW	£6,000		N/A	£7,600	£7,600
(b) exceeding 10 MW but not exceeding 50 MW	£18,000		N/A	£37,800	£37,800
(c) exceeding 50 MW but not exceeding 100 MW	£18,000		N/A	£125,000	£125,000
(d) exceeding 100 MW but not exceeding 200 MW	£24,000		N/A	£167,500	£167,500
(e) exceeding 200 MW but not exceeding 500 MW	£36,000		N/A	£250,000	£250,000
(f) exceeding 500 MW	£60,000		N/A	£417,000	£417,000
Extension or extension and operation of a generating station, which is EIA development, resulting in increase in capacity—					
(a) not exceeding 10 MW	£6,000		£2,025	£8,100	£8,100
(b) exceeding 10 MW but not exceeding 50 MW	£18,000		£10,125	£40,500	£40,500
(b) exceeding 50 MW but not exceeding 100 MW	£18,000		£47,500	£190,000	£190,000
(c) exceeding 100 MW but not exceeding 200 MW	£24,000		£58,500	£234,000	£234,000
(d) exceeding 200 MW but not exceeding 500 MW	£36,000		£87,500	£350,000	£350,000
(e) exceeding 500 MW	£60,000		£135,000	£540,000	£540,000
Extension of a nuclear generating station by retrofitting of emission control equipment	£6,000		£31,250	£125,000	£125,000
Any other extension of a generating station	£1,200		£6,250	£25,000	£25,000
Operation only or change to manner of operation of a generating station	£1,200		£6,250	£25,000	£25,000

## ANNEX 2

### Partial Business and Regulatory Impact Assessment

#### **Title of Proposal**

The Electricity (Applications for Consent) Regulations 1990 and Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017

#### **Purpose and intended effect**

- **Background**

Scottish Ministers are responsible for determining applications for consent for onshore generating stations with installed capacity exceeding 50 MW and overhead power lines in Scotland under sections 36 and 37 of the Electricity Act 1989 respectively. The Electricity (Applications for Consent) Regulations 1990 and Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 apply to such applications, which are processed on behalf of Scottish Ministers by the Scottish Government's Energy Consents Unit. The Scottish Ministers are also responsible for determining applications for consent for generating stations with installed capacity exceeding 1 MW in Scottish Territorial waters and over 50 MW in the Scottish Renewable Energy Zone (REZ). Such applications are processed on behalf of Scottish Ministers by Marine Scotland Licensing Operations Team.

- **Objective**

Scottish, UK and EU policy mandates a transition to a more decarbonised energy system with increased use of low carbon energy sources. The deployment of new generation and associated grid infrastructure is central to this. At the same time, policies are in place at Scottish and EU level to safeguard the environment. A well-resourced energy consenting regime is vital to achieving both these aims.

In accordance with the Scottish Public Finance Manual, the Scottish Government adopts the principle that there should be full cost recovery for all public services, including those associated with discharging consenting functions including post consent work under the Electricity Act 1989. There has been a shortfall in cost recovery for a number of years, which is now impeding our ability to resource our consenting functions in the manner to which we aspire. We are reviewing the fees that we charge, and propose increases to maintain service delivery and to support future improvement.

- **Rationale for Government intervention**

The proposal contributes to the following objectives of the National Performance Framework:

- We value and enjoy our built and natural environment and protect it and enhance it for future generations
- Our public services are high quality, continually improving, efficient and responsive to local people's needs
- We realise our full economic potential with more and better employment opportunities for our people.

The proposal contributes to the Purpose Targets – Increase Scotland's Economic Growth and Reduce Greenhouse Gas Emissions – and the following National Indicators:

- Improve people's perceptions of the quality of public services
- Improve the responsiveness of public services
- Increase renewable electricity production

### **Consultation**

- **Within Government**

The following Government directorates have reviewed the proposals as formulated: Marine Scotland; Planning, Architecture and Design; Planning and Environmental Appeals; Directorate For Energy And Climate Change; Scottish Government Legal Directorate. Their input has supported the formulation of the policy proposals by providing a cross-check on any potential conflicts with other policies that may have needed to be addressed; for example, the recent review of planning fees; and more generally in helping to refine the scope of proposals being consulted on.

- **Public Consultation**

There has been limited informal consultation with developers and planning authorities to flag the intent to review fees. It is our intention to use the current full public consultation to produce a final BRIA from this partial BRIA.

- **Business**

The Scottish Government is proposing to contact trade associations (Scottish Renewables) and key businesses engaged in applications for consent which are likely to be impacted on by the proposals. This would be in addition to the published, written consultation and would take the form of a meeting where the Scottish Government would present details of its intentions and invite discussion and feedback on the proposals. Any feedback would be summarised and recorded.

### **Options**

1. Do nothing.
2. Increase the existing fees as proposed and introduce new fees for variations in alignment with the fees for applications.
3. Increase the existing fees as proposed and introduce new fees for variations in alignment with the fees for applications. Introduce phasing of payments such that a proportion of application costs are paid at EIA screening or scoping stages.

### **Sectors and groups affected**

The groups that we anticipate to be affected by the proposed changes are limited to those which would pay application fees for their development proposals to be determined by Scottish Ministers under sections 36, 36C or 37 of the Electricity Act 1989. These are the developers of electricity generating stations proposals and developers of overhead line proposals.

### **Benefits**

#### **Option (1)**

The first option would be to continue with the current model which is based on the Electricity (Applications for Consent) Regulations 1990. Therefore there would be no impact on business to consider regarding fees to be paid, and neither would there be any benefits to business in terms of the service delivered.



### Option (2)

The proposed changes would contribute to the Scottish Government's vision of Scotland where "we value and enjoy our built and natural environment and protect it and enhance it for future generations"; "our public services are high quality, continually improving, efficient and responsive to local people's needs" and "we realise our full economic potential with more and better employment opportunities for our people". The benefits to businesses would be:

- The delivery of service from the Scottish Government would continue, or improve, on current levels
- For onshore applications, a scale of fees more consistent with local planning fees and a smoother transition around the 50 MW threshold between applications under the Town and Country Planning (Scotland) Act 1997 and under section 36 of the Electricity Act 1989.

### Option (3)

The proposed changes would contribute to the Scottish Government's vision of Scotland where "we value and enjoy our built and natural environment and protect it and enhance it for future generations"; "our public services are high quality, continually improving, efficient and responsive to local people's needs" and "we realise our full economic potential with more and better employment opportunities for our people". The benefits to businesses would be:

- The delivery of service from the Scottish Government would continue, or improve, on current levels
- For onshore applications, a scale of fees more consistent with local planning fees and a smoother transition around the 50 MW threshold between applications under the Town and Country Planning (Scotland) Act 1997 and under section 36 of the Electricity Act 1989.
- The application fee would not be required to be paid in a single lump sum, but paid in instalments in proportion to the level of risk for the business.

## Costs

### Option (1)

We have already identified that the status quo is a significant departure from the principle of the Scottish Public Finance Manual that there should be full cost recovery for all public services which cannot be sustained, as it is standing in the way of the Government's vision where "our public services are high quality, continually improving, efficient and responsive to local people's needs". The costs to businesses of maintaining the fees at their current level would be a much reduced service level, for example applications may take considerably longer to determine and our capacity may be reduced for holding meetings with key stakeholders to explore important issues and gain clarity on how these may be addressed. Not only would our service level to businesses be degraded, but other future enhancements which may add value would be precluded if they have a resource cost attached.

Furthermore, an unwanted incentive would be sustained regarding the sizing of onshore generation projects at the design stage, where planning fees charged by local authorities for determining applications up to 50 megawatts (MW) installed capacity under the Town and Country Planning Act (Scotland) 1997 are considerably greater than fees charged by the Scottish Government for section 36 consent. This

could drive developers towards sizing some proposals over the 50 MW threshold to save on application fees, which may not be optimally sized in terms of the balance between adverse environmental impacts and policy benefits. In turn this could increase the risk for developers that their section 36 application fails or is abortive.

#### Option (2)

The costs to businesses as a result of implementing option 2 are financial, as detailed in the consultation paper. Beyond the financial cost no other costs have been identified.

#### Option (3)

Similarly to option 3, the costs to businesses as a result of implementing option 3 are financial, as detailed in the consultation paper. Beyond the financial cost no other costs have been identified. However, under option 3, these costs are spread over the project development cycle and are not due in a single lump sum at application stage.

#### **Scottish Firms Impact Test**

A Scottish Firms Impact Test will be carried out following wider consultation and consideration of the response to the published consultation.

#### **Competition Impact Screening**

The Scottish Government has considered the following questions:

Will the measure directly or indirectly limit the number or range of suppliers?

Will the measure limit the ability of suppliers to compete?

Will the measure limit suppliers' incentives to compete vigorously?

Will the measure limit the choices and information available to consumers?

We consider the answer to each question is no and on that basis no in-depth competition assessment is required.

#### **Test run of business forms**

No new forms will be introduced.

#### **Legal Aid Impact Test**

The proposal does not create a new procedure or right of appeal to a court or tribunal, any change in such a procedure or right of appeal, or any change of policy or practice which may lead people to consult a solicitor.

The proposal is not likely to result in additional people seeking legal assistance or being taken through the courts.

#### **Enforcement, sanctions and monitoring**

Payment of fees will be monitored by the Energy Consents Unit and Marine Scotland Licensing Operations Team. If an application is submitted without the required fees having been paid, it will not be a valid application and will not be capable of being determined.

#### **Implementation and delivery plan**

It is intended that implementation of any changes to fees will take place in the second half of 2018.

**Post-implementation review**

It is our intention that the fees will be reviewed again within 5 years.

**Summary and recommendation**

Option 3 is recommended, as it allows the Scottish Government to meet its aspirations to have full cost recovery for all public services.

- **Summary costs and benefits table**

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	No benefit	Degrading of service received by business from Scottish Government to business in determination time and loss of advantages of front-loading application process.
2	Service received by business from Scottish Government maintained and can be improved	Financial cost to business depends on number and details of applications submitted but clearly set out in table of new fees that will apply in consultation paper
3	Service received by business from Scottish Government maintained and can be improved Costs are spread over project development lifetime and not all payable in one go	Financial cost to business depends on number and details of applications submitted but clearly set out in table of new fees that will apply in consultation paper

**Declaration and publication**

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact will be assessed with the support of businesses in Scotland.

**Signed:**A handwritten signature in blue ink, appearing to read "Paul Wheelhouse".**Date: 17/01/2018****Paul Wheelhouse MSP  
Minister for Business, Innovation and Energy**



## FEES CHARGED FOR APPLICATIONS UNDER THE ELECTRICITY ACT 1989

### RESPONDENT INFORMATION FORM

**Please Note** this form **must** be completed and returned with your response.

Are you responding as an individual or an organisation?

- Individual  
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name  
 Publish response only (without name)  
 Do not publish response

#### Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes  
 No



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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**

**30<sup>th</sup> April 2018**

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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

- 2.1.1 Reference: 17/01342/PPP  
Proposal: Demolition of existing building and erection of four dwellinghouses  
Site: Site at Industrial Buildings and Yard, Elders Drive, Newtown St Boswells  
Appellant: Craigmount Properties

Reason for Refusal: The proposals would be contrary to the aims and principles of Policy ED1 of the Scottish Borders Local Development Plan 2016 in that the development would result in the loss of industrial land and premises and there is sufficient housing land allocation existing elsewhere to enable housing development in the village without requiring the loss of commercial premises.

Grounds of Appeal: In 1990 the applicants purchased the property from the previous owner who had established Planning Consent for the Housing development Ref 371./88. The intention to develop the area with an appropriate density of housing. The access lane from the then A68 public road to the property was a "right of access" road. It transpired that the conditions of the Planning Consent required a more onerous construction to accommodate any more than 2 dwellings (policy at the time). Approach was made to neighbours to establish if land could be made available to widen the existing lane to a suitable standard: not possible due to "kings ransom" being asked for the land. The property continued as vacant land with existing storage shed and workshop being occupied by a light engineering tenant (not requiring the rest of the land). The applicants reviewed the position and decided to proceed with a new application. The Agent approached the Technical Services department of the Scottish Borders Council; held a site meeting with Mr Alan Scott. Mr Scott indicated that he could now consider 4 dwellings on the site. The Planning

department were also supportive of the application. The existing Tenant is aware of the application.

## 2.2 Enforcements

Nil

## 3 APPEAL DECISIONS RECEIVED

### 3.1 Planning Applications

Nil

### 3.2 Enforcements

- 3.2.1 Reference: 17/00006/UNDEV  
Proposal: Painting of exterior of building within conservation area and listed building  
Site: 13 St Ella's Place, Eyemouth  
Appellant: Mrs Evy Young

Reason for Notice: It appears to the Council that the above breach of planning control has occurred within the last four years. The land affected at 13 St Ella's Place, Eyemouth sits within the Eyemouth Conservation Area and is also a C Listed Building. Planning permission and listed building consent are required for the change in colour and any external works to the appearance of the building. The external render surfaces of the building have been painted an alternative and unauthorised colour and the window bandings have also been painted out. A retrospective planning and listed building application was submitted but was refused. No subsequent appeal has been lodged and no attempts have been made to regularise the unauthorised works.

Grounds of Appeal: The appellant was away when the walls were painted and didn't realise how bright it was until after the painter had finished. It was too expensive to have it re-done immediately and she was told it would tone down to a gentler colour and it is going in that direction now. The appellant is planning to cut windows into the front and back wall in January, the walls will then need to be repainted. Due to the winter weather and spray from the big waves hitting the house it is not possible to paint the walls during winter. The appellant is looking for an extension of 6 months to be able to do the repainting in the summer.

Method of Appeal: Written Representations & Site Visit

Reporter's Decision: Dismissed

Summary of Decision: The Reporter, Stephen Hall, advised that during his site visit he noted the proximity of the rear of the property to the sea wall and the general exposure of this elevation to adverse winter weather conditions arriving off the North Sea. He therefore agrees with the appellant that the repainting, at least of the rear elevation, during the winter and early spring would be difficult. He also noted that scaffolding was present during the site inspection of 8 March, but the new windows at the front elevation had yet to be inserted. He reported that the repainting



of the main house should be co-ordinated with the repainting of the outbuilding, and for it to happen after the main external works on the outbuilding are completed. Therefore, the reporter upholds the enforcement notice but varies the terms of the notice by amending the time of compliance from one month to six months to allow ample time for weather conditions to improve, for the building works to be completed and for the repainting to be carried out over the course of the summer.

3.2.2 Reference: 17/00089/UNUSE  
Proposal: Erection of scaffolding structure and metal panel fence structure  
Site: Land North West of Kirkburn Church, Peebles  
Appellant: Mr Andrew Cleghorn

Reason for Notice: It appears to the Planning Authority that the amenity of part of the district is adversely affected by the detrimental visual effect of Land North West of Kirkburn Church, Peebles and on the street scene of that part of Kirkburn, Peebles in the approximate position shown in red on the attached plan. A scaffolding structure and metal panel fence structure have been erected on the land without the benefit of either deemed or express planning permission, and it is considered that these structures adversely affect the amenity of the area.

Grounds of Appeal: Mr Cleghorn has consent for a tourism related development on the ground in question and it is a condition of that consent that an archaeological investigation takes place prior to implementation of the works. In order to establish the tourism development Mr Cleghorn would like to commence with screen planting in the area in question and it is proposed to do the investigation prior to planting. The scaffold in question is a temporary structure which will be moved along the boundary in question during the course of the archaeologist's dig, thereby giving them shelter and cover during the proceedings. Mr Cleghorn did not realise the scaffold required planning consent and since a visit from SBC, has applied for consent for the scaffold. The boundary fence was moved by his neighbour who tried to claim a portion of Mr Cleghorn's ground. Until the matter is resolved Mr Cleghorn has been forced to erect the temporary fence to keep cattle within his small holding and also to ensure that health and safety measures are in place to prevent the public from accessing his small holding and in particular the aforementioned scaffold. Both structures have a meaningful shelf life – the scaffold for 18 months and the fence for as long as it takes to resolve the boundary dispute.

Method of Appeal: Written Representations & Site Visit

Reporter's Decision: Dismissed

Summary of Decision: The Reporter, Stephen Hall, concluded that the scaffolding structure and fence do adversely affect the amenity of the district and that the appeal under ground (a) fails. With regard to grounds (c) and (d), the reporter states that the height and overall scale of the scaffolding structure is far greater than would ordinarily be required to shelter archaeological works. The structure is also not easily moveable, as he would have expected for such a shelter. There was no evidence of any archaeological works ongoing or even having been carried out at the time of the site visit, and yet the structure has apparently (according to the council's evidence) been in place since at least July 2017. The reporter accepts the need for stock-proof fencing if the intention is to graze cattle

in the appellant's field; however it is not necessary to construct the fence out of solid metal sheets and poles, when alternative fencing solutions more appropriate to the rural character of the area are commonly available, therefore the appeal under ground (d) fails. The reporter feels that the removal of the scaffolding structure and fence is relatively straightforward and easily capable of being achieved within the one month period of the enforcement notice and therefore the appeal under ground (c) also fails.

#### 4 APPEALS OUTSTANDING

4.1 There remained 7 appeals previously reported on which decisions were still awaited when this report was prepared on 19<sup>th</sup> April 2018. This relates to sites at:

• Land North of Howpark Farmhouse, Grantshouse	• Poultry Farm, Marchmont Road, Greenlaw
• Land South West of Easter Haprew Farmhouse, Peebles	• Hutton Hall Barns, Hutton
• Land East of Knapdale 54 Edinburgh Road, Peebles	• Land North West of Gilston Farm, Heriot
• Land South West of Lurgiescleuch (Pines Burn), Hawick	•

#### 5 REVIEW REQUESTS RECEIVED

5.1 Reference: 17/01617/PPP  
 Proposal: Erection of dwellinghouse  
 Site: Land North West of The Gables, Gattonside  
 Appellant: Mr And Mrs A Matthew

Reason for Refusal: It is considered that the proposed development would be contrary to policies PMD2 and, PMD5 of the Local Development Plan 2016 in that adequate access to the site cannot be achieved resulting in an adverse impact on road safety, for the following reasons: 1. The junction of the private road (Priors Road), serving the site and the B6360 is not suitable for additional traffic due to the acute angle at which Priors Road joins the B6360, its width, steep gradient, visibility, loose material and uneven surface making it difficult for vehicles enter and exit the junction and for each other to pass at the junction. 2. Priors Road itself, between the B6360 and The Loan, suffers from poor construction make-up, tight geometry, lack of width combined with limited forward visibility, inadequate passing provision, absence of on-street parking and inadequate street lighting. 3. The junction of the road serving the site and The Loan is substandard in geometry making a left turn out of Priors Road or a right turn in extremely difficult.

5.2 Reference: 17/01685/PPP  
 Proposal: Erection of dwellinghouse  
 Site: Land South of The Bungalow, Blacklee Brae, Bonchester Bridge  
 Appellant: Mr John Huck

Reasons for Refusal: 1. The proposed development is contrary to Adopted Local Plan Policy HD2 and the advice of Supplementary Planning Guidance - New Housing in the Borders Countryside (December 2008) in

that: (i) the development is not sympathetic to the character of the building group and would not contribute positively to the sense of place of the existing building group; and (ii) the Applicant has not demonstrated that there is any operational need for a new dwellinghouse to be located at the site as a direct operational requirement of any agricultural, horticultural, forestry or other enterprise which is itself appropriate to the countryside. 2. The proposed development is contrary to Adopted Local Plan Policies HD2, PMD2 and EP13, in that it has not been demonstrated satisfactorily that the development would not have any unacceptable impacts upon the local landscape, principally that it would not cause the loss of, or serious damage to, an existing woodland resource with landscape, ecological and shelter value. 3. The proposed development is contrary to Adopted Local Plan Policies HD2, PMD2 and EP1 in that it has not been demonstrated satisfactorily that the development would not be liable to have any unacceptable impacts upon local biodiversity, principally upon bats, a European Protected Species.

- 5.3 Reference: 17/01704/FUL  
Proposal: Change of use from retail to dog grooming practice  
Site: 38 Bank Street, Galashiels  
Appellant: Mr S Wilson

Reason for Refusal: The proposed development would not comply with Policy ED4 of the Local Development Plan 2016 in that the use would not comprise a Class 1 or 3 use; would occupy a premises which has not been sufficiently marketed for sale or let; and which has been vacant for a relatively short period. The level of footfall contribution to the town centre will likely be less than that generated by a Class 1 or 3 use operating from the same location and this would detract from the future viability and vitality of the town centre.

- 5.4 Reference: 17/01731/FUL  
Proposal: Extension to dwellinghouse  
Site: 34 Edinburgh Road, Peebles  
Appellant: Ms Lynne Marshall

Reason for Refusal: The development would be contrary to Policy PMD2 of the Local Development Plan 2016 in that the proposed extension would not be sympathetic to the existing building in its form and scale and it would, therefore, have an adverse visual impact on the building and surrounding area.

## 6 REVIEWS DETERMINED

- 6.1 Reference: 17/01008/FUL  
Proposal: Erection of replacement dwelling house  
Site: Derelict Dwelling Land West of Glenkinnon Lodge, Peelburnfoot, Clovenfords  
Appellant: Mr Adam Elder

Reasons for Refusal: 1. The proposed development is contrary to policy EP13 (Trees, Woodland and Hedgerows) of the Scottish Borders Local Development Plan (2016), and contrary to adopted supplementary guidance on Trees and Development in that the development will result in significant removal of trees subject to Tree Preservation Order which provide a positive landscape contribution. Furthermore, the proposed development would lead to increased pressure to remove further trees in

the future. 2. The proposed development is contrary to policy HD2 of the Scottish Borders Local Development Plan (2016), in that the proposed development would not sympathetically relate to the existing building group in terms of siting, scale, form or design. The existence of a building on site is inadequate justification for the proposed development.

Method of Review: Review of Papers and Further Written Submissions

Review Decision: Decision of Appointed Officer Upheld

6.2 Reference: 17/01409/FUL  
Proposal: Extension to form new living room  
Site: 16 Craig Brown Avenue, Selkirk  
Appellant: Mr Harry Thomson

Reason for Refusal: The proposed extension would reduce the available off-street parking below the minimum standard specified in the Local Development Plan 2016. The extension would also not relate well to the adjoining proposed property to the north east, and would be potentially detrimental to its amenity. The development is, therefore, contrary to Policies PMD2, HD3 and IS7 of the Local Development Plan 2016.

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Upheld

6.3 Reference: 17/01572/PPP  
Proposal: Extension to dwellinghouse  
Site: Land South East of Beckhope, Kailzie, Peebles  
Appellant: Mrs Anne McKelvey

Reasons for Refusal: 1. The development would be contrary to Policy HD2 of the Local Development Plan 2016 and New Housing in the Borders Countryside Guidance 2008 in that the proposed development breaks into a previously undeveloped field which is located out with both natural and man made boundaries of the building group. This location fails to respect the character of the building group and would potentially lead to ribbon development which would further undermine its character. 2. The development would be contrary to Policy HD2 of the Local Development Plan 2016 and New Housing in the Borders Countryside Guidance 2008 in that the proposed development fails to reflect and respect the scale and siting of other individual dwelling plots within the group and would therefore adversely affect the character of the building group.

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Overturned (Subject to conditions, informatives and a Section 75 Legal Agreement)

6.4 Reference: 17/01613/PPP  
Proposal: Erection of dwellinghouse  
Site: Land East of Keleden, Ednam, Kelso  
Appellant: Mr & Mrs Brian Soar

Reason for Refusal: The proposals would be contrary to Policy PMD4 of the Scottish Borders Local Development Plan 2016 in that the erection of a dwellinghouse on this site would result in development outwith the

development boundary of the village as defined on the settlement profile map for Ednam, leading to unjustified encroachment into the open countryside and coalescence with the Cliftonhill building group. The proposed dwelling is not a job generating development in the countryside that has economic justification under Policy ED7 or HD2; it is not an affordable housing development that can be justified in terms of Policy HD1; a shortfall in the provision of an effective 5 year land supply has not been identified and it is not a development that would offer significant community benefits that would outweigh the need to protect the development boundary.

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Overturned (Subject to conditions, informatives and a Section 75 Legal Agreement)

6.5 Reference: 17/01704/FUL  
Proposal: Change of use from retail to dog grooming practice  
Site: 38 Bank Street, Galashiels  
Appellant: Mr S Wilson

Reason for Refusal: The proposed development would not comply with Policy ED4 of the Local Development Plan 2016 in that the use would not comprise a Class 1 or 3 use; would occupy a premises which has not been sufficiently marketed for sale or let; and which has been vacant for a relatively short period. The level of footfall contribution to the town centre will likely be less than that generated by a Class 1 or 3 use operating from the same location and this would detract from the future viability and vitality of the town centre.

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Overturned (Subject to conditions and an informative)

## **7 REVIEWS OUTSTANDING**

7.1 There remained no reviews previously reported on which decisions were still awaited when this report was prepared on 19<sup>th</sup> April 2018.

## **8 SECTION 36 PUBLIC LOCAL INQUIRIES RECEIVED**

Nil

## **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 19<sup>th</sup> April 2018. This relates to sites at:

• Fallago Rig 1, Longformacus	• Fallago Rig 2, Longformacus
• Birneyknowe Wind Farm, Land North, South, East & West of Birnieknowe Cottage, Hawick	•

**Approved by**

**Ian Aikman  
Chief Planning Officer**

**Signature .....**

**Author(s)**

Name	Designation and Contact Number
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**Background Papers:** None.

**Previous Minute Reference:** None.

**Note** – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Jacqueline Whitelaw can also give information on other language translations as well as providing additional copies.

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