
PLANNING APPEALS & REVIEWS

Briefing Note by Chief Planning Officer

PLANNING AND BUILDING STANDARDS COMMITTEE

26th June 2017

1 PURPOSE

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

2 APPEALS RECEIVED

- 2.1 Planning Applications

Nil

- 2.2 Enforcements

Nil

3 APPEAL DECISIONS RECEIVED

- 3.1 Planning Applications

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

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

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

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

Method of Appeal: Written Representations & Site Visit

Reporter's Decision: Sustained

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

3.2 Enforcements

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

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

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

Method of Appeal: Written Representations & Site Visit

Reporter's Decision: Dismissed

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

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

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

Reason for Notice: Unauthorised Development

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

Method of Appeal: Written Representations & Site Visit

Reporter's Decision: Dismissed

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

4 APPEALS OUTSTANDING

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

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

5 REVIEW REQUESTS RECEIVED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 REVIEWS DETERMINED

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

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

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Upheld

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

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

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Upheld

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

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

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Upheld

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

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

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Upheld

7 REVIEWS OUTSTANDING

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

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

8 SECTION 36 PUBLIC LOCAL INQUIRIES RECEIVED

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

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

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

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

9 SECTION 36 PUBLIC LOCAL INQUIRIES DETERMINED

Nil

10 SECTION 36 PUBLIC LOCAL INQUIRIES OUTSTANDING

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

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

Approved by

Ian Aikman
Chief Planning Officer

Signature

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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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