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: 11/00888/FUL
Proposal: Erection of 9 No wind turbines 126.5m high to tip and associated infrastructure including hardstandings, anemometer mast, control building, temporary construction compound, laydown area, access tracks, electrical connections and borrow pit
Site: Land South West of Hyndsidehill Farmhouse (Corsbie Moor), Westruther
Appellant: E.ON Climate & Renewables

Reason for Refusal: 1. The proposed development would have a significantly adverse effect on local landscape character by virtue of its scale and, in particular, the height of the turbines, resulting in significant visibility across a range of sensitive receptors, including, but not exclusively, a number of residential properties and also road users on the A6089. The proposed development would unacceptably extend large scale wind farm development into a medium-scaled, settled landscape. These unacceptable effects would be contrary to Policies N9, I19 and I20 of the Consolidated Structure Plan 2009 and Policies G1 and D4 of the Consolidated Local Plan 2011. 2. The proposed development would have a...
significantly adverse cumulative effect on the enjoyment of users of the northern and western sections (which pass the site) of the Southern Upland Way, in particular the northern section incorporating the Twin Law Cairns iconic viewpoint, when combined with simultaneous and successive views of existing wind farms along this section of the route. These unacceptable effects would be contrary to Policies I19 and I20 of the Consolidated Structure Plan 2009 and Policy D4 of the Consolidated Local Plan 2011.

Grounds of Appeal: The appellants disagree that the scale of development is unacceptable in the landscape context and that its resulting visibility is unacceptable. They disagree with the Council's view that there would be significant effects on residential properties and the A6089, and consider the reason for refusal lacks clarity as regards residential impacts. They consider the landscape of a scale that can comfortably accommodate the scale of development proposed. 2. The appellants do not consider that effects on the Southern Upland Way or Twin Law Cairns are so adverse as to be unacceptable in terms of cumulative impact. They suggest that research points to walkers being more and not less tolerant than the average person to wind farm development. The intervening distance alone precludes significant visual effects. 3. They also consider that any significant effects are outweighed by the benefits of the development

Method of Appeal: Written Representations, Hearing & Site Visits

Reporter’s Decision: Dismissed

Summary of Decision: The Reporter, Trevor A Croft, dismissed the Appeal, concluding that the scale of the proposal, particularly the height of the turbines, and its intrusion into an area devoid of commercial scale wind farm developments, makes it unacceptable. Cumulatively its relationship to existing turbines, taken again with its location in a predominantly undeveloped area, makes the cumulative impact unacceptable.

3.1.2 Reference: 11/01680/FUL
Proposal: Erection of 7 No wind turbines up to 115m high to tip, transformers, access tracks, borrow pit, substation and control room, temporary construction compound, concrete batching area and other associated infrastructure,
Site: Land North West of Gilston Farm, Heriot
Appellant: RidgeWind Limited

Reason for Refusal: The proposed development is contrary to Policies N9, N14, N15 and, I19, I20 of the Scottish Borders Consolidated Structure Plan 2001-2018, and Policies G1, BE2 and D4 of the 2011 Scottish Borders Local Plan in that: (i) it would be located outwith the natural containment of the Lammermuir Hills and would introduce large turbines (100m -115m) into a medium scale landscape that is not capable of accommodating them successfully. The erection of these large scale turbines into this more transitional landscape accentuates their scale and dominance and creates an unacceptable landscape change and visual impact; (ii) the potential cumulative landscape and visual impact of the development with other approved schemes and those pending decision would give rise to a poorly planned, piecemeal form of wind energy development which would prejudice the integrity of nearby landscapes; (iii) the height and scale of the development would have a significant adverse impact on the local
landscape and, in particular on Fala Moor which has been designated as an Area of Great Landscape Value by Midlothian Council; (iv) due to the location and height of the proposed turbines, the development would potentially harm the local visual environment, and in particular the setting of at least one Scheduled Ancient Monument at Soutra Aisle; (v) due to the location of part of the development within an area of known archaeological interest it has not been demonstrated that the benefits of the proposal will clearly outweigh the archaeological value of the site.

Grounds of Appeal: It is the Appellants belief that the proposed development is a well designed scheme on a well chosen site that does not result in significant effects, on its own or cumulatively, that warrant the refusal of planning permission. The scale and nature of the landscape is considered to be capable of accommodating the proposed development. The design has been carefully considered through an iterative design and constraints led process; and the end result is a sound design for a site which is considered to be well contained. The scheme would give rise to no unacceptable impacts in respect of archaeology and cultural heritage. The concerns of SBC are considered to be over stated and the views of Historic Scotland are supported. It is submitted that conditions can satisfactorily be used to address concerns that have been raised by statutory consultees. The proposed development is the type of development which is strongly supported by UK and Scottish Government policy. It is also strongly supported by SPP and NPF3 which provide the policy framework for the consideration of planning applications for renewable developments. It is acknowledged that the scheme gives rise to a number of significant impacts in respect of landscape. However, it is submitted that the contribution that the proposed development would make to targets is an important material consideration to add weight in support of the proposed development in the planning balance.

Method of Appeal: Written Representations & Site Visits

Reporter’s Decision: Dismissed

Summary of Decision: The Reporter, Richard E Bowden, concluded that the scale, form and location of the development on the appeal site would represent a significant, detrimental change to the existing landscape character and visual amenity of the immediate locality and the wider area and would also result in unacceptable cumulative impacts. The appeal does not accord sufficiently with the governments policy set out in SPP and associated national guidance or with the development plan policy requirements, in particular those related to policy 10 of SESplan. Neither would it accord with all the criteria set out in policy D4 of the adopted local development plan concerning renewable energy proposals having regard to its requirement to take account of the social, economic and environmental context. The proposal would not satisfactorily accord with the detailed SNH guidance on the siting and design of wind turbines, including with regard to cumulative impacts. The reported also concluded that the economic case and related sustainability benefits put forward in support of the appeal proposal did not provide sufficient justification to override the outstanding concerns regarding likely adverse impacts and therefore dismissed the appeal and refused planning permission.

3.1.3 Reference: 12/01348/FUL
Proposal: Erection of wind farm incorporating 10 turbines 115m high to tip, ancillary equipment and associated infrastructure
Site: Land South East of Reston Hill Farmhouse, (Horn Burn Wind Farm), Eyemouth
Appellant: Energiekontor UK Ltd

Reason for Refusal: Appeal against non-determination of application

Grounds of Appeal: 1. The Appellant submits that the assessment of the proposal contained in the ES contained in their Statement of Appeal support the overall acceptability of the proposal and their contention that the Scheme is a well designed and sensitively sited proposal which does not give rise to any significant effects sufficient to warrant refusal, either on its own or cumulatively with other in-planning, consented or built schemes in the vicinity. 2. The scale, grain and nature of the landscape can accommodate the Scheme without giving rise to unacceptable character effects. The Scheme is well-designed, visually balanced and well sited. 3. Impacts on heritage assets have been thoroughly assessed and it has been concluded that there is no reason to refuse permission for the Scheme. The statutory consultee and Council’s Archaeology Officer have reached the same conclusion. 4. A proper analysis of the MOD objection demonstrates that it would be entirely possible for the Scheme to be consented and constructed and for the MOD to continue to operate Spadeadam range without any impact on their operations. 5. The conclusions reached by the Appellant’s witnesses and in the ES have been arrived at through the use of best practice methodologies and are the result of a thorough assessment of the impacts of the Scheme. The conclusion reached is that the impacts on each of the interests identified in the reason for refusal are acceptable, or can be appropriately mitigated by the use of conditions where appropriate. 6. The Scheme is precisely the kind of development which finds strong support in SPP. In carrying out the balancing exercise required in the determination of this Scheme it is submitted that to the extent that the Scheme gives rise to any significant effects, these are outweighed by the benefits of the Scheme, and in particular the significant contribution which the Scheme would make to national targets, which is an important material consideration weighing in favour of the Scheme.

Method of Appeal: Written Representations & Site Visit

Reporter’s Decision: Dismissed

Summary of Decision: The Reporter, David Russell, looked at all aspects of the appeal. He also looked at the landscape, visual & economic impacts of the wind farm on the surrounding area including the effect on Ministry of Defence radar performance. The reporter therefore dismissed the appeal and refused planning permission.

3.1.4 Reference: 12/01545/MOD75
Proposal: Modification of planning obligation pursuant to planning permission reference 02/00963/OUT
Site: Creag an Airidh Venlaw Farm, Edinburgh Road, Peebles
Appellant: Mr and Mrs G Goldstraw

Reason for Refusal: There is no justification to vary the clause on the Section 75 Agreement as the restriction remains necessary to prevent the land from being inappropriately developed and pressurised from adjoining settlement and building group boundaries - and to respect and reflect the unrestricted planning permission granted for the retirement farmhouse.
previously granted on the land, safeguarding against repeated attempts for further dwellinghouses.

Grounds of Appeal: Clause 2(b) does not meet with all the policy tests contained within Planning Circular 3/2012. Provision 2(b) is considered to be unnecessary to prohibit further development on the farm, in order to make the development of Creag an Airidh acceptable in planning terms. Given the presence of a clear building group at Venlaw which comprises 5 dwellinghouses, the prohibition of construction of further dwellinghouse(s) with the Section 75 agreement is now considered to be unreasonable.

Method of Appeal: Written Representations & Site Visit

Reporter’s Decision: Sustained

Summary of Decision: The Reporter, Philip G Hutchinson, allowed the appeal and determined that the planning obligation comprising the Minute of Agreement shall have effect subject to the deletion of Clause 2(b). Clause 2(b) did not pass all 5 tests in Paragraph 14 of Circular 3/2012 - Planning Obligations and Good Neighbour Agreements and therefore the reporter concluded that the appeal must succeed and the planning obligation should be modified to remove Clause 2(b).

3.2 Enforcements

Nil

4 APPEALS OUTSTANDING

4.1 There remained 4 appeals previously reported on which decisions were still awaited when this report was prepared on 19th September 2013. This relates to sites at:

- Blackburn, Grantshouse, Duns
- Penmanshiel, Grantshouse
- Whitslade (Barrel Law), Selkirk
- 24 Lamberton Holding

5 REVIEW REQUESTS RECEIVED

5.1 Reference: 11/01081/PPP
Proposal: Erection of dwellinghouse
Site: Land South of Fieldview, Townhead Farm, Cockburnspath
Appellant: Mr & Mrs W Russell

Reason for Refusal: The development proposed would conflict with Policy D2 of the Scottish Borders Consolidated Local Plan 2011, and Policy H8 of the Scottish Borders Structure Plan 2001-2018, in that: (i) agreement cannot be reached in relation to the limitation of future farm subdivision, which would be controlled via a Section 75 Legal Obligation temporarily tying the existing house at Fieldview with the land on which the application was based, the proposed new dwelling and the modern farmsteading adjacent to it at Old Cambus Townhead Farm; therefore (ii) the current proposal is not fully justified and would give rise to a high risk of sporadic new housing development in the countryside, compounding pre-existing disposal of other dwellings, buildings capable of conversion to
dwellings and dwelling 'plots' at Old Cambus Townhead Farm that may have provided opportunities to deliver the required agricultural workers' accommodation. Without the described limitations, the development would have the potential to repeat the precedent caused by the disposal/sale of the original farmhouse, requiring yet another dwelling to serve the agricultural operations of the farmholding, in the instance that the current applicants cease direct involvement in the farm operations.

5.2 Reference: 13/00428/PPP
Proposal: Erection of ancillary accommodation
Site: Land South East of The Roan Cottage, Lauder
Appellant: Mrs Ann Toms

Reason for Refusal: 1. The proposal is contrary to Adopted Local Plan Policy G1 in that an ancillary residential building sited as proposed, would be poorly related to the dwellinghouse at The Roan, and as such, would not be readily interpretable as an ancillary building augmenting residential accommodation within that property. Further, and regardless of its ancillary use, such a building would be liable to have the character of a separate residential property. In this way, it is considered that the proposal would not be compatible with, or respect, the character of the surrounding area, neighbouring uses and neighbouring built form at The Roan, or be of a scale that is appropriate to its surroundings. 2. The proposal is contrary to Approved Structure Plan Policies H7 and H8 and Adopted Local Plan Policy D2 in that the proposal would be liable to function as, and therefore be tantamount to, a residential property independent of, and separate from, the dwellinghouse at The Roan, and in a location where there is neither a recognised building group capable of augmentation nor any justification for a new dwellinghouse to service the operation of a business with a recognised need for a rural location and the accommodation of a worker (or retired worker) on-site.

5.3 Reference: 13/00454/FUL
Proposal: Erection of 2 no wind turbines 34.4m high to tip and ancillary infrastructure
Site: Land North East of Ayton Mains Farmhouse, Eyemouth
Appellant: Mr David Henry Liddell Grainger

Reason for Refusal: 1. The proposed development would be contrary to South East Scotland Strategic Development Plan 2013, Policy 1B - The spatial strategy: Development principles, and Policy 10 - Sustainable energy technologies, and Policies D4 of the Consolidated Local Plan 2011, in that it would have a significant adverse effect on local landscape character due to the height, scale and location of the proposed turbine and the prominence of the site within the local landscape, which would result in an overbearing and visually intrusive structure that would be significantly visible across a range of sensitive receptors, National Cycle Route (NCN) 76 which includes views to the setting of Ayton Castle, the environs of Gunsgreen House, and a well used local Core Path 59. 2. The proposed development would be contrary to Policies G1, BE1, and D4 of the Consolidated Local Plan 2011, in that it would have a significantly adverse impact upon the setting of the Category A listed building of Ayton Castle, as a consequence of the scale and proximity of the proposed turbine relative to the Castle, when viewed from NCN 76, and which would not be outweighed by any social or economic benefit to be derived from the location and operation of the proposed turbine. 3. The proposed development would be contrary to the Council’s draft SPG - Landscape and
Visual Guidance on Single and Small Groups of Wind Turbines in Berwickshire (April 2013). The height and scale of this turbine development is not appropriate to the prevailing Landscape Character Type (LCT) 30: Coastal Valley.

5.4 Reference: 13/00776/PPP
Proposal: Erection of dwellinghouse
Site: Paddock and Redundant Stable North of Station House, Cowdenburn, Lamancha
Appellant: Mr and Mrs S Corrigan

Reason for Refusal: The proposal for a dwellinghouse at this location is contrary to Scottish Borders Local Plan policy D2 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.

6 REVIEWS DETERMINED

6.1 Reference: 13/00003/PPP
Proposal: Erection of Dwellinghouse
Site: Land North West of Paddockmyre, Coldingham
Appellant: Mr and Mrs J White

Reason for Refusal: The proposed development would be contrary to Policies H7 and H8 of Consolidated Structure Plan 2009 and Policy D2 of the Consolidated Local Plan 2011, in that the proposed development would not relate sympathetically to an existing building group in a manner which is compliant with development plan policies and New Housing in the Borders Countryside Guidance Note 2008 and that, while the proposed business requires a rural location, the proposal has failed to demonstrate that there is a sufficient operational requirement for the business to require a dwelling house to ensure its efficient operation and that the business is sufficiently sustainable to support a permanent dwellinghouse.

Method of Review: Review of Papers
Review Decision: Decision of Appointed Officer Upheld

6.2 Reference: 13/00186/FUL
Proposal: Erection of wind turbine 67.9m high to tip and formation of new access track
Site: Land North West of Helenslea, Primsidemill, Yetholm
Appellant: Mr James Wauchope

Review against non-determination of Application.

Method of Review: Review of Papers
Review Decision: Continued for Site Visit

6.3 Reference: 13/00227/FUL
Proposal: Two storey extension to dwellinghouse
Site: 2 Crown Crescent, Earlston
Appellant: Mr & Mrs Colin Elliot
Reason for Refusal: The proposed extension would fail to comply with Policy H2 of the Adopted Local Plan 2011 and with the advice of the Supplementary Planning Guidance on Householder Developments (July 2006), in that it would have unacceptable impacts upon the amenity of two surrounding residential properties, more specifically in terms of: (i) its impact upon the amount of daylight that would be available to ground floor rooms lit by windows on the rear elevation of the dwellinghouses at both No 1 and No 3 Crown Crescent, which in the case of the latter would contribute to a cumulative impact on daylighting in conjunction with the existing offshoot at No 4; and (ii) its impact upon the amenity of ground floor and first floor rooms lit by windows on the rear elevation of the dwellinghouse at No 3 Crown Crescent as a consequence of the overbearing relationship that would arise from the West Elevation of the proposed extension being realised in such close proximity to the boundary with No 3 Crown Crescent, particularly in respect to its contribution to a cumulative impact that would be produced in association with the existing two-storey rear offshoot at No 4 Crown Crescent, which it would essentially mirror in projection, height and proximity to the east of No 3.

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Overturned

6.4 Reference: 13/00360/FUL
Proposal: Change of use, alterations and extension to form children’s play centre, community resource and installation of boundary fence and gates
Site: No 1 Works, Hillview Trading Estate, Guards Road, Coldstream
Appellant: Mr Jon Standing

Reasons for Refusal: The proposed change of use would be contrary to Policy ED1 of the Consolidated Local Plan in that that change of use to form children’s soft play centre would result in the loss of employment floor space and the alternative use has not been adequately justified. The proposed change of use would not offer significant benefits to the surrounding area and community that would outweigh the need to retain the site in employment use. Furthermore, the proposed use would not be compatible with neighbouring employment uses. 2. The proposals would be contrary to Policy Inf4 of the Consolidated Local Plan 2011 in that the proposed change of use would not incorporate adequate provisions for on site car parking, leading to an unacceptable adverse impact on road and pedestrian safety.

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Upheld

6.5 Reference: 13/00388/FUL
Proposal: Erection of dwellinghouse
Site: Land North East of Shawburn, Bleachfield Road, Selkirk
Appellant: Mr and Mrs Grieve

Reasons for Refusal: The proposal is contrary to Policies G1 and G7 of the Scottish Borders Consolidated Local Plan 2011, and Policy N20 of the Consolidated Scottish Borders Structure Plan 2009 in that it would
represent an unacceptable form and scale of development on the site. Furthermore, the proposed development is contrary to policy guidance applicable to a single dwelling in an urban or rural location, set out in the Scottish Borders Council Supplementary Planning Guidance on Placemaking and Design. 2. The development of the site would be contrary to Policy I15 of the Consolidated Scottish Borders Structure Plan 2009 and Policy G4 of the Scottish Borders Consolidated Local Plan 2011 in that the site is at risk from flooding, the development proposals have not been subject to a Flood Risk Assessment, and it has not been satisfactorily demonstrated that flood risk affecting the site can be mitigated.

Method of Review: Review of Papers
Review Decision: Decision of Appointed Officer Overturned

6.6 Reference: 12/01191/PPP
Proposal: Erection of dwellinghouse
Site: Land North East Of Buxton House, Eastfield, Selkirk
Appellant: Mr Hugh Lovatt

Reasons for Refusal: The proposed development is contrary to Policy H7 and H8 of the Scottish Borders Consolidated Structure Plan 2009 and Policy D2 of the Scottish Borders Consolidated Local Plan 2011 in that the application site does not constitute an appropriate addition to the building group at Buxton and the requirement for a dwellinghouse on medical grounds does not justify a departure from development plan policy. Furthermore, in the interests of road safety in that the existing vehicular access to the site is inadequate.

Method of Review: Review of Papers
Review Decision: Decision of Appointed Officer Overturned

7 REVIEWS OUTSTANDING

7.1 There remained 1 reviews previously reported on which decisions were still awaited when this report was prepared on 19th September 2013. This relates to sites at:

- Primsidemill, Yetholm

Approved by

Brian Frater
Head of Planning & Regulatory Services

Signature ........................................

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Background Papers: None.
Previous Minute Reference: None.

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