

# Public Document Pack



## PLANNING AND BUILDING STANDARDS COMMITTEE MONDAY, 5TH OCTOBER, 2020

A MEETING of the PLANNING AND BUILDING STANDARDS COMMITTEE will be held on MONDAY, 5 OCTOBER 2020 at 10.00 a.m. The meeting will be conducted remotely by Microsoft Teams in accordance with Section 43 of the Local Government in Scotland Act 2003 and will be live streamed to the public. A link to the meeting will be on the Council website.

J. J. WILKINSON,  
Clerk to the Council,

28 September 2020

<b>BUSINESS</b>	
1.	<b>Apologies for Absence.</b>
2.	<b>Order of Business.</b>
3.	<b>Declarations of Interest.</b>
4.	<b>Minute.</b> (Pages 3 - 16)  Minute of Meeting held on 7 September 2020 be approved and signed by the Chairman. (Copy attached.)
5.	<b>Applications.</b>  Consider the following applications for planning permission:-
	(a) <b>West Grove, Waverley Road, Melrose - 20/00331/FUL</b> (Pages 17 - 34) Demolition of existing building and erection of 14 No residential apartments and associated parking. (Copy attached.)
	(b) <b>Jed Distillery Land of Former Jedforest Hotel and Jedforest Hotel (now known as Mossburn House), Jedburgh - 20/00109/FUL</b> (Pages 35 - 58) Erection of 2 No distilleries with associated visitor centres, bottling hall, maturation warehousing, office, gatehouse with associated roads and infrastructure, and change of use of hotel to form office and staff accommodation previously approved under consent number 16/00744/FUL. (Copy attached.)
	(c) <b>Hutton Hall Barns, Hutton - (Shed 5) - 20/00347/FUL</b> (Pages 59 - 80) Erection of poultry building, upgrade of access junction, formation of access road, and associated works (Shed 5) (Copy attached.)

	(d) <b>Hutton Hall Barns (Shed 6) - 20/00470/FUL</b> (Pages 81 - 100) Erection of poultry building and associated works (Shed 6) (Copy attached.)
	(e) <b>Falsidehill Farm, Kelso - 20/00390/FUL</b> (Pages 101 - 120) Erection of 4 No poultry buildings together with associated infrastructure including link corridor, store rooms, egg packing facilities, staff facilities, loading bay, installation of 4 No feed bins, underground dirty water containment tank, drainage attenuation pond and formation of new access (Copy attached.)
	(f) <b>Whitelaw Brae Wind Farm, Fruid, Tweedsmuir - 20/00789/S36</b> (Pages 121 - 134) Variation to operating life from 25-30 years, increasing tip height from 133.5m to 136.5 metres and clarification on drawing listed as Annex E on consent. (Copy attached.)
6.	<b>Appeals and Reviews.</b> (Pages 135 - 138)  Consider report by Service Director Regulatory Services. (Copy attached.)
7.	<b>Any Other Items Previously Circulated.</b>
8.	<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 S. Mountford (Chair), N. Richards, A. Anderson, J. A. Fullarton, S. Hamilton, H. Laing, D. Moffat, C. Ramage and E. Small.

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

MINUTE of Meeting of the PLANNING AND  
BUILDING STANDARDS COMMITTEE held  
by Microsoft Teams on Monday, 7  
September 2020 at 10.00 am

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Present:- Councillors S Mountford (Chairman), A. Anderson, J. Fullarton, S. Hamilton, H. Laing, C. Ramage, N. Richards .

Apologies:- Councillor E. Small.

In Attendance:- Chief Planning Officer, Planning & Development Standards Manager, Lead Roads Planning Officer, Chief Legal Officer (N, McKinlay), Democratic Services Officers (F. Henderson and F. Walling).

1.0 **DECLARATIONS OF INTEREST**

Councillors J Fullarton and H. Laing declared an interest in Application 20/00523/FUL in terms of Section 5 of the Councillors Code of Conduct and left the meeting during the discussion.

2.0 **APPOINTMENT OF VICE CHAIRMAN**

With reference to paragraph 2 of the Minute of 26 June 2017, The Chairman proposed and it was unanimously agreed that Councillor Helen Laing be appointed to serve as the only Vice Chairman of the Committee. The Chairman thanked Councillors Aitchison, Anderson and Hamilton for undertaking Vice Chairmen duties in the past.

**AGREED that Councillor H Laing be appointed to serve Vice Chairman of the Planning and Building Standards Committee.**

3.0 **MINUTE**

There had been circulated copies of the Minute of the Meeting held on 3 August 2020.

**DECISION**

**APPROVED for signature by the Chairman.**

**ADJOURNMENT**

The meeting adjourned at 1.30 p.m. and reconvened at 2 p.m.

4.0 **APPLICATIONS**

There had been circulated copies of a report by the Chief Planning and Housing Officer on an applications for planning permission requiring consideration by the Committee.

**DECISION**

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

5.0 **INDICATIVE REGIONAL SPATIAL STRATEGIES FOR SOUTH OF SCOTLAND AND SOUTH EAST SCOTLAND**

The Chief Planning Officer was present at the meeting and gave a presentation on the two Indicative Regional Spatial Strategies (IRSS) that had been prepared to inform the development of the National Planning Framework (NPF). He explained that the Scottish

Borders Council was in the unique position of being involved in the preparation of two such strategies. The IRSS for the South of Scotland had been prepared jointly with Dumfries and Galloway Council and the IRSS for the South East Scotland in association with the five other SESplan authorities (City of Edinburgh, West Lothian, East Lothian, Midlothian and Fife Councils).

6.1 It was explained that the formal duty to prepare Regional Spatial Strategies had not yet been enacted but that Scottish Government had asked that indicative or interim strategies be prepared to inform the NPF. Regional Spatial Strategies are long term spatial strategies which identify:

- the need for strategic development
- the outcomes to which strategic development will contribute
- priorities for the delivery of strategic development
- proposed locations, shown in the form of a map or diagram

6.2 What had been prepared in both instances are 'light touch' but overarching documents that reflect existing projects, programmes and strategies such as SESplan, Scottish Borders Local Development Plan, the Borderlands Inclusive Growth Deal and the Edinburgh and South East Scotland City Region Deal. The IRSS was not promoting any new policies or projects but it was the opportunity to bring together existing strategic planning issues, economic development strategy and connectivity projects and give an indication of where we would want to see our region in 2050.

The South of Scotland IRSS focusses on the following themes:

- **Climate** - What development will we need to address climate change?
- **People** - How can planning support our quality of life, health and wellbeing in the future?
- **Economy** - What does planning need to do to enable an economy that benefits everyone?
- **Place** - How can planning improve and strengthen the special character of our places?
- **Connectivity** - What infrastructure do we need to plan to realise our long term aspirations?

The South East of Scotland IRSS builds on the strategy set out in SESplan and takes into account the emerging City Deal Regional Growth Framework and focusses on:

- **Regional Recovery and Renewal** - Tackling inequality, environmental improvement, economic renewal
- **Adaptable, a more resilient region** - Tackling climate change, building design and conservation
- **Accessible Region** - Tackling connectivity, infrastructure delivery, sustainable housing sites

6.3 Mr Aikman confirmed that both documents would be presented to Council on 25<sup>th</sup> September 2020 for ratification and that the South East of Scotland IRSS would also be considered by the SESplan Joint Committee on 21 September 2020.

**DECISION  
NOTED.**

7.0 **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 had been received an Appeal in respect of:-
- (i) **Erection of 52 holiday lodges with office, reception/shop and formation of associated roads and parking on Land North West of Willowdean House, Foulden – 20/00067/FUL**
- (b) there remained 2 appeals outstanding in respect of :-
- (i) **Land North of Carcant Lodge, Wull Muir Wind Farm, Heriot;**
  - (ii) **Land West of 1 Linthaugh Farm Cottage, Jedburgh**
- (c) Review requests had been received in respect of:-
- (i) **Erection of 15 No huts with associated access and car parking on Land East of Wester Deans, West Linton- 19/01256/FUL;**
  - (ii) **Siting of 3 No glamping pods and associated works on Land South West of Stouslie Farmhouse, Hawick – 20/00343/FUL;**
  - (iii) **Erection of dwellinghouse with detached garage on Land North West of Strathmyre, Old Belses, Jedburgh – 20/00486/FUL**
- (b) the decision of the Appointed Officer had been overturned in respect of:-
- (i) **part change of use from garage/storage and alterations to form workshop and storage for joinery business at Buccleuch Hotel, Trinity Street, Hawick – 19/01784/FUL, subject to conditions;**
  - (ii) **Erection of treehouse and walkway for use as holiday let accommodation and associated works on Land South West of Sandystones Farmhouse, Ancrum, Jedburgh - 20/00132/PPP, subject to conditions and Notification to Scottish Ministers);**
- (c) there remained two reviews previously reported on which decisions were still awaited when the report was prepared on 17 July 2020.

<ul style="list-style-type: none"><li>• <b>Garden Ground of 7 Heriot House, Heriot</b></li></ul>
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<ul style="list-style-type: none"><li>• <b>Garden Ground of Clifton Cottage, High Street, Kirk Yetholm</b></li></ul>
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*The meeting concluded at 4.10 p.m.*

**APPENDIX I**  
**APPLICATION FOR PLANNING PERMISSION**

<b><u>Reference</u></b>	<b><u>Nature of Development</u></b>	<b><u>Location</u></b>
20/00523/FUL	Erection of mixed use building comprising of office (Class 4) and storage (Class 6) and associated development including servicing, parking, re-profiling of existing shelter mound and demolition of adjacent harbour	Land North West of Fishmarket, Gunsgreen Quay Eyemouth

Decision: Approved, subject to the following conditions:

1. The development hereby permitted shall not be carried out otherwise than in complete accordance with the plans and specifications approved by the Planning Authority.  
Reason: To ensure that the development is carried out in accordance with the approved details.
2. No development shall commence until a scheme of details for the rerouting of the dive site access road has first been submitted to and agreed in writing by the Planning Authority. The scheme of details shall include plans and drawings of the rerouting and a timetable for delivery that ensures vehicular access is provided during the construction and operational stages of the development hereby approved. Thereafter, the rerouting of the dive site access road shall be delivered in strict accordance with the scheme of details, unless otherwise agreed in writing by the Planning Authority.  
Reason: So that vehicular access to the dive site is maintained during the construction and operational stages of the development hereby approved.
3. 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 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 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) 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
- 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 to a satisfaction of the Council.
- e) 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 Developer 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.

4. No demolition works shall take place to Smeaton's Wall until the applicant has secured the implementation of a programme of archaeological works (which may include excavation) in accordance with a Written Scheme of Investigation outlining a Historic Building Survey which has been formulated by, or on behalf of, the applicant and submitted to and approved in writing by the Planning Authority. Access should be afforded to allow archaeological investigation, at all reasonable times, by a person or persons nominated by the developer and agreed to by the Planning Authority. Results will be submitted to the Planning Authority for review in the form of a Historic Building Survey Report.

Reason: To preserve by record a wall of historical interest.

5. Prior to any works to the existing screening mound, the precise details of any alterations to this mound shall first be submitted to and agreed in writing by the Planning Authority. The details shall include proposals any seeding/ planting details and a timetable for delivery, completion and ongoing maintenance. Thereafter, the development shall be carried out wholly in accordance with the approved details.

Reason: To secure control over the precise details of any alterations required to the existing screening mound, in the interests of landscape and visual interest.

6. Prior to the construction of the building hereby approved, precise details of the following items shall be submitted to and approved in writing by the Planning Authority:

- All external materials, colours and finishes including those of walls, roofs and windows (including details of glass colour/ tint and specification);
- West elevation mullion design;
- PV panels, including the colour of the frames, and details of any associated equipment;
- Antennae and any other rooftop plant or equipment;
- Guttering and rainwater goods;
- Surface materials (including details of Smeaton's Wall line reinstatement in paving stone);
- Fencing, gates, walls and edge protection, including car park screening;
- Crane;
- External lighting of the site; and
- Substation details.

Thereafter, the development hereby approved shall be carried out wholly in accordance with details that have first been agreed in writing by the Planning Authority.

Reason: To secure control over detailed design considerations and ensure a satisfactory form of development that contributes appropriately to its setting.

7. Prior to commencement of development, a Species Protection Plan (SPP) for otter, badger and breeding birds shall be submitted to and approved in writing by the Planning Authority. The SPP shall incorporate provision for a pre-development supplementary survey and a mitigation plan. No development shall be undertaken except in accordance with the approved SPP.  
Reason: To protect the ecological interest in accordance with Local Development Plan policies EP1, EP2 and EP3.
8. Prior to commencement of development, a Construction Environmental Management Plan incorporating the latest good practice guidelines and statutory advice (as outlined in *Nearr Na Gaoithe Operations & Maintenance Facility Outline Construction Environmental Management Plan, ITP Energised, 15/05/2020*) to protect the Berwickshire & North Northumberland Coastal SAC shall be submitted to and approved in writing by the Planning Authority. Any works shall thereafter be carried out strictly in accordance with a scheme that has first been approved in writing by the Planning Authority.  
Reason: To protect the ecological interest in accordance with Local Development Plan policies EP1, EP2 and EP3.
9. Prior to construction of the building hereby approved a Biodiversity Enhancement Plan shall be submitted to and approved in writing in writing by the Planning Authority. Any works shall thereafter be carried out strictly in accordance with the approved scheme.  
Reason: To protect the ecological interest in accordance with Local Development Plan policies EP1, EP2 and EP3.
10. Prior to construction of the building hereby approved, precise details of surface water drainage, and written evidence on behalf of Scottish Water that mains water and foul drainage connections shall be made available to serve the development, shall be provided for the written agreement of the Planning Authority. Thereafter, the agreed servicing and surface water drainage arrangements shall be made operational prior to occupancy of the development, unless otherwise agreed in writing by the Planning Authority.  
Reason: To ensure the development is adequately serviced.
11. Prior to the development hereby approved becoming operational, the car parking arrangements shown on the approved site plan Reference 100 P-02 shall be formed and thereafter so retained, in perpetuity, unless otherwise agreed in writing with the Planning Authority.  
Reason: To ensure adequate parking is provided prior to the development becoming operational.
12. Prior to the development hereby approved becoming operational, a comprehensive Travel Plan that sets out proposals for reducing dependency on the private car shall be submitted to and approved in writing by the Planning Authority, in consultation with Transport Scotland. The Travel Plan shall identify measures to be implemented, the system of management, monitoring, review, reporting and the duration of the plan.  
Reason: To be consistent with the requirements of Scottish Planning Policy (SPP) and PAN 75 Planning for Transport.
13. Prior to the development hereby approved becoming operational, details of siting and design of the proposed cycle storage facilities, including details of implementation and completion, shall be submitted to and agreed in writing by the Planning Authority. The facilities shall be implemented in accordance with the agreed scheme of details and shall be retained in perpetuity thereafter, unless otherwise agreed in writing by the Planning Authority.

Reason: To control the detail of the proposed cycle storage facilities, and to ensure they are delivered as part of the development.

#### Information for the applicant

1. It should be borne in mind that only contractors first approved by the Council may work within the public road boundary.
2. Flood Risk Officer Advice: adoption of water resilient materials and construction methods are strongly recommended.
3. SEPA Advice: The storage of fuel should comply with CAR General Binding Rule 28 to minimise pollution risk. We refer the applicant to pollution guidelines at: <https://www.netregs.org.uk/media/1475/gpp-2-pdf-jan-2018.pdf>. The car parking area should be designed to comply with GBR10. If the existing screen mound is contaminated and reused appropriately as part of the planning permission on site there are no waste implications. If the soils are contaminated or soils are needing to be discarded for any reason then they will be classed as waste. Therefore, there will be waste management licencing implications and SEPA's local regulatory team should be consulted. Details of regulatory requirements and good practice can be found on the SEPA website or contact a member of the regulatory services team at: [ELB@sepa.org.uk](mailto:ELB@sepa.org.uk)

<u>Reference</u>	<u>Nature of Development</u>	<u>Location</u>
20/00413/FUL	Construction of earthen bank slurry lagoon	Legars Farm, Hume

Decision: Approved subject to the following conditions and informative, as follows:-

1. No development shall commence until precise details of the colour(s) (to include BS or RAL numbers) for the fence and gates to be erected has first been submitted to and approved in writing by the Planning Authority. Thereafter, the development shall be carried out in complete accordance with the approved details.  
Reason: In the interests of the visual amenities of the area.
2. No development shall take place except in strict accordance with a scheme of tree and shrub planting on the areas immediately surrounding the proposed slurry lagoon, which shall first have been submitted to and approved in writing by the Local Planning Authority, and shall include:
  - i. location of new trees, shrubs, hedges and grassed areas
  - ii. schedule of plants to comprise species, plant sizes and proposed numbers/density
  - iii. programme for completion and subsequent maintenance
  - iv. specific provision on the north-eastern side for dense planting to assist in the potential for limiting smell nuisance and visibility in that direction

Reason: To enable the effective assimilation of the development into its wider surroundings and to assist in limiting impacts on residential properties.

#### Informative:

The grant of planning permission does not alter the need for the applicant (or any operator) to comply with any other regulations or guidance pertaining to the use and operation of the development hereby approved, including in relation to any requirements associated with environmental pollution or nuisance.

#### NOTE

1. Mrs Elaine Scott-Mitchell, Neighbour spoke against the application and David Mair, Agri Design spoke in support of the application.

<u>Reference</u>	<u>Nature of Development</u>	<u>Location</u>
20/00378/PPP	Erection of dwellinghouse	Land North East of Burnside Lower Green West Linton

Decision: Refused, against Officer recommendation, for the following reasons:-

1. The proposed development represents an overdevelopment of a small site, giving rise to a cramped form of development, out of character with the surrounding Conservation Area and resulting in unacceptable impacts upon neighbouring residential properties, contrary to Policies PMD2, PMD5, EP9 and HD3 of the Scottish Borders Local Development Plan 2016.
2. The submitted application has not adequately demonstrated that safe access and satisfactory off-street parking provision can be achieved and therefore it is considered that vehicle movements associated with the development would give rise to road safety concerns, including interference with the free passage of vehicles and pedestrians using Back Road, contrary to Policy PMD2 of the Scottish Borders Local Development Plan 2016.
3. Insufficient evidence has been submitted to demonstrate that the proposed development can achieve an appropriate level of scale, massing, design and appearance that would be necessary to preserve and enhance the character of the West Linton Conservation Area at this location and therefore the application is contrary to the requirements of Policies EP9 and PMD2 of the Scottish Borders Local Development Plan 2016.

**NOTE**

1. Councillor Heather Anderson spoke against the application
2. Mr Ian Reid, West Linton Board of Trustees, Mrs Glenda Barton, Resident and Mr Graham Tulloch, Chairman of West Linton Community Council spoke against the application.

**VOTE**

*Councillor Fullarton, seconded by Councillor Mountford moved that the application be approved as per the Officer recommendation.*

*Councillor Richards, seconded by Councillor Laing moved as an amendment, that the application be refused on the grounds that the development was contrary to Policies PMD2, PMD5, EP9 and HD3 of the Scottish Borders Local Development Plan 2016.*

*As the meeting was conducted by Microsoft Teams members were unable to vote by the normal show of hands and gave a verbal response as to how they wished to vote the result of which was as follows:-*

*Motion – 2 votes*

*Amendment – 5 votes*

*The amendment was accordingly carried.*

<u>Reference</u>	<u>Nature of Development</u>	<u>Location</u>
20/00331/FUL	Demolition of existing building and erection of 14 No residential apartments and associated parking	Main Building West Grove Waverley Road Melrose

Decision: Continued to seek revisions to enable an increase in on-site parking provision.

NOTE

Gavin Yuill, Camerons spoke in support of the application.

<u>Reference</u>	<u>Nature of Development</u>	<u>Location</u>
19/01138/FUL	Erection of 4 No dwellinghouses	The Orchard Back Road Newstead

Decision: Approved subject to a legal agreement addressing contribution towards education, affordable housing and the Borders railway and the following conditions:

1. The development hereby permitted shall not be carried out otherwise than in complete accordance with the plans and specifications approved by the Local Planning Authority.  
Reason: To ensure that the development is carried out in accordance with the approved details.
2. 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.
3. A sample of all materials/colour finishes to be used on all exterior surfaces of the development hereby approved (walls, roofs, windows, doors) shall be submitted to and approved in writing by the Planning Authority before the development commences. The development then to be completed in accordance with the approved samples.  
Reason: The materials to be used require further consideration to ensure a satisfactory form of development, which contributes appropriately to its setting and to the character of the Conservation Area.
4. The existing boundary walls (shown on the drawings hereby approved) shall be retained and repaired as necessary (with the exception of the section of wall required to be removed for the vehicular access or lowered to achieve the junction visibility splays) in accordance with a scheme of works that shall first be submitted to and approved in writing by the Planning Authority before the development commences. The repairs shall be completed before the first dwellinghouse hereby approved is occupied.  
Reason: To secure the retention and repair of the historic wall, which contributes to the character of the Conservation Area.
5. No development shall take place except in strict accordance with a scheme of soft landscaping works, which shall first have been submitted to and approved in writing by the Local Planning Authority, and shall include (as appropriate):
  - i. indication of existing trees, shrubs and hedges to be removed, those to be retained and, in the case of damage, proposals for their restoration

- ii. location of new trees, shrubs, hedges and grassed areas
- iii. schedule of plants to comprise species, plant sizes and proposed numbers/density
- iv. programme for completion 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.

6. Details of the surfacing materials for the vehicular access, internal access road, visitor parking spaces and driveways/parking spaces shall be submitted to and approved in writing by the Planning Authority before the development commences. The development shall then be completed in accordance with the approved details.  
Reason: The materials to be used require further consideration to ensure a satisfactory form of development, which contributes appropriately to its setting and to the character of the Conservation Area.
7. Two parking spaces shall be provided within the curtilage of each dwellinghouse prior to the occupation of the dwellinghouse and then retained thereafter in perpetuity. The visitor parking spaces shall be provided before the first dwellinghouse is occupied.  
Reason: To ensure the development is served by satisfactory on-site parking, in the interests of road safety.
8. No drainage system other than the public mains sewer shall be used to service the dwellinghouses hereby approved without the written consent of the Planning Authority. Prior to occupation of the dwellinghouses, written evidence shall be submitted to and approved in writing by the Planning Authority that the dwellinghouses have been connected to the public water drainage network.  
Reason: To ensure that the development does not have a detrimental effect on public health.
9. No development shall 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 dwellinghouses, written confirmation shall be submitted to and approved in writing by the Planning Authority that the development has been connected to the public mains water supply. 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.
10. Details of all surface water drainage shall be submitted to and approved in writing by the Planning Authority before the development commences. The surface water drainage arrangements shall follow sustainable urban drainage techniques and shall ensure that pre-development Greenfield run-off rates are not increased. The surface water drainage shall then be installed as approved before the dwellinghouses are occupied.  
Reason: To ensure that the development is adequately serviced, does not increase run-off rates and does not have a detrimental effect on public health.
11. The site shall be cleared of vegetation outwith the bird breeding season (March to September) unless in strict compliance with a Species Protection Plan for breeding birds, including provision for pre-development supplementary survey, that shall first be submitted to and approved in writing by the Planning Authority.  
Reason: To protect the ecological interest in accordance with Local Development Plan policies EP2 and EP3.
12. Details of the proposed culvert shall be submitted to and approved in writing by the Planning Authority before the development commences. The development shall then be completed in accordance with the approved details/drawings.

Reason: Further information is required to ensure a satisfactory form of development.

13. Notwithstanding the details indicated on the approved drawings, the finished floor levels of the building(s) hereby permitted shall be consistent with those indicated on a scheme of details which shall first have been submitted to and approved in writing by the Local Planning Authority. Such details shall indicate the existing and proposed levels throughout the application site in relation to Ordnance Datum and shall indicate the position of burn and culvert running through the site and show the cross-sections described in Table 9 of the FRA.

Reason: To ensure that any risk to the proposed development from flood risk is minimised.

### Informatives

1. With respect to Condition 4, no repair works to the boundary wall enclosing the site to the north-west are to take place until the cavities have been inspected by a licenced bat worker.

The applicant is advised that, under the Conservation Regulations (Natural Habitats & c.) 1994 (as amended) it is an offence to deliberately or recklessly damage or destroy a breeding site or resting place of bats (whether or not deliberately or recklessly), capture, injure or kill a bat, harass a bat or group of bats, disturb a bat in a roost (any structure or place it uses for shelter or protection), disturb a bat while it is rearing or otherwise caring for its young, obstruct access to a bat roost or otherwise deny an animal use of a roost, disturb a bat in a manner or in circumstances likely to significantly affect the local distribution or abundance of the species, disturb a bat in a manner or in circumstances likely to impair its ability to survive, breed or reproduce, or rear or otherwise care for its young.

In the event that bats are discovered following the commencement of works, works should stop immediately and the developer must contact Scottish Natural Heritage (tel: 01896-756652 or 01463 725 364) 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)

<https://cdn.bats.org.uk/pdf/Bats-Trees.pdf?mtime=20181101151317>

All wild birds are afforded protection and it is an offence to deliberately or recklessly kill, injure and destroy nests and eggs of wild birds. Additionally for those species protected under Schedule 1 of the Wildlife and Countryside Act 1981 (as amended) it is illegal to intentionally or recklessly disturb any bird whilst it is nest-building or at or near a nest containing eggs or young, or to disturb any of its dependent young.

2. The Council's Heritage and Design Officer advises that there are references to historic sundials in Newstead; should these or other historic elements remain, or be found during the course of the works, the Planning Authority should be notified to agree the best way forward.

<u>Reference</u>	<u>Nature of Development</u>	<u>Location</u>
19/00819/FUL	Erection of dwellinghouse & installation of opaque panels to windows in Clinic building The Orchard	Garages South of Clinic and Clinic, Greenside Park St Boswells
19/853/CON	Demolition of 3 Garages	

DECISION: 19/00819/FUL - Approved subject to a legal agreement addressing development contributions towards education and the Borders railway and the following conditions:

1. The development hereby permitted shall not be carried out otherwise than in complete accordance with the plans and specifications approved by the Planning Authority.  
Reason: To ensure that the development is carried out in accordance with the approved details.
2. The development hereby approved shall only be carried out in strict accordance with details of the materials to be used on the external walls, roofs, window frames and doors of the proposed dwellinghouse, which shall first have been submitted to and approved in writing by the Planning Authority.  
Reason: To ensure a satisfactory form of development, which contributes appropriately to its setting and safeguards the character and appearance of the Conservation Area.
3. The garden area to the front of the dwellinghouse hereby approved is to be enclosed by a hedge, as shown on Drawing Number 9366.1.02 Rev B (not a fence or wall or other means of enclosure). Details of the proposed hedge (species, plant sizes and proposed numbers/density) and a programme for completion and subsequent maintenance to be submitted to and approved in writing by the Planning Authority before the development commences.  
Reason: To enhance the setting of the development and safeguard the character and appearance of the Conservation Area.
4. All planting, seeding or turfing comprised in the approved details of landscaping (lawn and hedge) shall be carried out in the first planting season following the occupation of the dwellinghouse 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.
1. The developer shall give notice to the Planning Authority once the approved landscaping works have been completed.  
Reason: To allow the Planning authority to inspect the works, in order to ensure that the works have been carried out as approved.
2. Details of how the pedestrian access strip (shown as No. 8 on Drawing Number 9366.1.02 Rev B) is to be demarcated and details of the materials for the paved area (shown as No. 10 on Drawing Number 9366.1.02 Rev B) to be submitted to and approved in writing by the Planning Authority before the development commences. The pedestrian access strip and paved area shall be completed in accordance with the approved details before the dwellinghouse is occupied.  
Reason: To ensure safe pedestrian access is provided within the site.
3. The two parking spaces shown on Drawing Number 9366.1.02 Rev B to be completed and made available for use prior to the occupation of the dwellinghouse hereby approved and be retained thereafter in perpetuity.  
Reason: To ensure that the development hereby approved does not have a detrimental impact on the parking available within the vicinity of the site, in the interests of road safety.
4. Engineering details for the new sections of tarmac footway (including dropped kerbs for pedestrians coming off the end of the footway) in Greenside Park are to be submitted to and approved in writing by the Planning Authority before the development commences. The sections of footway are then to be constructed in accordance with the approved details prior to the occupation of the dwellinghouse.  
Reason: To ensure the footway is fit for pedestrian use.

5. Any damage to the footway in Greenside Park caused by the development hereby approved must be repaired prior to the occupation of the dwellinghouse, in accordance with a scheme of details which shall first be submitted to and approved in writing by the Planning Authority.  
Reason: To ensure the integrity of the adjacent footway is not compromised.
6. No water supply other than the public mains water supply 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.
7. No drainage system other than the public mains sewer shall be used to service the property without the written consent of the Planning Authority.  
Reason: To ensure that the development does not have a detrimental effect on public health.
8. Access to the remaining garage and to the rear of the adjoining houses (former police houses) shall not be obstructed during the demolition of the garages or the construction of the dwellinghouse hereby approved.  
Reason: To maintain existing rights of way.

#### Informatives

1. In respect of condition 6, the paved area (10) on the plan may be better suited if it was raised, rather than level with the surrounding area and be continued to meet the existing footway on Greenside Park. This would provide a safe access for pedestrians to and from the dwelling.
2. In respect of condition 8, all works within the road (including footway) must be carried out by a contractor first approved by the Council.

19/00853/CON: Approved subject the following conditions:

1. The development hereby permitted shall be carried out within three years of the date of this consent.  
Reason: To comply with the provision of Section 66 of the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997.
2. Any damage to the adjacent public footway caused by the demolition hereby approved must be repaired (in accordance with a scheme of details first submitted to and approved in writing by the Planning Authority) within 2 months of completion of the demolition, unless otherwise agreed in writing with the Planning Authority.  
Reason: To ensure the integrity of the adjacent public footway is not compromised.
3. A scheme of works to protect the remaining garage during the demolition of the three garages and once the garages have been demolished (and before works commence on the dwellinghouse) shall be submitted to and approved in writing by the Planning Authority before the demolition commences. The scheme of works shall be implemented during and after demolition.  
Reason: To ensure the existing garage is protected and left in a wind and water tight condition prior to the erection of the dwellinghouse.

Informative

1. All works within the road (including footway) must be carried out by a contractor first approved by the Council.

NOTE

1. Mr Denis Rodwell, Neighbour spoke against the application
2. Neil Mochrie, Agent spoke in support of the application

<u>Reference</u>	<u>Nature of Development</u>	<u>Location</u>
20/00611/FUL	Variation of Condition 2 of planning consent 19/00945/FUL to allow car parking on approved site to comply with Covid 19 social distancing guidelines.	St Boswells Garage Border Toyota St Boswells

DECISION: Approved, subject to the following conditions as follows:

1. The site hereby approved shall at all times be used in connection with, and ancillary to, the existing use of the premises as a garage and car showroom.  
Reason: The Planning Authority does not consider the establishment of a separate planning unit to be appropriate in this edge of settlement location, to retain effective control of the site and to protect visual and residential amenity.
2. The existing hedge on the north east boundary of the site with the A68 trunk road as well as the existing trees within the site shall be retained unless otherwise agreed in writing by the Planning Authority.  
Reason: To safeguard the visual amenities of the area.
3. This consent specifically excludes any type of lighting for the demonstration/training area, charging points, staff parking and car storage areas shown on approved drawing 191565/02 dated May 2020.  
Reason: To safeguard the visual and residential amenities of the area.
4. No development shall take place except in strict accordance with a scheme of details indicating a physical buffer area, toward the south-eastern boundary with Hawthorn Lodge, which shall include measures to prevent vehicle movements within the agreed area and screen planting close to the boundary with the adjacent residential property.  
Reason: To minimise any potential impacts of the development on the neighbouring residential property

NOTE

1. Mr Andrew Dow, Neighbour spoke against the application
2. Mr Archie MacLean, Applicant spoke in support of the application

**SCOTTISH BORDERS COUNCIL**

**PLANNING AND BUILDING STANDARDS COMMITTEE**

**5 OCTOBER 2020**

**APPLICATION FOR PLANNING PERMISSION**

**ITEM:** **REFERENCE NUMBER:** 20/00331/FUL

**OFFICER:** Julie Hayward  
**WARD:** Leaderdale and Melrose  
**PROPOSAL:** Demolition of existing building and erection of 14 No residential apartments and associated parking  
**SITE:** Main Building West Grove Waverley Road Melrose  
**APPLICANT:** Rural Renaissance Ltd  
**AGENT:** Camerons Strachan Yuill Architects

**PLANNING PROCESSING AGREEMENT:**

A Planning Processing Agreement is in place until 23<sup>rd</sup> October 2020.

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

The application was continued from the September meeting of the Planning and Building Standards Committee to seek revisions to the site layout to increase the amount of on-site parking provision.

**SITE DESCRIPTION**

The site is situated on the corner of Waverley Road and Tweedmount Road in Melrose. It is out with the Conservation Area, though the eastern boundary of the site forms the edge of the Conservation Area, and is within the National Scenic Area.

The single storey, flat roof rendered building to the rear (out with the application site boundaries) has Planning Permission to convert from offices to a gym and spa. There are residential properties to the east and south on High Cross Avenue and to the north west in Tweedmount Road. The Holy Trinity Church and rectory are to the south west on High Cross Avenue. The church, rectory and a number of residential properties in the surrounding area are Listed Buildings.

The site comprises of a former congregational church and manse and parking for the gym. The former church building has been altered and extended many times in the past and was last used for offices, but has been vacant for some time. The church has a high gable onto Waverley Road and the manse is two storey with bay windows, rendered with a slate roof.

There are vehicular accesses from Waverley Road and Tweedmount Road. Boundary treatments comprise of a stone wall and timber fence to Tweedmount Road, a timber fence to Waverley Road and a stone wall along the boundary with Nos. 14 – 16 High Cross Avenue to the east. There is an area of planting and a disabled parking space in front of the building and there are two semi-mature trees within the site, which are covered by a Tree Preservation Order.

## **PROPOSED DEVELOPMENT**

The proposal is to demolish the former church and manse and erect a building containing 14 apartments. Revised drawings have been submitted since the application was first registered; the building would be four storeys, including an undercroft and attic accommodation. The design features high gables and pitched roof dormers. It would have white rendered walls with coursed rubble for the undercroft and standing seam zinc cladding detailing. The walls would be broken up with natural stone buttresses and finials. The pitched roof would be slate and the flat roofs standing seam zinc. The windows would have grey alu-clad frames. There would be four, two bedroom apartments per floor and two in the roof space.

The site plan drawing considered at the September meeting showed an undercroft providing three parking spaces, one disabled space, cycle storage and service/plant/storage areas. Overall, fifteen residential car parking spaces were proposed, including one disabled space and one visitor space. The gym would be served by 20 parking spaces.

A revised site plan has now been submitted together with a Parking Statement. A total of 18 car parking spaces would serve the apartments, including one visitor space and one disabled space; six of these spaces would be accommodated in the undercroft and the remainder of the undercroft would now accommodate a biomass district heating system for the apartments and gym/spa. The gym/spa would be served by 20 parking spaces.

The site would be served by a widened vehicular access from Waverley Road and an exit onto Tweedmount Road via a one way system. A bin store would be located adjacent to the entrance onto Waverley Road screened by a 1.8m high coursed rubble wall.

The boundary to Tweedmount Road would be defined by a beech hedge and a 400mm high coursed rubble stonewall would be erected along the Waverley Road boundary and the access road. There would be areas of grassed amenity space around the front of the building, some tree planting and low level planting along the eastern elevation.

## **PLANNING HISTORY**

15/00504/FUL: External alterations and erection of 4 No flagpoles. Refused 14<sup>th</sup> July 2015.

15/00896/FUL: Installation of canopy walkway and alterations to form 2 no slappings. Approved 29<sup>th</sup> September 2015.

15/01203/FUL: Change of use from Class 4 Offices (Business) to Class 2 Offices (Financial, Professional and other Services) (retrospective). Approved 9<sup>th</sup> December 2015.

15/01354/FUL: External alterations and erection of 4 No flagpoles. Refused 18<sup>th</sup> January 2016.

16/01583/FUL: Change of use from offices and alterations and extension to form gym/spa. Approved 24<sup>th</sup> April 2017.

17/00768/FUL: Extension to form spa treatment rooms. Approved 6<sup>th</sup> September 2017.

17/01432/FUL: Extension to form new entrance and alterations to west elevation (amendments to previously approved application numbers 16/01583/FUL and 17/00768/FUL). Approved 14<sup>th</sup> December 2017.

## REPRESENTATION SUMMARY

Eleven individual representations (seven objections and four letters of support) have been received and these can be viewed in full on the Public Access website. The objections raise the following issues:

- Residential/retirement flats is a good use of the site but the building is too high, dwarfing the existing buildings;
- Nothing in this area is of this scale;
- The development should include eco designs to benefit owners of the properties;
- The design does not fit in with the architecture of the area;
- The gym should be demolished enabling a lower building with a larger footprint;
- It is unlikely that residents would use the adjacent gym, which has Planning Permission. The gym should be demolished and facilities that better suit elderly people provided on the site;
- The public space at the front is just a small area of grass;
- Insufficient parking for the apartments and gym is proposed resulting in additional parking and congestion in Tweedmount Road, impacting on safety;
- The access to the site is dangerous due to the poor visibility and steep slope;
- Noise from additional traffic;
- Overlooking and loss of privacy;
- The building has been moved closer to existing properties, impacting on outlook, light and privacy
- Light pollution from the flats at night;
- Increase in traffic;
- The apartment building and the gym within the site constitutes overdevelopment with no connection between the two uses;
- The development will detract from the character of the area, contrary to policy PMD5 (b);
- The development should be more in keeping with the surrounding architecture and more tree planting would help it blend in with its surroundings;
- The scale, form, design and density are at odds with the context of the immediate neighbourhood, in contravention of policy PMD5 (d);
- The street views are misleading and deceptive and the development will stand as a modern carbuncle siting on one of the main routes into Melrose. The development should be reduced by at least one storey and redesigned, with additional tree planting.

The four representations in support of the proposal can be summarised as follows:

- Retirement accommodation represents a good use of the site as there is a shortage of high quality accommodation for those in later life in Melrose and the surrounding area. Such accommodation frees up other properties for first time buyers;
- The building is lower in height than the existing building;
- The proposed building is more aesthetically pleasing than the existing building;
- The development would have easy access to the town centre;

- The development would encourage people to come to Melrose and support local infrastructure.

## **APPLICANTS' SUPPORTING INFORMATION**

- Design Statement
- Planning Statement
- Objection Rebuttal
- Parking Statement

## **DEVELOPMENT PLAN POLICIES:**

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

PMD1: Sustainability

PMD2: Quality Standards

PMD5: Infill development

HD3: Protection of Residential Amenity

EP3: Local Biodiversity

EP4: National Scenic Areas

EP7: Listed Buildings

EP8: Archaeology

EP9: Conservation Areas

EP13: Trees, Woodland and Hedgerows

IS2: Developer Contributions

IS3: Developer Contributions Related to the Borders Railway

IS7: Parking Provisions and Standards

IS9: Waste Water Treatment Standards and Sustainable Urban Drainage

## **OTHER PLANNING CONSIDERATIONS:**

Supplementary Planning Guidance

Placemaking and Design 2010

Householder Development (Privacy and Sunlight) 2006

Trees and Development 2008

Biodiversity 2005

Development Contributions updated January 2018

## **CONSULTATION RESPONSES:**

### **Scottish Borders Council Consultees**

**Roads Planning Service:** Concerns with this proposal relate to the level of parking provision.

Through previous approvals, agreement has been met for 23 parking spaces associated with the gym/spa/offices. These have been shown on the plan although the amended layout causes some concern. The use of the three undercroft bays may not be clear to users of the gym/spa, although signage could be utilised to indicate this. The disabled bay for the gym is now shown under the new building as opposed to next to the access ramp. This now causes users of this bay to cross the car-park to access the gym/spa. Another issue regarding the parking for the gym/spa is that the submission indicates 24 spaces, although there are only 23 shown on the plan.

With regards the parking associated with the flats, it is noted that there is to be one space allocated per flat and 2 visitor spaces. This equates to 16 spaces as shown on the plan. However, one of these spaces is a disabled bay which cannot be allocated to a specific flat and does not accommodate all visitors. Whilst there may be some spillage of vehicles into the spaces proposed for the gym by residents and visitors to the flats, the parking overall is on the light side.

Given the site's proximity to the town centre and the services and public transport links this provides, the proximity of Tweedbank Terminus for the Border Railway, and taking into consideration the fact that the SEStrans parking guidance allows for between 0.5 and 1.5 spaces per unit for this zone of development (Zone D), RPS would be prepared to accept a parking level of 19 spaces for the flats and 23 for the gym/spa. The 19 spaces would be made up from 14 allocated for the flats, 4 visitor spaces and 1 disabled space. Confirmation as to how these spaces are to be provided is required.

The following matters should be addressed should approval be considered:

- Alterations to the wall at the exit on to Tweedmount Road, agreed via previous approvals, will also have to be carried out prior to occupation of the first unit.
- An allowance for cycle parking should be incorporated within the development – as per ‘Cycling by Design by Transport Scotland’ standards.
- The access into the site shall have to be in the form of a footway crossing. As the footway is slabbed, the access should be formed using block pavements. A detail for this will have to be provided for approval. This detail should include construction details, the relocated street lighting column and road gully.
- The paths associated with the entrance to the property should continue to the existing footway on Waverley Road.
- The boundary fence along Tweedmount Road should not be provided over the final 3m adjacent to the exit from the site.

**Re-consultation:** Confirm that the amended drawing is in line with discussions with the agent. Recommend conditions regarding the construction details of the parking area and boundary fencing should be attached to any approval.

**Re-consultation:** Having reviewed the amended drawing, Drawing No. 9375.3.04 Rev. F, I would make the following comments:

For clarification, the parking associated with the gym is as per the approval for that development which was 20 spaces. This was based on one space per two visitors at the maximum occupation of the development (including the add-on therapies) of 40.

The parking associated with this residential proposal (18 spaces) is still one space less than what was originally requested, but this does represent an increase of 3 spaces from the 15 spaces proposed in the previous submission considered at the Planning & Building Standards Committee meeting on 7<sup>th</sup> Sept 2020. I am satisfied that the developer has made all attempts to maximise parking provision and, on balance, I am able to accept the 18 spaces proposed. It is my opinion that the parking spaces should be distributed in the following way: 14 spaces dedicated to the residents of the proposed flats, 1 – 3 on the plan allocated for visitors and the final space being the disabled person space.

When considering this application, it has to be borne in mind that whilst it is being referred to as “retirement flats”, the only restriction I am able to find for the occupancy

is that residents have to be over 55. As such, I have had to assess the development as mainstream housing. I accept that the SEStrans Parking Guidelines for new flats in Zone D is between 0.5 and 1.5, which would be between 7 and 21 for this development, however, the Local Development Plan states that for general housing, the parking should be 2 spaces per dwelling plus 0.25 spaces per dwelling for visitors or alternatively 1.5 to 1.75 spaces for communal provision. Whilst the proposed level does not match this standard, I have taken into consideration the physical constraints on site, the location of the site in proximity to the town centre, the local bus routes and proximity of Tweedbank Railway Station, along with consideration of the likelihood of the occupants having more than one car, and accepted a reduction from these standards towards those accepted for town centre redevelopments (which are 1 to 1.5 spaces per dwelling or 14 to 21 for this development). Following guidance, I have also requested that disabled person parking be provided in the ratio of 1 space per 20, thus there is one space for the gym and one for the residential development.

Based on the above, I am now in a position to be able to offer support to the proposal.

**Director of Education and Lifelong Learning:** No response.

**Housing:** The proposal provides fewer units than would require provision of on-site affordable housing but developer contributions would be required to satisfy policy requirements.

**Archaeology Officer:** This application is for the demolition of the existing historic buildings of a former Congregational Chapel, which dates back to 1878.

As Planning Permission is not required to demolish the buildings, we cannot require that any historic building recording is carried out. An informative about recording of the building is requested, as this cannot be covered by a planning condition.

Whilst the site of this proposed application lies outside the core of the medieval town, and is shown as open fields in the 19<sup>th</sup> century mapping, it is located at a prominent location and routeway into the town. There would be, therefore, the potential for some below-ground, hitherto, unrecorded archaeological remains to be present.

The proposed building would extend beyond the extent of the existing buildings on the site. It is likely that foundation trenches will be substantial, and will also be at a greater depth to the previous foundations (if any) of church and manse buildings. Archaeological work is recommended to be carried out. However, little of the original natural topography of the area survives for the most part of the area proposed for development. It is probable that any earlier archaeological remains will have largely been destroyed already, but what may remain and might be exposed during foundation work may still be of significance. A modest archaeological condition is recommended.

**Landscape Architect:** No response.

**Heritage and Design Officer:** The site located in a prominent corner location immediately outside the boundary of the Melrose Conservation Area, and within close proximity to a number of Category B and C listed buildings of ecclesiastical and residential historic character. The former church in question was designed as a prominent, but not visually dominating, contribution to its streetscape.

The former church has been considerably altered to accommodate varied uses over time. The associated loss of authenticity lowers its heritage value. While elements of the historic fabric remain, the former church in question has low heritage value due to

its level of alteration and associated loss of integrity and aesthetic interest. There is therefore no objection from a heritage perspective to the demolition of this building provided subsequent development has a positive planning and public benefit impact.

The proposed replacement building is a substantial structure. The proposed residential use of the site is consistent with the general historic character of the area and the layout is also appropriate to the area.

However, while it is clear that effort has been made to reduce the visual dominance of this substantial development (e.g. by setting further back from the southern street edge), due to the scale of development the proposed intervention would be out of scale with its surrounding townscape, thus harming the setting of the Conservation Area and wider setting of surrounding Listed Buildings. This effect would be emphasised by the proposed boundary treatment of fences and a generally 'hard' appearance which is in contrast to the combination of stone boundary wall and mature trees which characterise the historic property/boundary treatment of the area.

The efforts made to reference the ecclesiastical history of the site and in this manner reinforce local character is positive in intention, though questionably effective at such a large scale.

**Neighbourhood Services:** No response.

**Refuse Collection:** As long as collection vehicles can drive in and out without the need for reversing or there is a dedicated turning area large enough for an RCV, there are no concerns. If this is not the case then a communal collection point would need to be put where a safe guaranteed turning area, kept clear could to be identified.

### **Statutory Consultees**

**Community Council:** Support this application as there is a need for these types of properties in Melrose whilst retaining some of the existing features in the new building supports the historic past use of this site. Our only concern would be that all parking needs to be within the development area as far as possible to minimise any disruption to surrounding existing residents parking.

**Scottish Water:** No response.

### **Other Consultees**

None.

### **KEY PLANNING ISSUES:**

- Siting, scale and design
- Impact on the Conservation Area
- Impact on residential amenities
- Access and parking
- Archaeology

## **ASSESSMENT OF APPLICATION:**

### **Planning Policy**

The site is within the development boundary for Melrose and so the proposal must be assessed principally against policy PMD5. Within Development Boundaries development on non-allocated, infill or windfall sites will be approved if certain criteria are met. These criteria will be assessed within this report. One criterion is that the proposal should not conflict with the established land use of the area. The surrounding area is predominantly residential in character and so the proposal to build residential apartments on the site would be in keeping with this part of Melrose.

The Planning Statement advises that the development would provide apartments for retired/older residents. The agent advises that people downsizing into a retirement flats frees up larger family houses, increasing the housing land supply and creating a chain of movements which ultimately means dwellings become available to a first time buyers, thereby slowing the rise of house prices.

This site would be an ideal location for apartments of this nature, being close to the town centre, health centre and public transport. The proposal would increase the variety of accommodation types available in Melrose and provide accommodation for those of, or close to, retirement age not readily available at the moment.

### **Layout and Design**

Policy PMD2 of the LDP requires all development to be of high quality in accordance with sustainability principles, designed to fit in with Borders townscapes and to integrate with its landscape surroundings. The policy contains a number of standards that would apply to all development. Policy PMD5 requires that the development respects the scale, form, design, materials and density of its surroundings; the individual and cumulative effects of the development should not lead to over-development or town cramming; the proposal should not detract from the character and amenity of the surrounding area.

The proposal is to demolish the existing buildings on the site, which are out with the Conservation Area and are not listed, therefore consent is not required for their demolition. The photograph in the Design Statement shows a handsome church of historic merit but the church and manse have been significantly altered and extended over time, although elements of the historic fabric remain. They now have a low heritage value and so there are no objections to their demolition

The proposal is to erect a replacement building accommodating 14 apartments, four on each floor and two in the attic. An undercroft, taking into account the sloping nature of the site, would provide some parking, storage and services.

Whilst it is accepted that the site represents an opportunity to provide a modern landmark development within Melrose, this is a prominent, sensitive site on the edge of the Conservation Area and such a proposal is not without its challenges. The area is characterised by low density development, with predominantly large, older residential properties set within large plots with mature landscaping and stone boundary walls.

The apartment building would be sited towards the Waverley Road boundary, with the car parking area and gym/spa building to the rear. The relationship with the gym is uncomfortable, due to the potential conflict of uses between the gym/spa and

residential apartments, in terms of traffic and activity, and also the way the position of the gym/spa dictates the layout of the site. The retention of the gym/spa results in a large area of hard surfacing to the rear and side of the apartment building for parking and circulation space for both uses (residential and commercial). This results in small areas of open space/amenity space for future residents at the front of the site adjacent to Waverley Road, where there is little in the way of privacy, and also a lack of space for landscaping to soften the impact of the development and break up the large areas of hard surfacing.

Discussions have taken place with the agent and applicant to resolve these issues but the applicant wishes to retain the gym/spa, as they see this as a complementary facility for residents of the apartments. The footprint of the building has been reduced slightly to increase the area of amenity space and small areas for planting and three trees have been included in the layout.

In terms of scale and height, the site demands a building with presence, given its location and the scale of the existing building. Efforts have been made during the processing of the application to reduce the visual dominance of the proposed building by setting it further back from the road, reducing the footprint and lowering the ridge height.

The design principles are felt to be the right approach, as the elevations are well proportioned with attractive detailing, such as the natural stone buttresses and finials and zinc cladding. The two wings help reduce the bulk of the building and the windows in the gables and stone frontage add interest.

A sample of the external materials would be secured by condition should the application be approved. It is felt that white dry dash render for the walls is not appropriate; a buff wet dash render or similar is required, the precise colour of which can also be secured by condition.

In summary, it is accepted that the site demands a building of a scale to reflect that of the existing building on the site and the design approach acceptable, but concerns regarding the lack of private amenity space, the large area of hard surfacing for car parking and the proximity of the gym/spa remain.

### **Impact on Visual Amenities**

Policy EP4 states that development that may affect the National Scenic Area will only be permitted where the objectives of the designation and overall landscape value of the site and its surroundings will not be compromised and any significant adverse effects on the qualities for which the site or its surrounds have been designated are clearly outweighed by social or economic benefits of national importance.

Policy EP9 states that the Council will support development proposals within or adjacent to Conservation Areas which are located and designed to preserve and enhance the special architectural or historic character and appearance of the Conservation Area, respecting the scale, proportions, alignment, density, materials and boundary treatments of nearby buildings and open spaces.

The site is out with the Conservation Area but this is a prominent site and any development on it would impact on views into and out of the Conservation Area. Street View visuals have been provided showing how the building will appear from both directions when travelling on Waverley Road. The removal of the existing building will benefit visual amenities. Although the building would be highly prominent, as outlined

above, the scale and design, subject to agreed materials, are considered to be acceptable for this site.

The original proposal was for a high timber fence on part of the road boundary but this has been replaced by hedging. The planting will be secured by condition.

It is considered that the amended proposals would not have a significant detrimental impact on visual amenities or the Conservation Area.

### **Impact on Trees**

Policy EP13 seeks to protect trees and woodlands from development. There are two trees on the Waverley Road boundary within the site that are covered by the High Cross Avenue group Tree Preservation Order. These will need to be felled to facilitate the revised proposals. The site plan indicates that three replacement trees are proposed.

### **Impact on Residential Amenities**

Policy PMD5 states that the development should not result in any significant loss of daylight, sunshine or privacy to adjoining properties as a result of overshadowing or overlooking. Policy HD3 states that development that is judged to have an adverse impact on the amenity of residential areas will not be permitted.

The Council's Supplementary Planning Guidance: Guidance on Householder Developments July 2006 contains guidance on privacy, overlooking and access to light that can be applied when considering planning applications for new developments to ensure that proposals do not adversely affect the residential amenities of occupants of neighbouring properties.

The site is located within a predominantly residential area and is surrounded on all sides by residential properties. However, it is considered that properties on High Cross Avenue to the south and west and in Tweedmount Avenue to the north-west would not be impacted adversely by the development due to the distances between proposed and existing buildings. The distances involved would not result in a loss of residential amenity.

Nos 14 – 16 High Cross Avenue are positioned to the east, adjacent to the site on lower ground, separated by a high stone wall. However this property has a projecting bay window on west facing side elevation. The proposed building would be sited further north west in the site than the existing building and the height of the proposed building would be significantly lower than that of the existing church. It is considered that any loss of light would not be exacerbated to the detriment of residential amenity by the current proposals. Windows are proposed in the east elevation serving living rooms, dining rooms and kitchens, approximately 10m from the boundary. These would be relatively small and appear to be located at a high level. There would be no direct overlooking of habitable rooms as the building is set back in the site, but there would be a degree of overlooking of the neighbouring garden. It is worth noting that there a number of windows at first floor level on the existing former church building that currently overlook the neighbouring property. Whilst these serve former offices, it is conceivable that the existing building could be converted to flats under a separate planning consent. As the existing building is closer to the mutual boundary and set further forward in the site than the proposed development, it is felt that the proposed development would reduce the potential for overlooking and would therefore improve the residential amenity of the neighbouring dwelling.

The property known as Dryden to the north of the site would be over 25m from the proposed apartment building, beyond the gym/spa. This is a bungalow and has a garage on the side elevation with no windows in the gable elevation. It is considered that there would be no loss of light or privacy to this property.

A biomass district heating system has been included on the revised site plan, though no details have been submitted. These will be secured by a condition and a further condition will limit noise levels from plant and machinery to protect residential amenities.

### **Access and Parking**

Policy PMD5 requires that adequate access and servicing can be achieved. Policy IS7 requires that car parking should be provided in accordance with the Council's adopted standards.

The vehicular access would be from Waverley Road, which would be widened and the exit would be onto Tweedmount Road via a one way system. Cycle storage would be accommodated within the undercroft. The Planning Permission (16/01583/FUL) for the gym/spa included 20 parking spaces for the facility and these would be retained.

The Roads Planning Service (RPS) advised that parking for the apartments was below what would normally be required for a development of this nature (19 spaces for the flats and 23 for the gym/spa). They advised that one of the spaces is a disabled bay, which cannot be allocated to a specific flat and the layout did not accommodate parking for all visitors. This under-provision of parking suggests an over-development of the site.

The site plan presented to the September committee showed fifteen car parking spaces (including a disabled space and one visitor space) provided for the apartments and 20 for the gym/spa. The Roads Planning Service had, however, previously agreed with the agent that there would be 19 spaces for the apartments and 20 for the gym, as there may be some spillage of vehicles into the spaces proposed for the gym by residents and visitors to the flats and the site is close to the town centre services and public transport links. Roads Planning requested minor adjustments to the layout to ensure pedestrians leaving the development can see other road users and conditions to ensure construction details for the parking area are submitted and agreed, and restrictions placed on the height of proposed boundary treatments.

Following the continuation of the application at the September committee a revised site plan has been received. This shows 18 parking spaces for the apartments, including one visitor space and one disabled space, and 20 for the gym/spa.

The Roads Planning Service has been consulted on this revised layout and can now support the proposal. They advise that the parking associated with this residential development is still one space less than what was originally requested, but this does represent an increase of 3 spaces from the 15 spaces proposed in the previous submission. The Roads Planning Service advises that 14 parking spaces should be dedicated to the residents of the proposed flats, spaces 1 – 3 on the site plan allocated for visitors and the final space being the disabled person space. Conditions will ensure that the parking is marked as such on-site and that the parking and cycle storage areas are completed prior to occupation of the apartments.

## **Archaeology**

Policy EP8 states that development proposals which will adversely affect local archaeological assets will only be permitted if it can be demonstrated that the benefits of the proposal outweigh the heritage value of the asset. All proposals that adversely affect such an asset must include an acceptable mitigation strategy.

The Council's Archaeology Officer has outlined the history of the site. He advises that it is probable that any earlier archaeological remains will have largely been destroyed already, but what may remain and might be exposed during foundation work may still be of significance. An archaeological condition is recommended.

## **Water and Drainage**

Policy IS9 states that the preferred method of dealing with waste water associated with new development would be a direct connection to the public sewerage system.

The apartments would be connected to the public water supply and drainage network. The exact details would be secured as part of the Building Warrant application.

## **Development Contributions**

Financial contributions, in compliance with policies IS2 and IS3, are required in respect of affordable housing and the Borders railway. These would be secured by Section 75 legal agreement.

As this development is for the over 55s, contributions would not normally be required towards education or play areas, but the means of ensuring that the development is occupied by those over 55 upon first sale and in perpetuity thereafter is critical. It is felt that a planning condition would be unreasonable, difficult to enforce and a legal search by a prospective purchaser would be unlikely to highlight such a condition on a planning permission. The end result would be that the apartments could be occupied by those below 55 years of age, thereby placing a burden on the local schools provision.

It is the applicant's intention to secure occupation through title deeds but this would be out with the control of the Planning Authority. It appears that the only practical way to ensure that the exemption from education and play provision contributions is applied fairly is to place a burden on the property titles by means of a section 75 agreement. That would require contributions to be paid if an apartment was subsequently sold to purchasers that did not meet the age criterion. This approach was adopted for the Planning Permission (16/01217/FUL) for the erection of ten retirement homes at the West Linton Primary school site.

The applicant's solicitor has advised that this approach is unacceptable as such a provision would adversely impact on the marketability of the development to over 55s as the inference to be drawn from it is that if the commuted sum was paid at the relevant point in time to the Council, the unit could then be sold to anyone, thereby completely undermining the over 55s only occupancy restriction.

The applicant therefore is proposing that the Section 75 Agreement requires the landowner to insert an over 55s only occupancy and marketing provision into the title through a deed of conditions. This would then be policed and enforced by other residents and Council would only need to enforce against the landowner if they fail to insert the over 55s only occupancy restriction into the title through a deed of conditions.

No units could be occupied until the Deed of Conditions has been approved by the Council and registered against the title.

It is considered that the most appropriate way to proceed would be to include both the Council's preferred clause and the clause put forward by the applicant. This would ensure that a 55s only occupancy clause is written into the deeds and that contributions are paid to the Council if the age clause is breached. This would not affect the marketability of the flats as the clause would only come into effect should the occupancy condition in the deeds be breached.

## **CONCLUSION**

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

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

I recommend the application is approved subject to a legal agreement addressing contributions towards Borders railway and affordable housing and ensuring that an over 55s occupancy clause is written into the deeds and education and play contributions are only secured should the apartments be occupied by any persons under 55 years old, and the following conditions:

1. The development hereby permitted shall not be carried out otherwise than in complete accordance with the plans and specifications approved by the Planning Authority.  
Reason: To ensure that the development is carried out in accordance with the approved details.
2. No development shall take place until the applicant has secured a programme of archaeological work in accordance with a Written Scheme of Investigation outlining a Watching Brief. This will be formulated by a contracted archaeologist and approved in writing by the Planning Authority. Access should be afforded to allow investigation by a contracted archaeologist(s) nominated by the developer and agreed to by the Planning Authority. The developer shall allow the archaeologist(s) to observe relevant below ground excavation during development, investigate and record features of interest and recover finds and samples if necessary. Results will be submitted to the Planning Authority for review in the form of a Data Structure Report. If significant archaeology is discovered below ground excavation should cease pending further consultation with the Planning Authority. The developer will ensure that any significant data and finds undergo post-excavation analysis, the results of which will be submitted to the Planning Authority.  
Reason: The site is within an area where ground works may interfere with, or result in the destruction of, archaeological remains, and it is therefore desirable to afford a reasonable opportunity to record the history of the site.
3. A sample of all materials/colour finishes to be used on all exterior surfaces of the development hereby approved (walls, roofs, windows, doors) shall be submitted to and approved in writing by the Planning Authority before the development commences. The development then to be completed in accordance with the approved samples.

Reason: The materials to be used require further consideration to ensure a satisfactory form of development, which contributes appropriately to its setting and to the character of the Conservation Area.

4. A sample of the stone for the boundary walls to be submitted to and approved in writing by the Planning Authority before the development commences. The development then to be completed in accordance with the approved sample.

Reason: To safeguard visual amenities.

5. Detailed drawings showing the elevations of the coursed rubble boundary walls, bin store (including gates) and railings (including colour finish) be submitted to and approved in writing by the Planning Authority before the development commences. The development then to be completed in accordance with the approved details and the bin store to be fully operational before the first apartment is occupied.

Reason: To safeguard visual amenities.

6. Details of the surfacing materials for the pedestrian access zones to be submitted to and approved in writing by the Planning Authority before the development commences. Thereafter, pedestrian access zones to be constructed as per the approved details before the first apartment is occupied.

Reason: To ensure safe access by pedestrians and to safeguard the visual amenities of the area.

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

- a) indication of existing trees, shrubs and hedges to be removed, those to be retained and, in the case of damage, proposals for their restoration
- b) location of new trees, shrubs, hedges and grassed areas
- c) schedule of plants to comprise species, plant sizes and proposed numbers/density
- d) programme for completion 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.

8. The finished floor levels of the building hereby approved shall be consistent with those indicated on a scheme of details which shall first have been submitted to and approved in writing by the Planning Authority before the development commences. Such details shall indicate the existing and proposed levels throughout the application site and shall be measurable from a fixed off-site datum point in a location clearly indicated in the scheme of details so approved.

Reason: To ensure that the proposed development does not have an adverse effect upon the amenity currently enjoyed by adjoining occupiers.

9. No drainage system other than the public mains sewer shall be used to service the development hereby approved without the written consent of the Planning Authority. Prior to occupation of the first apartment hereby approved, written evidence shall be submitted to and approved in writing by the Planning Authority that the apartments have been connected to the public water drainage network.

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

10. No development shall 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

first apartment, written confirmation shall be submitted to and approved in writing by the Planning Authority that the development has been connected to the public mains water supply. 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. The construction details (including surfacing material and drainage) for the parking area and details of how the parking spaces are to be demarcated on-site for residents and visitors shall be submitted to and approved in writing by the Planning Authority before the development commences. Thereafter the car parking area shall be constructed and the spaces demarcated as per the approved details before the first apartment is occupied and retained as such thereafter.  
Reason: To ensure the parking is fit for the purpose of the development hereby approved.
12. The cycle storage areas shown on the drawings hereby approved shall be installed and fully operational before the first apartment is occupied. The cycle storage areas shall be retained in perpetuity thereafter.  
Reason: To ensure cycle parking is incorporated within the development, as per "Cycling by Design by Transport Scotland" standards.
13. The 1800mm high beech hedge shown on the site plan (9357.3.04 Rev F) hereby approved shall be reduced in length by 3m from the vehicular exit of the site onto Tweedmount Road.  
Reason: To ensure the exit from the development hereby approved on to the existing public road is safe and fit for purpose.
14. Details of the biomass district heating system to be submitted to and approved in writing by the Planning Authority before the development commences. The heating system then to be installed in accordance with the approved details.  
Reason: As no information has been submitted and to safeguard residential amenities.
15. Any noise emitted by equipment, plant and machinery used within the building not exceed Noise Rating Curve NR20 between the hours of 2300 – 0700 and NR 30 at all other times when measured within all noise sensitive properties (windows can be open for ventilation). The noise emanating from any equipment, plant and machinery used on the premises should not contain any discernible tonal component. Tonality shall be determined with reference to BS 7445-2.  
Reason: To protect the residential amenity of nearby properties.

#### Informatives

1. The Council's Archaeology Officer encourages a basic recording exercise of the existing buildings, with internal and external photos, to be carried out before demolition. Given the conversion to offices took place many years ago, it is unlikely that any original internal features remain but elements may be revealed during the demolition works. He would be pleased to add any records to our HER.

## DRAWING NUMBERS

Plan Ref	Plan Type
9357.03.01 A	Location Plan
9357.03.02	Existing Site Plan
9357.03.04 F	Proposed Site Plan
9357.03.04 B	Undercroft and Ground Floor Plan
9357.03.05 A	First and Second Floor Plan
9357.03.06 A	Third Floor and Roof Plan
9357.03.07 B	Elevations
9357.03.10 B	Street Views
9357.03.11 B	Courtyard Views
9357.03.12 B	Reduced Massing Drawing

### **Approved by**

Name	Designation	Signature
Ian Aikman	Chief Planning and Housing Officer	

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

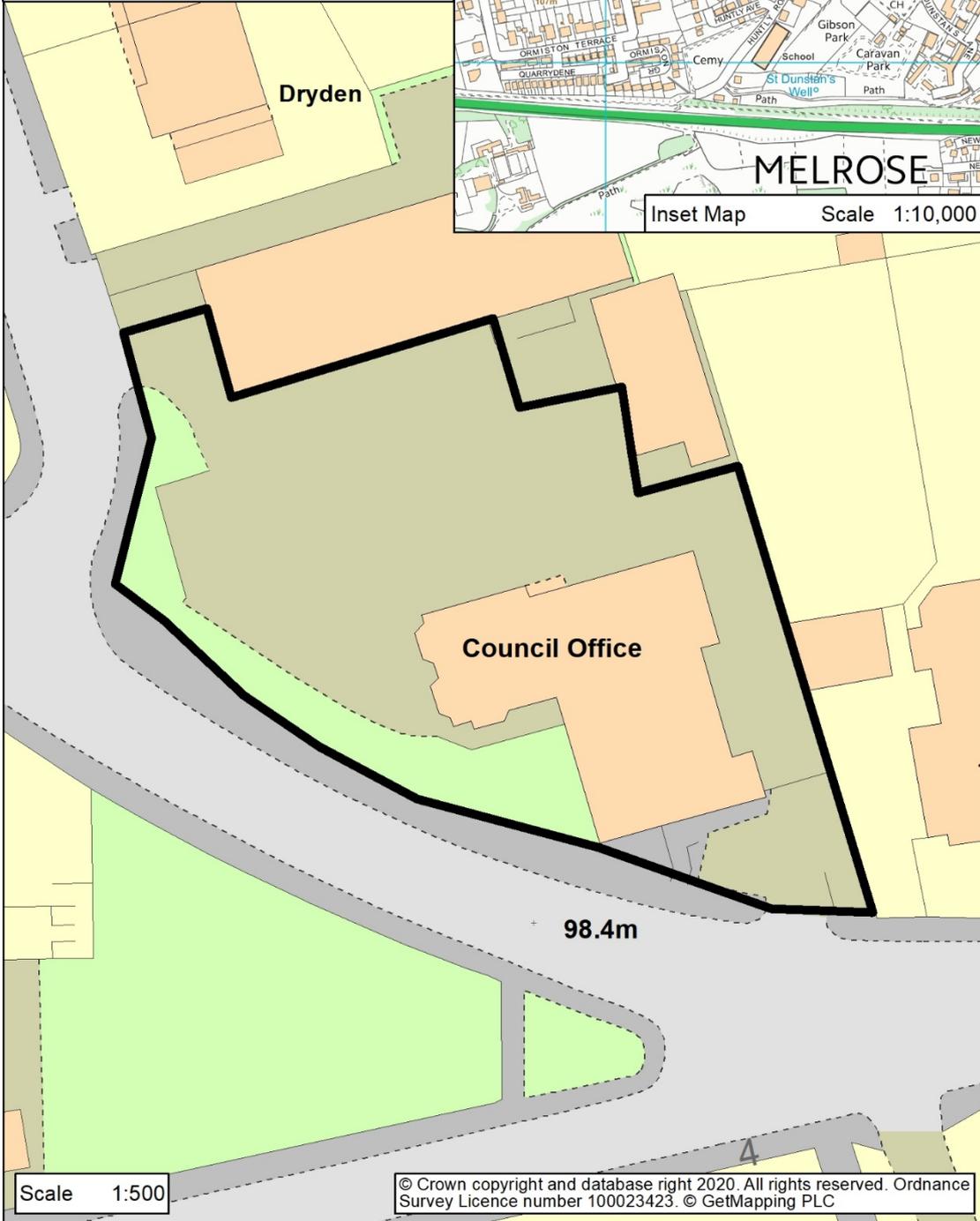
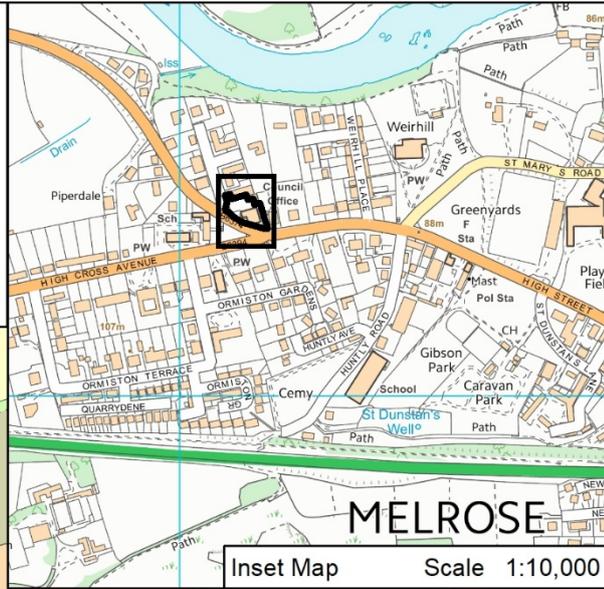
### **Author(s)**

Name	Designation
Julie Hayward	Team Leader Development Management



20/00331/FUL

Main Building  
West Grove  
Waverley Road  
Melrose



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**SCOTTISH BORDERS COUNCIL**

**PLANNING AND BUILDING STANDARDS COMMITTEE**

**5 OCTOBER 2020**

**APPLICATION FOR PLANNING PERMISSION**

**ITEM:** **REFERENCE NUMBER:** 20/00109/FUL

**OFFICER:** Mr Scott Shearer  
**WARD:** Jedburgh and District  
**PROPOSAL:** Erection of 2 No distilleries with associated visitor centres, bottling hall, maturation warehousing, office, gatehouse with associated roads and infrastructure, and change of use of hotel to form office and staff accommodation previously approved under consent number 16/00744/FUL

**SITE:** Land North Of Former Jedforest Hotel and Jedforest Hotel (now known As Mossburn House)  
Jedburgh, Scottish Borders

**APPLICANT:** Jedforest BV  
**AGENT:** Blyth And Blyth

**PLANNING PROCESSING AGREEMENT:** This application has a Planning Processing Agreement which seeks determination at the Planning and Building Standards Committee on the 5<sup>th</sup> October 2020.

**SITE DESCRIPTION**

The application site is the same site which obtained planning permission for the development 2 No distilleries and associated works on land of the former Jedforest Hotel, now known as Mossburn House. The site is located approximately 5km to the south of Jedburgh and is accessed directly to the east of the A68.

The majority of the site is vacant land. An escarpment runs through the site, splitting its levels with the western part sitting at a lower topography which forms part of the floodplain of the Jed Water which terminates the western boundary of the site. A finger of planting extends into the site from the north adjacent to a pond. Further mature woodland is found in the southern half of the site around Mossburn House, Cleathaugh Stables and the three residential properties which sit in the site to the west of the former hotel. The southern corner of the site is enclosed by mature woodland out with the site. There is a former filling station located towards the centre of the site. Two further residential properties lie directly out with the site to the north east.

**PROPOSED DEVELOPMENT**

This proposal represents a repeat application following consent 16/00744/FUL lapsing prior to the commencement of development works. The application was originally submitted with the understanding that it fell under Section 42 of the Act and sought to extend the time period of this previously consented development. The proposal was originally described as an "Extension of commencement time period for erection of 2 No distilleries with associated visitor centres, bottling hall, maturation warehousing, office, gatehouse with associated roads and infrastructure, and change of use of hotel

to form office and staff accommodation previously approved under consent number 16/00744/FUL.”

Through the course of the application it was established that proposals to vary commencement time periods of planning permissions cannot be handled under Section 42 of the Act. This is because the time period for commencement of development is a direction of the planning permission and not a condition. Therefore there are no powers available to the planning authority under Section 42 to change or extend the period of commencement of the proposed development. Reference to the proposal being an “Extension of time period” was removed from the description of development and the proposal has instead been considered as a repeat application which seeks the development of the same commercial distillery approved under 16/00744/FUL. The proposed works are summarised as follows;

- Erection of 2 separate distilleries with visitor centres and cafeterias (one known as Jedhart Distillery and other Mossburn Distillery)
- Installation of 8 storage tanks (tank farm)
- Erection of maturation warehousing, bottling facilities and cased goods storage buildings
- Development of office buildings at Cleathaugh Steading
- Change of use of former Jedforest Hotel to form office and staff accommodation
- Associated works which include; new access, internal roads, parking areas, landscaping

The development of the site remains proposed across two phases. The first phase consists of Jedhart Distillery and other related works to enable the business to operate (i.e. tank farm, maturation warehouse, bottling hall etc.) with the landscaping of the southern part of the site being undertaken. The Mossburn Distillery, related works and the landscaping of the northern part of the site fall within the second phase.

Further details of the proposals is noted within the Committee Report for 16/00744/FUL.

## **PLANNING HISTORY**

The following planning history is relevant to the determination of this latest application;

**14/00253/PAN** – Jedforest BV made notification to the Council of Pre Application Consultation for construction of distillery including production/bottling plant, storage and visitor facilities, new access and associated landscaping in February 2014. This related to a different proposal and smaller site than the current application.

**14/00487/FUL** - External alterations, alterations to access road and parking area and associated works at Jedforest Hotel. The Council granted conditional approval for refurbishment of the Hotel for "Private corporate and domestic use". The house has been completely renovated and has been boarded up. Heras fence encloses the immediate grounds.

**15/00349/FUL** - External alterations, alterations to access road and parking area and associated works at former Jedforest Hotel. The applicant proposed for a formal landscaped garden, enclosed by stone gate piers, traditional parkland fencing and a ha-ha wall. High stone walls, enclosing a paved courtyard on the east elevation, would complete the layout of the grounds. None of these proposals have been implemented.

**16/00744/FUL** - Erection of 2 No distilleries with associated visitor centres, bottling hall, maturation warehousing, office, gatehouse, associated roads and infrastructure, and change of use of hotel to form office and staff accommodation.

This application was approved in principle by the P&BS Committee, in accordance with Officer Recommendation subject to notification to the Scottish Ministers as a result of an objection raised by SEPA on flood risk grounds. On accepting this recommendation, delegated authority was granted to Officers to resolve detailed regulatory matters with SEPA concerning Groundwater Dependent Terrestrial Ecosystems (GWDTEs) issues and Pollution Prevention and Control (PPC) measures.

On the 21<sup>st</sup> of December 2016, SEPA confirmed that they were satisfied that outstanding GWDTEs and PPC matters could be addressed by planning conditions along with relevant SEPA licence requirements.

On 31<sup>st</sup> January 2017 the Scottish Government resolved to determine that under The Town and Country Planning (Notification of Applications (Scotland) Direction 2009 that they were satisfied to not intervene in this application by either issuing a direction restricting the granting of planning permission or by calling in the application for their own determination. Scottish Borders Council were authorised to determine the application with approval granted subject to conditions agreed by the P&BS Committee.

Since determination, the applicants provided information to respond to some of the suspensive conditions which were attached to consent 16/00744/FUL. Under the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, it was a direction that the consented development must be implemented within 3 years of the date of the permission. On 31<sup>st</sup> January 2020, consent 16/00744/FUL lapsed after all suspensive conditions were not purified and development was not commenced with the period prescribed by the consent.

## **REPRESENTATION SUMMARY**

No third party representations have been received.

## **APPLICANTS' SUPPORTING INFORMATION**

The application has been supported by an updated Environmental Impact Assessment Report (EIAR). The changes are summarised in the Environmental Impact Assessment – Update Summary dated 23.04.2020.

Otherwise the application is supported by the same information which was submitted in support of the previous application.

## **DEVELOPMENT PLAN POLICIES:**

PMD1: Sustainability

PMD2: Quality Standards

PMD4: Development out with Development Boundaries

HD3: Protection of Residential Amenity

ED7: Business, Tourism and Leisure Development in the Countryside

EP1: International Nature Conservation Sites and Protected Species

EP2: National Conservation sites and Protected Species

EP3: Local Biodiversity

EP5: Special Landscape Areas

EP8: Archaeology  
EP13: Trees, Woodland and Hedgerows  
EP15: Development Affecting the Water Environment  
EP16: Air Quality  
IS4: Transport Development and Infrastructure  
IS5: Protection of Access Routes  
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

Supplementary Guidance on;

- Waste Management 2015
- Local Landscape Designations 2012
- Placemaking and Design 2010
- Use of Timber in Sustainable Construction 2009
- Trees and Development 2008
- Landscape and Development 2008
- Privacy and Sunlight Guide 2006
- Biodiversity 2005
- Local Biodiversity Action Plan: Biodiversity in the Scottish Borders 2001

Scottish Borders Tourism Strategy (SBTS) 2013-2020

Scottish Borders Tourism Action Plan

Planning and Building Standards Committee Report for 16/00744/FUL dated 5 December 2016

Decision Notice for 16/00744/FUL

Circular 4/98 Use of Planning Conditions

Circular 3/2013: Development Management Procedures

The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017

#### **CONSULTATION RESPONSES:**

##### **Statutory Consultees**

**Historic Environment Scotland (HES):** No objection. The development does not impact on any heritage assets within HES remit.

**Jed Valley Community Council:** No objection is raised however the concerns raised in response to the original application in relation to the industrial nature of the development generating noise, traffic volumes, landscape and visual impacts and artificial lighting within the picturesque Jed Valley setting are reiterated.

**Scottish Environment Protection Agency:** No objection. A Pollution Prevention Plan is required in accordance with Construction Site Licence.

**Scottish Natural Heritage:** No objection.

**Scottish Water:** No objection. Note that there is sufficient capacity in the Roberton Water Treatment Works to service the development. The provision of private waste water treatment should be investigated and the applicant should discuss surface water discharge proposals with Scottish Water.

**Transport Scotland:** No objection.

**Visit Scotland:** No response at the time of writing.

**Scottish Borders Council Consultees;**

**Access Officer:** No response at the time of writing.

**Archaeology Officer:** No objection. Recommend condition attached to previous consent relating to developer funded; watching brief and historic building survey should be re-attached to any consent.

**Contaminated Land Officer:** No objection. The site previously operated as a filling station, store and a steading. These land uses are potentially contaminative. Planning permission should be granted on condition that development is not be permitted to start until a site investigation and risk assessment has been carried out

**Ecology Officer:** No objection. The impacts of the development are likely to be as predicted in the earlier EIA and updated supplementary EclA information. Recommend that the planning conditions attached to the previous consent to mitigate the impact of the development on ecological interests would be re-attached.

**Economic Development:** No response at the time of writing.

**Flood and Coastal Management Engineer:** No objection to this previously consented development however identify pertinent points raised during the previous application whereby;

- The Flood Risk Management (Scotland) Act 2009 does not consider land raising to be a sustainable approach to managing flood risk on an undeveloped site. For this reason, and in line with SPP, the principle of protecting the role of the functional flood plain to store and/or convey water should be adopted and it is recommended that the development be relocated out with the 0.5% annual probability flood extent as shown in Figure 2-7.
- The SEPA hazard map also shows that the proposed site is at risk from surface water flooding for the 1 in 200 year event. Figure 2-17 and 2-18 show the areas expected to be subjected to surface water flooding and the flood risk assessment recommends that a surface water management plan is produced in order to manage this risk. We would request this is submitted for approval.

**Landscape Architect:** No response at the time of writing.

**Roads Planning Service:** No objection.

## **Other Consultees**

**Association For The Protection Of Rural Scotland:** No response at the time of writing.

**RSPB:** No response at the time of writing.

**Scottish Badgers:** No objection. Recommend that due to the proximity of the site to the A68 it would be prudent to retain vegetation at the eastern edges of the site to allow for safe passage of badgers.

**Scottish Wildlife Trust:** No response at the time of writing.

**The Tweed Foundation:** No response at the time of writing.

## **KEY PLANNING ISSUES:**

The key determining issues are whether or not this repeat application still complies with the Councils Local Development Plan 2016 or if any new material considerations are raised which would justify a departure from policy provision.

## **ASSESSMENT OF APPLICATION:**

### PAC Report

Members will be aware that prior to lodging a major planning application that it is incumbent on applicants and developers to engage with the local community under the Pre Application Consultation (PAC) process. The applicants have relied on the PAC which was undertaken for application 16/00744/FUL.

Circular 3/2013 Development Management Procedures advises that;

*It is for the planning authority (and ultimately the courts) to satisfy themselves that an application is sufficiently linked to the proposals consulted upon at the pre-application stage.*

The development proposed in this repeat application is materially the same as a previous development which PAC was undertaken and a disproportionate period of time has not elapsed since the PAC process was previously undertaken. In these circumstances it is acceptable for the applicants to rely on the previous PAC/PAN process.

### Legislative Changes

Since the determination of 16/00744/FUL, the EIA regulations have been updated. The Environmental Impact Assessment Directive (2014/52/EU) was published by the European Commission in 2014 and transposed into Scottish law by the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 (the EIA Regulations). The updated Regulations cover a wider scope of assessment topics in line with modern best practice for impact assessment and superseded the 2011 EIA Regulations which the previous application was considered against.

The applicants have noted changes made to the submission as a result of the new EIA regulations in Table 1 of the EIAR Update Summary which is available on Public Access. The EIA regulations require consideration of four additional topics: human

health, climate change, biodiversity and risk of major accidents and disasters. These topics are included in the updated EIAR.

The Ecology Chapter has been updated in the EIAR with new surveys to reflect the current baseline. Otherwise as the proposal has not materially changed the content of the EIA and it remains largely unaltered from the previous submission. Its findings are considered as part of this repeat application.

### Planning Principle

Since the determination of 16/00744/FUL there has been no planning policy changes at a national level which this proposal would require further consideration against. At a local level, the Councils development plan which 16/00744/FUL was considered against remains unchanged.

The proposal remains located on an unallocated site within the countryside. Policy PMD4 aims to ensure that most development is located within defined Development Boundaries. It does still recognise that exceptional approvals may be granted where it is a job generating development in the countryside which is justified under Policy ED7. Policy ED7 remains to support business and employment generating developments where the Council is satisfied that there is an operational need for the development within a rural location and the development cannot be accommodated within the Development Boundary. The Committee Report for 16/00744/FUL provided a robust assessment against these policy requirements. Given that the proposal and the policy principle has remained unchanged these arguments are not repeated however the main points are summarised below;

1. Malt whiskey operations are often situated in rural Scotland with many relying on their countryside setting to positively market their brand with their unique rural locations helping to characterise the product and draw tourists.
2. The site allows for the Jed Water to provide the water supply required for the distillery process.
3. Having the distillery, warehousing and bottling operations all on one site will reduce vehicle movements, specifically HGV.
4. The site is readily accessible from the A68.
5. VisitScotland considered that the development would draw tourists and complement existing tourism assets in the Scottish Borders.
6. Economic Development section highlight that this development fits with Scottish Borders Tourism strategy 2013-2020 (which is still the current SBTS)
7. The development would create jobs. When fully complete it suggested the distillery could provide up to 70 full time jobs. The construction operation could provide employment opportunities for up to 1500 personnel.

No information has been provided to suggest that the economic benefits outlined in the previous submission no longer exist. Following determination of 16/00744/FUL the developers were seeking to discharge their suspensive planning conditions, however this exercise was not completed prior to the permission lapsing. Nevertheless their decision to reapply for consent indicates that they are still seeking to pursue this significant investment within the Scottish Borders.

This development remains a unique opportunity for the Scottish Borders. The proposal and the policy context which this development was previously justified against has remained unchanged since the determination of 16/00744/FUL. Members are advised that proposal remains a suitable job generating development in the countryside with a sustained economic justification. Therefore, this development continues to represent

a justifiable exceptional approval against Criteria a) of Policy PMD4 and Criteria c) of Policy ED7.

### Design and Landscape and Visual Impacts

No design changes are proposed and since the determination of 16/00744/FUL there have been no significant changes to the setting of the site in the immediate and wider landscape. The design and landscape implications posed by this development were thoroughly assessed within 16/00744/FUL and it was determined that the development complied with relevant LDP policy provision covering these topics, subject to conditions.

The two distillery buildings are still modern landmark visitor attractions however the topography of the site will still adequately contain these structures. The proposals involving the former Jedforest Hotel and Cleathaugh Steading continue to be handled in a sensitive manner. Concerns about the visual impact of the scale of the warehouse structures within the Teviot Valleys Special Landscape Area (SLA) linger, however it is still possible to mitigate all landscape and visual impacts of these proposals by reattaching previous conditions which seek to agree;

1. Precise details of all external materials used across the development which include the perusal of dark coloured material finishes for the warehouse buildings.
2. A detailed landscape scheme across the site including future maintenance to ensure that the development integrates with the surrounding rural area
3. A lighting management plan which will avoid the development appearing unduly prominent during darkness.

In the absence of any changes to the landscape and visual context of this site it is recommended that conditions covering the above detailed requirements are re-imposed and will ensure that the development appropriately integrates with the character and appearance of the surrounding area in accordance with policies covering Placemaking and Design (PMD2) and Special Landscape Areas (EP5).

### Impacts of Traffic, Road Safety and Parking

Neither the Councils Roads Planning Service (RPS) nor Transport Scotland have objected to this repeat application. The development would still pose the same traffic and road safety implications which were assessed under 16/00744/FUL. Since the determination of the previous application no new vehicular or pedestrian considerations have been raised. The detailed assessments undertaken previously by Transport Scotland and our RPS Officers remain valid and confirm that the new access to the A68 remains acceptable in principle. Detailed issues affecting the trunk road, parking and public transport provision were sought to be agreed by conditions to address the following matters;

1. Closure of the existing road leading to the site and the construction of the new access road in accordance with Transport Scotland's construction requirements before development commences.
2. Agreement of a traffic management plan for construction traffic
3. Wheel washing facilities
4. Provision of Traffic bollards
5. A parking study
6. Provision of connections from the site to the nearest bus stop on the A68

To ensure that safe access is provided which does not adversely affect road safety on the trunk road, mitigation is put in place to address impacts of construction traffic, sufficient parking is provided within the site and adequate access to public transport is available conditions covering the above matters are recommended. Agreement of these conditional matters will ensure that the proposal complies with development plan policy provision covering access, road safety, parking and sustainable transport.

### Flooding

Under 16/00744/FUL both SEPA and the Councils Flood Engineers objected on grounds that land raising was proposed on a greenfield site within the functional floodplain of the Jed Water. The Councils flooding advisors also raised concerns about the creation of an informal flood defence (a small bund or berm) as part of proposed Pollution Prevention and Control Measures to protect the river in the event of spillage or fire incident.

The PBS Committee accepted the recommendation of Officers which observed that;

*Flooding is clearly a material planning consideration. However, appropriate weight must be apportioned to the potential wider social and economic benefits of this proposal and cognisance must be given to the efforts of the Agent and their engineering consultants to design mitigating measures. Given, also, the relatively small proportion of flood plain affected, combined with the relative isolation from centres of population, it is considered that while the risk must be acknowledged it is not considered so great as to warrant refusal of the scheme.*

The decision of the PBS Committee to approve a development where there was an unresolved objection from SEPA triggered referral to Scottish Ministers under the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009. The case was considered by the Scottish Ministers in January 2017 a direction was issued allowing the Council to determine the application. In effect, Scottish Ministers did not find that the development should be opposed on flood grounds and no additional mitigation was necessary.

In terms of this repeat application, the same small proportion of the site still lies within the floodplain which has a 0.5% annual probability of flooding. Compensatory storage is proposed on the floodplain north of Mossburn House. Clearly, flooding is still a material consideration, however both SEPA and the Councils Flood Officers recognise the decisions by the PBS Committee and Scottish Ministers in relation to 16/00744/FUL and have not objected to this repeat application. The development proposals and the LDP provision concerning flooding has not changed since the determination of 16/00744/FUL and neither SEPA nor the Councils Flood Risk Officers have advised that the flooding scenario has changed. There is no reason therefore to oppose this development on grounds of flood risk.

In line with the advice provided by the Councils Flood Officers is it recommended that an additional condition is added agree a surface water management plan to avoid flooding from this source.

### Ecology

This site's eastern boundary is defined by the Jed Water which is part of the River Tweed Special Area of Conservation (SAC). The river is an important habitat for Otter, a European Protected Species. SNH have not objected to this repeat application.

SEPA did object to 16/00744/FUL on grounds that the development would impact on Ground Water Dependent Terrestrial Ecosystems (GWDTEs) identified as Marshy grassland where the Mossburn Distillery was being proposed. After the application was presented to Members, agreement with SEPA was reached that these impacts could be adequately mitigated via an appropriately worded suspensive planning condition seeking the agreement of a Construction Environmental Management Plan (CEMP).

Updated ecological surveys have been submitted in support of this repeat application to record the current ecological baseline where previous assessments will have lapsed owing to the time between the previous application and this re-submission. These assessments have been considered by our Ecologist and have not raised any concerns.

Provided conditions covering; the appointment of an Ecological Clerk of Works, a CEMP, a Species and Habitat Protection Plan and a Landscape and Habitat Management Plan (all of which were attached to consent 16/00744/FUL) are reattached to this repeat application, the ecological implications of this development will be adequately mitigated in accordance with Policies EP1, EP2 and EP3 of the LDP.

#### Other Matters

During the processing of the 16/00744/FUL a wide range of other topics not covered above were thoroughly assessed by Council Officers and relevant external consultees. These matters include;

- Impact on nearby uses
- Residential Amenity
- Air Quality
- Nuisance and Noise
- Impact on the Jed Water and other regulatory issues
- Drainage
- Handling of Waste
- Cooling/Process Water Abstraction and Cooling Water discharge
- Pollution Prevention Control (PPC) Regulations and Control of Major Accident Hazards Regulations (COMAH)
- Cultural Heritage

Officers provided a robust assessment to Members on these matters within the Committee Report for 16/00744/FUL. The updated EIAR confirms that barring modest administrative changes there has been no need to update or reconsider the impacts of the development on any of these topics.

Since the last report to Members in 2016, the physical context of the site has remained unaltered and importantly the LDP which this proposal was previously considered against is still the Councils adopted local development plan. In consultation to this repeat application no internal or external consultees raised any objections or new concerns in response to any of the above matters. In the absence of any changes it is still appropriate to rely on the detailed assessment of the developments impact on all of the topics above as considered in the report to Members on the 5<sup>th</sup> December 2016 which was accepted by Scottish Ministers. This recommendation found that the proposed development complied with LDP provisions on all of the above matters and where any potentially adverse impacts were raised, these could be adequately addressed via a suite of suitably worded planning conditions.

Since the determination of 16/00744/FUL it is acknowledged that the applicants provided information to seek to address some of the suspensive conditions however none of these conditions were formally discharged.

To ensure the proposal continues to comply with all relevant LDP policy provision and is appropriately regulated, it is recommended that all conditions which were attached to the original permission are re-imposed, should Members be minded to approve the application. This would regulate the following matters;

- Hours of construction operations
- Archaeological evaluation of the site
- Historic building surveys
- Noise
- Maintenance of plant and machinery
- Agreement of appropriate means of private drainage and waste handling
- Contaminated land investigations

The proposal is otherwise found to be acceptable and no concerns have been raised against any of the new topics included in the updated EIA which would fail to comply with the policy constraints set out the Councils LDP.

## **CONCLUSION**

The proposed development would still represent a significant economic investment within the Scottish Borders. Although consent for this development has lapsed, the development proposed in this repeat application is the same development which was previously supported by the P&BS Committee and did not require any further intervention by the Scottish Ministers following notification to address flooding matters.

The current proposals have remained unchanged since the earlier approval and have received no objection from internal or external consultees and no objections from third parties. The Councils development plan has not changed since the previous application was determined and the merits of this repeat application have been re-assessed against the same development plan policies.

In the absence of any changes to the proposals and the development plan, it is recommended that (subject to compliance with the schedule of conditions and informatives) the development will accord with all 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 AND HOUSING OFFICER:**

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

1. No development shall commence until the following details have been submitted to and approved in writing by the Planning Authority;
  - a) A detailed construction programme and projected timetable for implementation of the development, to include proposals for the phasing of the development, including phasing of the landscaping plan, provision of all building and associated infrastructure including access roads, parking and drainage;
  - b) The location, design and layout of any temporary construction compound(s), to include (but not limited to) areas for staff welfare accommodation, areas for

storage of construction materials including plant and machinery, etc., the positioning of any static plant as far as practicable from site boundaries, the location orientation, size and height of all site compound buildings to be stationed on the site, (and positioned to act as a sound barrier) and the location and design including height of any barriers to be erected around the site to reduce the level of noise, etc.

- c) Detailed specifications and/ or samples of all external finishing materials for all buildings to be erected on the site. This shall include the use of dark coloured external materials for the warehouse buildings.

Thereafter the development shall be carried out in accordance with the approved details.

Reason: To ensure an acceptable form of development and to mitigate the landscape and visual impact of the development (as recommended in the applicant's submitted ES) in the interests of the landscape and visual appearance and amenity of the development upon the surrounding Special Landscape Area.

- 2. All landscaping works including tree and shrub planting, hedgerows; grass and hard landscaping features to be undertaken in accordance with the drawings hereby approved. Notwithstanding the following changes;
  - a) Changing specification of River birch *Betula nigra* in 'Riverside Trees' since this is not native.
  - b) Using cell grown or pot grown stock as opposed to bare root stock.
  - c) Further details of hard landscaping features
  - d) Further details of Landscape Art Feature

No part of the development shall commence until details have first been submitted to and approved in writing by the Planning Authority including the timescale for undertaking all planting and seeding works which form part of the approved landscaping works together with a programme for the long-term management and maintenance of all landscape areas within the site. This timetable shall be informed by the construction and phasing programme as required by Condition 1 above and include provision for early establishment of all planting following earth works around the site boundary, including the vehicular access. Thereafter, all landscaping shall be provided and implemented in accordance with the approved details.

Reason: Details of the timetable for implementing the proposed/required landscaping arrangements are lacking from the submission and in order to ensure that the approved landscaping works are carried out timeously, including boundary treatments, to ensure the development is screened and absorbed into the landscape and to reduce the landscape and visual amenity impact of the development upon the Special Landscape Area.

- 3. Any trees, shrubs and seeding/turfing (within a period of 5 years from planting) are removed or become damaged shall be replaced by the end of the first planting season thereafter with others of similar size, number species and or seeding mix, unless otherwise agreed in writing with the Planning Authority.

Reason: To ensure that all approved landscaping works are timeously carried out and properly maintained in a manner which will not adversely affect the character, appearance and amenity of the development and the surrounding areas.

- 4. Construction works associated with the development, audible at any point on the boundary of any noise sensitive dwelling, shall be permitted between 0700-1900 hours, Monday to Friday and 0700-1600 hours on Saturday only, and at no other times out with these permitted hours. No other construction works shall take place out with these times unless otherwise first agreed in writing with the Planning Authority.

Reason: To minimise the potential disturbance and impact from construction operations occurring within the site upon the amenity of the surrounding area including the nearest noise sensitive properties.

5. No development shall commence until a lighting plan for limited unidirectional lighting has first been submitted to and approved in writing by the Planning Authority. This lighting plan should be designed by a qualified lighting designer in accordance with The Institution of Lighting Engineers; "Guidance Notes for the Reduction of Obtrusive Light". Thereafter development to only be undertaken and lit in accordance with this plan.

Reason: To protect neighbouring residential amenity and protect the rural character and appearance of the surrounding landscape.

6. 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 only proceed 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 seek 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.

7. No development shall take place until the applicant has secured and implemented an approved programme of archaeological work in accordance with a Written

Scheme of Investigation outlining an Historic Building Survey. This will be formulated by a developer contracted archaeologist(s) and approved in writing by the Planning Authority. Development and archaeological investigation shall only proceed 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) Historic Building Survey will be in accordance with the ALGAO: Scotland guidance as requested by the Planning Authority.
- c) In accordance with the WSI, access shall be afforded to the nominated archaeologist(s) to allow archaeological investigation, at all reasonable times.
- d) Initial results shall be submitted to the Planning Authority for approval in the form of a Historic Building Survey Report (HBSR) within one month following completion of all on-site archaeological works.
- e) Once approved the site archive and HBSR shall also be reported to the National Monuments Record of Scotland (NMRS) via the OASIS system within three months of on-site completion.
- f) Results will be summarised in Discovery and Excavation in Scotland (DES) within one year of on-site completion.
- g) The results of the DSR will be used by the Council's Archaeologist to make recommendations to the Planning Authority for further archaeological investigations, reporting and dissemination of results as required.

The developer will be expected to fund and implement all further archaeological work.

Reason: To preserve by record a building of historical interest.

8. No development shall commence until a new access to the site has been constructed and the existing access closed off. The new access to the development shall substantially match the new junction which accesses the site as detailed in the drawing (Dwg No EC21062:95:001) submitted by Blyth + Blyth dated 9 May 2016, in support of the application, but excluding the right turn lane. The access shall be constructed in accordance with details that shall first be submitted and approved in writing by the Planning Authority, in consultation with Transport Scotland.

Reason: To ensure that the use of the existing access is discontinued and the safety of traffic on the trunk road is improved; to maintain safety for both the trunk road traffic and the traffic moving to and from the development; to ensure that vehicles entering or exiting the access can undertake the manoeuvre safely and with minimum interference to the safety and free flow of traffic on the trunk road; and to ensure that water run-off from the site does not enter the trunk road.

9. No development shall commence until a Traffic Management Plan for construction traffic has first been submitted to and approved in writing by the Planning Authority, in consultation with Transport Scotland.

Reason: To maintain safety for both the trunk road traffic and the traffic moving to and from the development

10. The full junction on the A68(T) as detailed in the drawing dated 9 May 2016 (Dwg No EC21062:95:001), submitted by Blyth + Blyth in support of the application, shall be constructed prior to the occupation of the development hereby approved.

Reason: To ensure that the standard of access layout complies with the current standards and that the safety of the traffic on the trunk road is not diminished. To maintain safety for both the trunk road traffic and the traffic moving to and from

the development. To ensure that vehicles entering or exiting the access can undertake the manoeuvre safely and with minimum interference to the safety and free flow of traffic on the trunk road and ensure that water run-off from the site does not enter the trunk road.

11. The gradient of the access road shall not exceed 1 in 40 for a distance of 15 metres from the nearside edge of the trunk road carriageway; the first 15 metres shall be surfaced in a bituminous surface and measures shall be adopted to ensure that all drainage from the site does not discharge onto the trunk road.

Reason: To ensure that the standard of access layout complies with the current standards and that the safety of the traffic on the trunk road is not diminished. To maintain safety for both the trunk road traffic and the traffic moving to and from the development. To ensure that vehicles entering or exiting the access can undertake the manoeuvre safely and with minimum interference to the safety and free flow of traffic on the trunk road and ensure that water run-off from the site does not enter the trunk road.

12. Wheel washing facilities shall be provided within the site.

Reason: To ensure that material from the site is not deposited on the trunk road to the detriment of road safety

13. No development shall commence until a detailed plan identifying the precise location of traffic bollards (Glasdon Admiral bollard or similar) to be erected within the trunk road verge, either side of the proposed access at agreed locations has first been submitted to and approved in writing by the Planning Authority in consultation with Transport Scotland. Thereafter the development shall be carried out in complete accordance with the approved details before the development is operational.

Reason: To ensure that road safety is improved by highlighting the location of the access.

14. No development shall commence until a Parking Study has first been submitted to and agreed in writing by the Planning Authority in consultation with Transport Scotland. Thereafter the development shall be carried out in accordance with the approved details.

Reason: To ensure that sufficient parking spaces are provided within the development.

15. No development shall commence until plans detailed plans are first submitted to and approved writing by the Planning Authority in consultation with Transport Scotland. The plans shall illustrate the following information;

- a) Pedestrian connections to and from the nearest bus stop on the A68.
- b) Plans to demonstrate replacement of the nearest bus stop on the A68
- c) Plans to demonstrate how the existing access road will be physically stopped up.

Thereafter the development shall be carried out in complete accordance with the approved details before the development hereby approved is operational.

Reason: To ensure sufficient access to the development by sustainable transport methods and in the interests of road safety.

16. Any noise emitted by plant and machinery used on the premises will not exceed Noise Rating Curve NR20 between the hours of 2300 – 0700 and NR 30 at all other times when measured within the nearest noise sensitive dwelling (windows can be open for ventilation). The noise emanating from any plant and machinery

used on the premises should not contain any discernible tonal component. Tonality shall be determined with reference to BS 7445-2

Reason: To protect the residential amenity of nearby properties.

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

Reason: To protect the residential amenity of nearby properties.

18. No development shall 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 public health.

19. Waste arising from the development shall not be disposed of other than in complete accordance with Chapter 2 Section 5.5 of the Environmental Statement, unless he otherwise agreed in writing with the Planning Authority.

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

20. 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 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 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

- a) 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.
- b) 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).
- c) 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.
- d) 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 Developer 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.

21. No development shall commence until an Ecological Clerk of Works (ECoW) has been appointed to carry out pre-construction ecological surveys, to inform a Construction Environmental Management Plan and to oversee compliance with the Construction Environment Management Plan (CEMP) and Species Protection Plan, ("the ECoW works"). The terms of the appointment shall be submitted for the approval in writing by the Council, as Planning Authority, in consultation with SEPA and SNH. The terms shall include the requirement to
- a) Impose a duty to monitor compliance with the ecological and hydrological commitments provided in the Environmental Statement and other information lodged in support of the application, the Construction Environmental Management Plan and other plans; and
  - b) Require the ECoW to report to the Company's nominated construction project manager, the Planning Authority, SNH and SEPA any incidences of non-compliance with the ECoW works.

Reason: To ensure the protection of the Tweed SAC and European protected species.

22. No development shall commence until a Construction Environment Management Plan has been submitted to and approved in writing by the Planning Authority in consultation with SEPA. The CEMP shall include:
- a) Risk assessment of potentially damaging construction activities
  - b) Identification of biodiversity protection zones
  - c) Method Statements to avoid or reduce impacts during construction, to include the location and timing of sensitive works to avoid harm to biodiversity features, the times during construction when specialist ecologists need to be present on site to oversee works include the use of protective fences, exclusion barriers and warning signs
  - d) A Drainage Management Plan
  - e) A Site Waste Management Plan
  - f) An Accident Management Plan
  - g) Responsible persons and lines of communication
  - h) The role and responsibilities on site of an ecological clerk of works ECoW
  - i) Actual location of outfall and abstraction as identified in the CAR Licence.

The approved CEMP shall be implemented throughout the construction period and operational phase as appropriate, strictly in accordance with the approved details, unless otherwise agreed in writing by the Planning Authority.

Reason: To ensure the protection of the River Tweed SAC and European protected species.

23. No development shall commence until a Species and Habitat Protection Plan including supplementary surveys and measures for Ground Water Dependent Terrestrial Ecosystems (GWDTEs), bats, otter, badger, breeding birds and amphibia as appropriate 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 the protection of the River Tweed SAC, European protected species and GWDTEs.

24. No development shall commence until a Landscape and Habitat Management Plan, including measures to compensate for habitat loss and enhance existing habitats including through woodland creation and management, conservation

management of grassland and wetlands, provision of a scheme of bat and bird boxes, an artificial otter holt and provision of appropriate access and interpretation, has first been submitted to and approved in writing by the Planning Authority. Thereafter no development shall take place except in strict accordance with the approved scheme.

Reason: To ensure the protection of the River Tweed SAC, European Protected species and enhancement of the ecological interest.

25. No development shall commence until a surface water management plan is submitted to and agreed in writing by the Planning Authority in accordance with the recommendations of the flood risk assessment. Thereafter the development shall be carried out in accordance with the approved details.

Reasons: To ensure appropriate management of surface water

### Informatives

- 1) Transport Scotland:

The applicant should be informed that the granting of planning consent does not carry with it the right to carry out works within the trunk road boundary and that permission must be granted by Transport Scotland Trunk Road and Bus Operations. Where any works are required on the trunk road, contact details are provided on Transport Scotland's response to the planning authority which is available on the Council's planning portal. Trunk road modification works shall, in all respects, comply with the Design Manual for Roads and Bridges and the Specification for Highway Works published by HMSO. The developer shall issue a certificate to that effect, signed by the design organisation. Trunk road modifications shall, in all respects, be designed and constructed to arrangements that comply with the Disability Discrimination Act: Good Practice Guide for Roads published by Transport Scotland. The developer shall provide written confirmation of this, signed by the design organisation. The road works which are required due to the above Conditions will require a Road Safety Audit as specified by the Design Manual for Roads and Bridges. Any trunk road works will necessitate a Minute of Agreement with the Trunk Roads Authority prior to commencement.

- 2) Environmental Health:

Private drainage systems often cause public health problems when no clear responsibility or access rights exists 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 liaise with the Council's Licensing Section to establish whether or not the proposed staff accommodation requires to be licenced as a House in Multiple Occupation. [liquorandlicensing@scotborders.gcsx.gov.uk](mailto:liquorandlicensing@scotborders.gcsx.gov.uk)

- 3) SEPA

The applicants should contact SEPA's local team to discuss their draft Pollution Prevention Plan (PPP) in due course. No construction can commence until a PPP is agreed in accordance with the construction site licence CAR/L/1178951.

- 4) With regards to Condition 14, the Applicant should be advised that the Parking Study is required due to discrepancies within the Visitor Appraisal Study. Parking is based on visitor numbers and car occupancy which is stated as being assumed

to be 2.7 people per car but Paragraph 2.7 in the same report states that Department of Transport figures indicate 1.51 people per car. This discrepancy must be resolved and the Parking Study should also include figures from similar development types to validate the assumed figures in the Transport Statement, based on the Visitor Appraisal Study.

**DRAWING NUMBERS**

See Appendix A – Drawing Schedule

**Approved by**

Name	Designation	Signature
Ian Aikman	Chief Planning and Housing Officer	

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

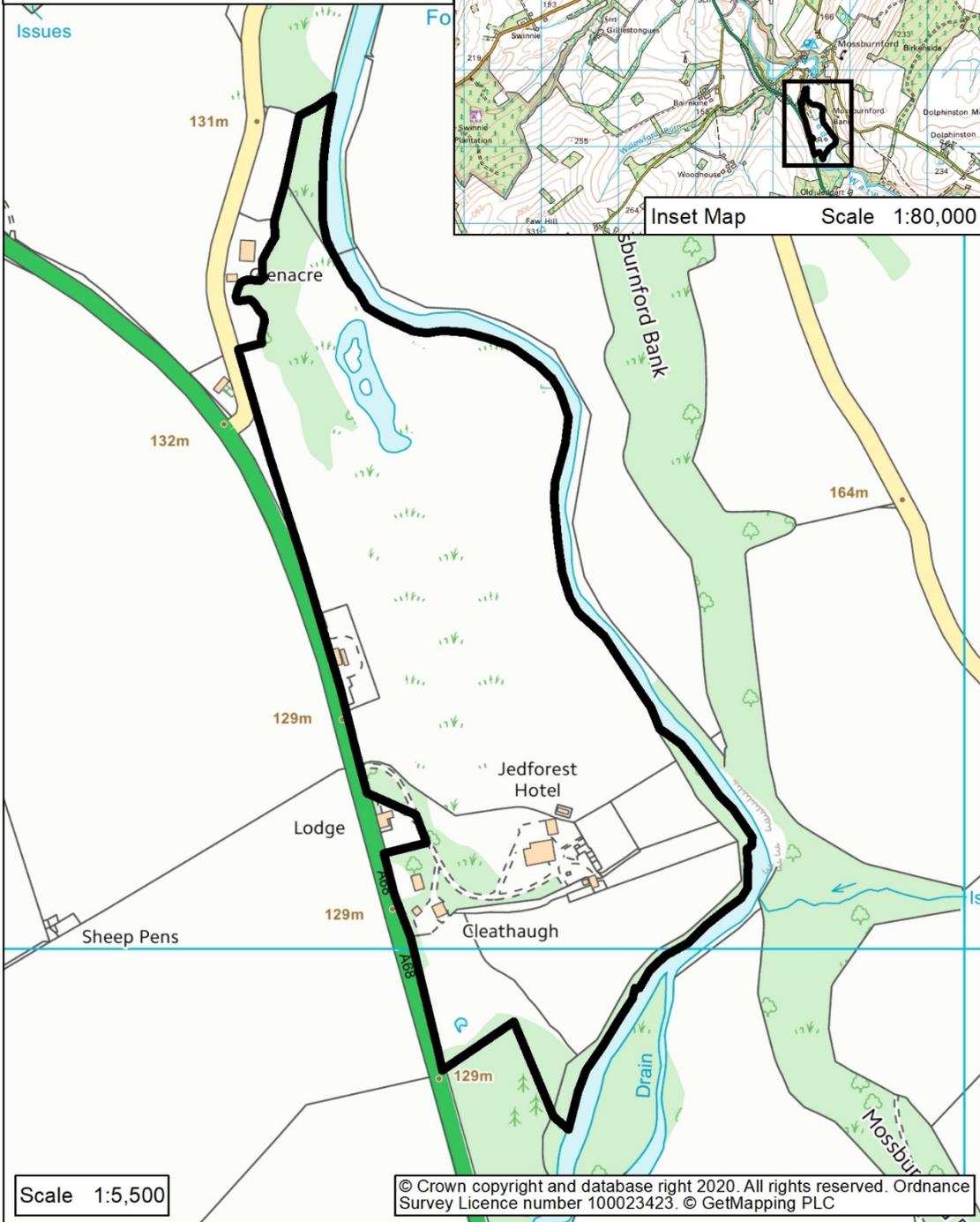
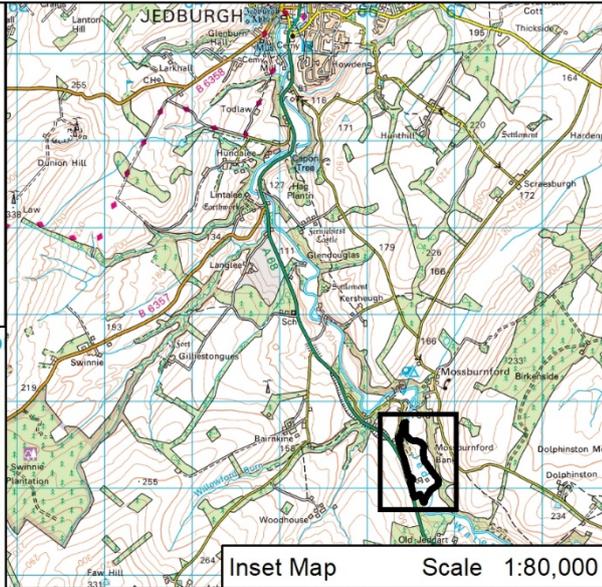
**Author(s)**

Name	Designation
Scott Shearer	Peripatetic Planning Officer



20/00109/FUL

Land North And South Of Former  
Jedforest Hotel And Jedforest Hotel  
(now Known As Mossburn House)  
And Jedforest Filling Station  
Jedburgh



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## **APPENDIX A**

### **DRAWING SCHEDULE**

**APPLICATION REFERENCE:** 20/00109/FUL

**PROPOSAL:** Erection of 2 No distilleries with associated visitor centres, bottling hall, maturation warehousing, office, gatehouse with associated roads and infrastructure, and change of use of hotel to form office and staff accommodation previously approved under consent number 16/00744/FUL

**SITE:** Land North and South of former Jedforest Hotel and Jedforest Hotel (now known As Mossburn House) Jedburgh, Scottish Borders

<b>PLAN DESCRIPTION</b>	<b>DRAWING NO</b>	<b>DATE RECIEVED</b>
PLANTING LAYOUT	300 REV P04	31 Jan 2020
TREE RETENTION AND REMOVAL LAYOUT 1	500	31 Jan 2020
TREES FOR RETENTION AND REMOVAL 2	501	31 Jan 2020
TREE RETENTION AND REMOVAL LAYOUT 3	502	31 Jan 2020
KERBS AND EDGES	910	31 Jan 2020
STONE SETT PAVING	914	31 Jan 2020
STONE BALLUSTRADE	918	31 Jan 2020
PAVING TERRACE	DE911	31 Jan 2020
PAVING PATH	DE912	31 Jan 2020
PAVING STEPPING STONES	DE913	31 Jan 2020
LOCATION PLAN	EC21062 00 001	31 Jan 2020
TOPOGRAPHICAL SURVEY	EC21062 00 002	31 Jan 2020
SITE REMOVALS PLAN	EC21062 10 001	31 Jan 2020
MATURATION WAREHOUSING	EC21062 28 004	31 Jan 2020
INTERNAL ROADS GEOMETRY LOCATION PLAN	EC21062 95 002B	31 Jan 2020
INTERNAL ROADS GEOMETRY SHEET 3	EC21062 95 005B	31 Jan 2020
INTERNAL ROADS GEOMETRY SHEET 4	EC21062 95 006B	31 Jan 2020
INTERNAL ROADS GEOMETRY SHEET 5	EC21062 95 007B	31 Jan 2020
INTERNAL ROADS GEOMETRY SHEET 6	EC21062 95 008B	31 Jan 2020
INTERNAL ROADS GEOMETRY SHEET 7	EC21062 95 009B	31 Jan 2020
INTERNAL SITE DRAINAGE OUTLINE STRATEGY	EC21062 95 002B	31 Jan 2020
SPILLAGE CONTAINMENT OUTLINE STRATEGY JE...	EC21062 96 004A	31 Jan 2020
SPILLAGE CONTAINMENT OUTLINE STRATEGY MO	EC21062 96 005A	31 Jan 2020
ES VOL 3 ANNEX J OUTLINE DRAINAGE SCHEME	EC21062/C&S REPORTS/R0001A	31 Jan 2020

PROPOSED BOTTLING HALL GROUND FLOOR PLAN	EC21062:28:001	31 Jan 2020
PROPOSED BOTTLING HALL FIRST FLOOR PLAN	EC21062:28:002	31 Jan 2020
PROPOSED BOTTLING HALL TYPICAL SECTIONS	EC21062:28:003	31 Jan 2020
PROPOSED TANKFARM PLANS AND ELEVATIONS	EC21062:28:005	31 Jan 2020
PROPOSED GHOST ISLAND JUNCTION GEOMETRY	EC21062:95:001	31 Jan 2020
SPIRIT STORAGE VOLUME	EC21062:96:006	31 Jan 2020
EXTERNAL LIGHTING LAYOUT	EM21062:96:200	31 Jan 2020
MOSSBURN DISTILLERY PROPOSED LEVEL 122 F	GA-02	31 Jan 2020
MOSSBURN DISTILLERY PROPOSED LEVEL 116 F...	GA-03	31 Jan 2020
MOSSBURN DISTILLERY ROOF PLAN	GA-04	31 Jan 2020
MOSSBURN DISTILLERY SECTION 1-1	GA-09	31 Jan 2020
MOSSBURN DISTILLERY PROPOSED SECTIONS AA	GA-10	31 Jan 2020
MOSSBURN DISTILLERY PROPOSED SECTIONS CC	GA-11	31 Jan 2020
MOSSBURN DISTILLERY PROPOSED SECTIONS EE...	GA-12	31 Jan 2020
CLEATHAUGH PROPOSED ENTRANCE FLOOR PLAN	GA-201	31 Jan 2020
JEDHART MAIN ENTRANCE PLAN	GA-301	31 Jan 2020
PROPOSED SERVICE LEVELS PLANS	GA-302	31 Jan 2020
JEDHART DISTILLERY ROOF PLAN	GA-303	31 Jan 2020
MATURATION WAREHOUSING ROOF PLAN	GA-403 A	31 Jan 2020
PROPOSED GATEHOUSE PLANS	GA-405	31 Jan 2020
MOSSBURN DISTILLERY PROPOSED LEVEL 126 F...	GA01	31 Jan 2020
BOTTLING HALL PROPOSED ELEVATIONS	GA404 A	31 Jan 2020
COOLING WATER SUPPLY ROUTE	SK01	31 Jan 2020
LANDSCAPE MASTERPLAN	101 REV P02	06 Feb 2020
LANDSCAPE MASTERPLAN	102 REV P02	06 Feb 2020
LANDSCAPE MASTERPLAN	103 REV P03	06 Feb 2020
MOSSBURN DISTILLERY LANDSCAPE LAYOUT	104 REV P01	06 Feb 2020
LANDSCAPE PHASING	106	06 Feb 2020
PLANTING LAYOUT	300 REV P05	06 Feb 2020

TREE RETENTION & REMOVAL LAYOUT	500 REV P02	06 Feb 2020
TREE RETENTION & REMOVAL LAYOUT	502 REV P02	06 Feb 2020
MOSSBURN DISTILLERY PROPOSED NORTH ELEV	GA-06	06 Feb 2020
MOSSBURN DISTILLERY PROPOSED EAST ELEVAT	GA-07	06 Feb 2020
MOSSBURN DISTILLERY PROPOSED SOUTH ELEVA	GA-08	06 Feb 2020
STEADING PROPOSED ENTRANCE FLOOR PLAN	GA-201	06 Feb 2020
JEDHART DISTILLERY SOUTH ELEVATION	GA-307	06 Feb 2020
JEDHART DISTILLERY SECTION A-A & B-B	GA-309	06 Feb 2020
GATEHOUSE PROPOSED PLANS	GA-405	06 Feb 2020
GATEHOUSE PROPOSED ELEVATIONS	GA-406	06 Feb 2020
LANDSCAPE: MANAGEMENT & MAINTENANCE	REV P01	06 Feb 2020
MATURATION WAREHOUSE PROPOSED ROOF PLAN	GA-401	06 Feb 2020
LANDSCAPE MASTERPLAN	REV P03	06 Feb 2020
MOSSBURN DISTILLERY WEST ELEVATION	GA-05	14 Feb 2020
CLEATHAUGH STEADING ELEVATIONS	GA-202	14 Feb 2020
CLEATHAUGH STEADING SECTIONS	GA-203	14 Feb 2020
JEDHART DISTILLERY NORTH ELEVATION	GA-305	14 Feb 2020
JEDHART DISTILLERY EAST ELEVATION	GA-306	14 Feb 2020
MATURATION WAREHOUSE ELEVATIONS	GA-402	14 Feb 2020
BOTTLING HALL ELEVATIONS	GA-404	14 Feb 2020
JEDHART DISTILLERY WEST ELEVATION	GA-304	17 Feb 2020

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**SCOTTISH BORDERS COUNCIL**

**PLANNING AND BUILDING STANDARDS COMMITTEE**

**5 OCTOBER 2020**

**APPLICATION FOR PLANNING PERMISSION**

**ITEM:** **REFERENCE NUMBER:** 20/00347/FUL

**OFFICER:** Paul Duncan  
**WARD:** East Berwickshire  
**PROPOSAL:** Erection of poultry building, upgrade of access junction, formation of access road, and associated works (Shed 5)  
**SITE:** Hutton Hall Barns, Hutton, Scottish Borders  
**APPLICANT:** MacLean Eggs Ltd  
**AGENT:** Hodgson And White Ltd

**PLANNING PROCESSING AGREEMENT:** A PPA is in place for the application which runs to Monday 5 October 2020. The PPA provides for possible extension to Monday 2 November 2020 in the event Members wish to visit the site prior to determination.

**SITE DESCRIPTION**

The proposed site is situated in rolling arable farmland between the Berwickshire villages of Hutton and Allanton, to the east and west respectively, and between the hamlet of Hutton Castle Barns to the north and Sunwick Farm to the south.

The main body of the proposed site is located to the far north of large, sloping, north-facing arable fields. The host fields are bound by hedgerow and mature trees on all sides. The southern field boundaries broadly follow a gentle ridge, whilst the northern boundaries are at low points in the landscape.

The host fields are distant to any neighbouring dwellinghouse, watercourse, footpaths or public road. The nearest dwellinghouses are located at Hutton Castle Barns around 700m north of the proposed building and 'Four Seasons' to the south-west of the proposed building, also at a distance of around 700m. The village of Hutton is around 800m from the proposed site at its closest point, beyond higher ground. The village cemetery is detached from the village and located over 600m from the site across rising and then falling land.

The nearest public roads are also far from the site of the proposed building, with the main B6460 road over 800m to the south of the site, and the minor connecting road through Hutton Castle Barns a considerable distance from the site to the west and to the north. The proposals would also see an existing junction with the minor public road upgraded.

The surrounding area hosts numerous existing large scale poultry buildings which have been built in more prominent locations over recent years. To the west, towards the public road, the development referred to by the applicant as Shed 4 is close to completion following planning approval last year. To its north, Shed 3 is now operational following planning approval on appeal to the Scottish Ministers in 2018. Further to the north-west, Sheds 1 and 2 sit west of Hutton Castle Barns hamlet. Other earlier poultry developments are also located to the east and north-east of the hamlet.

The proposed building would be located at a significant distance from the Cabby Burn, which meanders through the surrounding fields before discharging into the Whiteadder Water roughly a mile from the site.

## **PROPOSED DEVELOPMENT**

A single poultry building would house 32,000 free-range birds for the purpose of free-range egg production. The proposed building would have a footprint of 149m by 29m, a ridge height of 7m and an eaves height of less than 3m. The building would be of steel portal frame construction, finished in juniper green steel cladding. A large flat site would be created to accommodate the building with a cut of almost 2m at the north-west corner of the site, likely slightly higher to the south-west. Hardstanding would be formed around the building.

Similarly to the previous sheds, ventilation would be computer controlled and provided by gable wall fans and 40 exhaust air chimneys and fresh air inlet chimneys on the roof. 9m high feed bins would be sited on the south side of the building. The south-facing roof of the building would host a large array of PV panels. The building would also house a staff toilet. Surface water would be directed to three Sustainable Urban Drainage System (SUDS) basins to the east of the proposed building with outfall to existing drains.

The application includes proposals to upgrade an existing farm track access at the minor public road which connects with the B6460 to the south. The existing farm track would be upgraded (but not widened), and a new track would branch off close to the home farm's existing manure store building, breaking through the hedgerow into the main host field of the proposed building with the loss of three trees.

## **PLANNING HISTORY**

There is no planning history at the proposed site. As noted above, poultry developments have been approved previously in the locale and this history is significant to the consideration of this application. There are three distinct clusters of these developments, which are grouped accordingly and detailed below. In addition, another planning application is pending consideration for a further poultry building nearby, to the south-west of the proposed site.

### East and North East of Hutton Castle Barns hamlet

- 06/00326/FUL - Mobile Poultry Unit. Approved March 2006 (time limit condition modified by approval of 07/01741/FUL).
- 07/01752/FUL - Erection of Mobile Poultry Unit etc. Approved October 2007.
- 08/02047/FUL - Erection of Mobile Poultry Unit etc. Approved March 2009.
- 10/00036/FUL - Erection of Poultry Unit etc. Approved May 2010.
- 14/01347/FUL - Siting of Mobile Poultry Unit. Approved February 2015.

### West of Hutton Castle Barns hamlet

- 15/01173/FUL – Shed 1 - Erection of poultry building etc. Approved by the Planning and Building Standards Committee in February 2016.
- 16/01430/FUL – Shed 2 - Erection of poultry building etc. Approved by the Planning and Building Standards Committee in March 2017.

### South of Hutton Castle Barns hamlet

- 17/00623/FUL – Shed 3 - Erection of poultry building and associated works. Refused by the Planning and Building Standards Committee November 2017 as contrary to LDP

policies ED7 (Business, Tourism and Leisure Development in the Countryside), ED10 (Prime Quality Agricultural Land), HD3 (Residential Amenity) and EP1 (International Nature Conservation Sites and Protected Species). Approved on appeal to the Scottish Ministers in November 2018. Now operational.

- 18/01620/FUL- Shed 4 - Erection of poultry building and associated works. Approved by the Planning and Building Standards Committee November 2019. Nearly completed.
- 20/00470/FUL - Shed 6 - Erection of poultry building and associated works. Pending consideration.

## **REPRESENTATION SUMMARY**

Objections were received from 5 households. One further comment was received neither in support or objection to the proposals. The issues raised are summarised below:

- Given cumulative impacts this application should be considered in tandem with pending application 20/00470/FUL;
- Cumulative impact;
- Disappointing that SBC has not postponed application due to coronavirus impact on community discussion is impacted;
- Proximity to Hutton Cemetery and Hutton Village;
- Tipping point issue;
- Environmental issues;
- Further development may be planned;
- Visual impact from Hutton (Knowe's Close) and the cemetery;
- Traffic and road safety;
- Assurances are sought that traffic through Broomdykes will be restricted to movements between 0730 and 1800 to avoid school transport;
- A bond should be secured to pay for the upkeep of the public roads;
- Loss of prime arable land;
- Concerns about road upkeep, particularly the junction east of Crossrig;
- Increase in traffic, including construction traffic;
- No screening proposals;
- Landscape impact;
- Lack of information;
- Deterioration of road surfaces;
- Form of development incompatible visually with greenfield sites;
- Impact on River Whiteadder and other water courses;
- High concentration farming leads to a concentration of pollution and waste;
- Noise, including during construction;
- Odour;
- Contractors do not respect speed limits;
- Previous application received inadequate consideration.

Two representations were received from local businesses in support of the application, and detailed the ways in which the applicants support local business and local employment.

An anonymous letter was also received.

All representations can be found online at the Council's *Planning Portal*.

## **APPLICANTS' SUPPORTING INFORMATION**

The applicant submitted the following supporting information:

- Supporting Statement
- Ecological Impact Assessment
- Operational Plan
- SCAIL Report
- Transport Statement
- Species Protection and Mitigation Plan for Otter, Badger & Breeding Birds

## **DEVELOPMENT PLAN POLICIES:**

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

PMD1: Sustainability

PMD2: Quality Standards

ED7: Business, Tourism and Leisure Development in the Countryside

ED9: Renewable Energy Development

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

HD3: Protection of Residential Amenity

EP1: International Nature Conservation Sites and Protected Species

EP2: National Nature Conservation Sites and Protected Species

EP3: Local Biodiversity

EP7: Listed Buildings

EP8: Archaeology

EP10: Gardens and Designed Landscapes

EP13: Trees, Woodlands and Hedgerows

EP15: Development Affecting the Water Environment

EP16: Air Quality

IS7: Parking Provision and Standards

IS8: Flooding

IS9: Waste Water Treatment and SUDS

## **OTHER PLANNING CONSIDERATIONS:**

- Biodiversity Supplementary Planning Guidance 2005
- Landscape and Development Supplementary Planning Guidance 2008
- Local Biodiversity Action Plan Supplementary Planning Guidance 2001
- Renewable Energy Supplementary Guidance 2018
- Sustainable Urban Drainage Systems Supplementary Planning Guidance 2020
- Trees and Development Supplementary Planning Guidance 2008
- Waste Management Supplementary Guidance 2015
- HES: Managing Change in the Historic Environment: Setting 2020
- Planning Advice Note 39: Farm and Forestry Buildings
- Planning Circular 4/1998: The Use of Conditions in Planning Permissions
- Planning Circular 1/2017: Environmental Impact Assessment regulations
- River Tweed Special Area of Conservation (SAC) and Site of Special Scientific Interest (SSSI) - Advice for developers and competent authorities when considering projects which could affect the River Tweed SAC and SSSI
- Scottish Planning Policy 2014

## CONSULTATION RESPONSES:

### Scottish Borders Council Consultees

**Archaeology Officer:** No archaeological sites or findspots are currently recorded within the application site. Sites of archaeological interest in the Hutton area include the presence of a prehistoric settlement (Canmore ID 60126) and various finds made from the general area ranging between the prehistoric past as a flint scraper (Canmore ID 60123) to a Medieval sword pommel (Canmore ID 339420). The nearest site recorded is, however, a little more mundane, though no less important, evidence of a field boundary visible from the air as a cropmark site (Canmore 288334). Though this is distant by about 500m to the centre of these two applications, such a cropmark attests that suitable soil, crop and climate conditions may reveal cropmarks and a presence of previous happenings in the area.

Aerial photography held by the council appears to show the presence of some cropmarks in the field to the north of Site 5. Some of these marks appear to extend beneath the existing field boundary into the very field of Site 5 and would be directly overlain by the proposed shed in this case. The exact nature of these cropmarks is uncertain and unclear, and would require archaeological investigations to be carried out to ascertain if archaeological or not. It would be recommended that such archaeological work be secured by condition if this application granted consent.

**Ecology Officer:** No objection, subject to conditions to secure Species Protection Plan for otter, badger and breeding birds and a Construction Method Statement to protect waterbodies.

The Phase 1 habitat survey identified that arable fields will be the main habitat affected, of low biodiversity value. The access track passes through field boundaries including a gappy hedgerow, the proposed shed is adjacent to a tree-lined boundary and will require removal of a short section of a gappy hedgerow. The Cabby Burn is approximately 150 m to the north and there is no obvious drainage connectivity from the proposed new shed site to the burn. The access track crosses the Cabby Burn and may provide a pathway for sediment run-off and pollutions to affect freshwater habitats. Mitigation should be required to protect the water environment in the form of a Construction Method Statement.

A survey for otter, badger and breeding birds was carried out. An otter spraint was found approximately 250m from the proposed shed. No other signs of otter were recorded. A badger survey recorded three additional setts, not previously recorded in surveys for early sheds at the farm. All appeared to be outlier setts. The report recommends that the access track is relocated to avoid a badger sett. A range of typical farmland bird species were recorded, including a number of red-listed species: grey partridge, skylark and yellowhammer. Barn owl was also recorded (Schedule 1 species). Whilst significant impacts on populations of these species are unlikely to arise, there is potential for disturbance and damage during construction. A condition is recommended to protect otter, badger and breeding birds during construction.

**Environmental Health:** No objection. As the nearest sensitive dwelling is over 700m from the site, the potential for adverse amenity impacts is low. Poultry sheds have the potential to give rise to issues that can adversely impact nearby residential amenity including odour, noise, insects, vermin, local air quality and light nuisance. The applicant has submitted an Operational Plan that adequately demonstrates how the Poultry Unit will be managed to minimise the likelihood of these issues occurring. The applicant will require to vary their current PPC license with SEPA which will subsequently entail ongoing monitoring of odour, noise, dust and ammonia emanating from the site. The poultry sheds will likely contain ventilation machinery that will run continuously. This machinery can produce noise that may impact on nearby residential amenity. As such, it is recommended to use conditions to ensure the noise

levels are controlled and machinery maintained. It is noted that development will be serviced by public mains water supply and there will be new septic tank with soakaway for the toilet.

**Flood Risk Officer:** No objection. SEPA flood risk mapping indicates that the site is not at risk from a flood event with a return period of 1 in 200 years. The road and any other hard surfaces should be attenuated to the existing greenfield run-off rates or 5l/s/Ha, whatever is lower, to ensure that there is no increased risk to downstream receptors.

**Landscape Officer:** No objection, subject to conditions. The proposed location for Shed 5 lies in a depression with gently rising ground in all directions which obscures most views from the road and path networks and residences in the area. If seen at all it will be at distances of 700m or more and views will be filtered by tree belts, boundary hedge and tree cover. In terms of landscape and visual impact this is probably the most suitable site so far for poultry sheds, for which planning permission has been sought by this applicant.

However there are issues that need to be addressed with this proposal to ensure satisfactory mitigation and protection of the tree resource. The line of mature trees on the field boundary immediately north of the site are of value in terms of their contribution to the character of the landscape and potentially for mitigation of the effects of the proposal. Some of these mature trees although an important feature in the landscape are in poor condition and it is evident that a number in the row have died in recent years. If the trees were to suffer further damage or death the site would potentially be a little more exposed to view, albeit from limited viewpoints to the north but also an important feature within the landscape would be compromised. The proposals on the site layout plan for shed 5 show the site 15m south of the tree line. Construction of any nature in close proximity to the trees i.e. vehicle tracking, excavation, material storage or hardstanding would be a serious risk to the health and longer term viability of these mature trees. A Tree Protection Plan in accordance with BS5837:2012 should be provided and clearly indicate the precise location of protective barriers to form a construction exclusion zone.

An appropriate landscape planting plan should be submitted for agreement with SBC showing planting proposals on the field boundary. It will have to take into account the potentially water logged ground in the lowest part of the site and ensure that the species and method of tree and hedge planting reflect this issue if indeed this is the case.

**Roads Planning Service:** No objection. 3 No passing places/road widenings have been provided on the minor public road between the sites and the B6460, this does not include the accesses into these units which double as two further passing places. RPS are content that the increase in traffic associated with the proposal can be mitigated by the addition of a further passing place on the minor public road. The vehicular access to the site will also be able to double up as a passing place. Only one passing place will be required for sheds 5 and 6, however as neither have been determined or implemented yet a condition for a passing place will be required on both consents should they be approved.

The proposed shed and shed 6 (currently pending consideration) are located in close proximity to the existing sheds 3 and 4 and in terms of minimising trips on the public road network RPS require an internal road to be provided between the 4 sheds.

## **Statutory Consultees**

**Scottish Environment Protection Agency (SEPA) - first response:** Object due to lack of information in relation to the SCAIL process (Simple Calculation of Atmospheric Impact Limits).

The operator will be required to vary the existing Pollution Prevention and Control (PPC) permit. As the last variation was for an additional 32,000 birds and this shed is likely to be the

same size, the proposed variation to the permit would be substantial.

The proposal for a septic tank discharging to closed soakaway is acceptable providing the relevant Building Standards are met.

The development site is out with SEPA's 1 in 200 year flood risk mapping. However, the proposed poultry building lies adjacent to a drainage ditch to the north east. The development site is in a topographic low at the bottom of a slope, as such, it may be susceptible to surface water flooding. It is recommended that the Flood Risk Management Authority comment on the requirements for the management of surface water at the application site including any mitigation measures. The development falls under the least vulnerable land use in line with SEPA Vulnerability Guidance. As a result of this, we have no objection to the proposed development.

SEPA strongly advise that when upgrading the access track leading to the road, it is ensured that any culverts or bridges (notably the crossing of the Cabby Burn) are maintained. Any new culverts or bridges should be designed to convey the 1 in 200 year flow of the watercourse.

**SEPA - second response:** Objection withdrawn. The applicant has carried out a Simple Calculation of Atmospheric Impact Limits (SCAIL). SEPA re-ran SCAIL and whilst the inputs and results differ from those submitted by the applicant, the outcome is the same; based on the information available the 5 existing and proposed sheds do not breach the NCP rules for ammonia, acid and nitrogen deposition and concentration at designated sites within 10km of the farm. In this context, the proposed fifth shed would be consentable *in principle* under PPC.

**NatureScot (formerly known as Scottish Natural Heritage/ SNH):** No objection provided SEPA are satisfied with the disposal of waste from the building, including any nitrogen emissions. The proposal is close to the River Tweed Special Area of Conservation (SAC). The site's status means that the requirements of the Habitats Regulations apply. Consequently, the Council is required to consider the effect of the proposal on the SAC before it can be consented (commonly known as Habitats Regulations Appraisal). Concern over the River Tweed SAC relates to nutrient enrichment of natural habitats caused either by emission of nutrients into the air or inappropriate disposal of poultry waste. Provided SEPA are satisfied with the disposal of waste from the poultry building, including release of any aerial emissions of nitrogen, then we have no objection to the proposal. An appropriate assessment is therefore not required.

**Hutton and Paxton Community Council:** The Hutton and Paxton CC has given seriously careful consideration to this application and to associated comments from affected and concerned residents. Council members give their full support to those specific comments already submitted.

Whilst the current application quotes a "fifth shed, the total number of sheds surrounding Hutton Castle Barns including those approved to date, is in fact currently nine. The two existing egg production businesses are performing exactly the same function around the same community thereby the cumulative effect whether that be in terms of environmental impact, associated traffic and odour, is the same. To separate the two is misleading. This current application indisputably would bring the total number of poultry sheds to ten.

The application, somewhat lightweight in detail, would appear to be in contravention of Planning Policy ED10, Protection of Prime Quality Agricultural Land and Carbon Rich Soils by resulting in the latter's permanent loss. What has occurred to date is eventual proof that the amount of land now permanently under concrete and hard core, already lost to crops, is substantial. This contravenes the Appendix to Policy ED10 that states only small scale developments may be considered. The current situation is far from small scale. Given both

the size of the shed in this case and the cumulative effect of the sheds already approved, this must surely be contrary to Policy ED10 not least as the accompanying map on page 61 in the currently Local Development Plan indicates that the site is in fact on Prime Agricultural Quality Land.

It would also appear that the proposed development is contrary to Planning Policy PMD4 Development Out with Development Boundaries. It is out with those indicated in the Planning Policy for Hutton and Hutton Castle Barns, not on allocated land for development and not of an appropriate scale in relation to adjacent settlements. It is prejudicial to their character and visual cohesion thereby causing a significant adverse effect on the natural landscape heritage and setting of the surrounding area.

The cumulative effect of nine previous sheds has already prejudiced the setting of the nearby settlements, regardless of conflicting views expressed by visiting officials. Permanent residents have already indicated so given that in spite of screening, the sheds can actually still be seen.

It seems incongruous that by the use of extensive excavation in an attempt to hide sheds, as is already the case, the visual aspect upon the natural environment can be reduced by sinking enormous sheds into the ground and surrounding them with out of character earth mounds. Does this suggest that if a shed does not fit visually with the natural environment and setting in planning terms, that we can alter the environments?

Sheds are development on a considerable scale. They are large metal building set on concrete foundations and as with any other industrial structure, planning permission is required hence the comments above on planning grounds, are absolutely relevant.

Hutton and Paxton Community Council objects to this application.

### **KEY PLANNING ISSUES:**

The key planning considerations are:

- Impacts on the character and amenity of the surrounding area, including but not limited to residential amenity impacts, taking account of cumulative impacts in combination with existing poultry developments;
- Landscape and visual impacts of the proposed poultry building and associated works, including cumulative impacts and impacts on trees;
- Biodiversity impacts, including impacts to protected species and designated sites, and including cumulative impacts.

### **ASSESSMENT OF APPLICATION:**

#### **Policy Principle**

The principle of these proposals can be assessed against the Council's Local Development Plan policy ED7 (Business, Tourism and Leisure Development in the Countryside). Policy ED7 aims to enable appropriate employment generating rural development whilst protecting the environment. The policy is supportive of development that would be used directly for agricultural operations or for uses which by their nature are appropriate to the rural character of an area. The policy requires such development to respect the amenity and character of the surrounding area and have no significant adverse impact on nearby uses, particularly housing.

Previously, the Planning and Building Standards Committee decision to refuse Shed 3 as

contrary to LDP policy ED7 was appealed successfully to the DPEA who granted approval for that development. The Reporter concluded that in principle, poultry developments satisfy the overarching requirements of Policy ED7, which is not worded so as to preclude large scale agricultural developments, provided adverse impacts can be avoided or mitigated.

The Reporter's comments at paragraph 25 of the appeal report for Shed 3 have again been referred to in objections. The Reporter considered whether a tipping point had been reached in the number and distribution of large poultry developments around Hutton Castle Barns. Evidently, in approving that application, the Reporter found that that development did not mark a tipping point. Cumulative impacts must, however, be considered afresh.

The proposed development would be sited sensitively at a significant distance to neighbouring residential properties, public roads, public footpaths and watercourses. In this regard the proposed site is considered to be greatly suited to this type of development than more recent, more prominent application sites which were also located very close to the Cabby Burn. It is understood that the host fields have been bought recently by the applicants, presumably for this reason. More recent developments had required significant mitigation measures to bring them to a satisfactory position, and associated planting schemes for those developments will take many years to reach full effect.

Detailed consideration of landscape, visual and residential amenity impacts is set out further below, under the relevant section. In principle however, it is considered that further poultry development could be accommodated at this location whilst respecting the character and amenity of the surrounding area, as Policy ED7 requires. Nor would neighbouring uses (mainly arable farming) be compromised. The supporting statement submitted with the application also confirms that the development would generate full time employment.

Notwithstanding the above, development of this scale can magnify impacts associated with more modest agricultural developments, particularly where cumulative impacts may arise, and requires very careful consideration. These impacts are considered further below.

## **Landscape and Visual Impacts**

### *Policy Context*

The proposed site is not located within or near to an area designated for landscape quality or special natural landscape protection. Landscape impacts must therefore be assessed against the LDP's standard policies for landscape protection, including PMD1 (Sustainability) and PMD2 (Quality Standards). Policy PMD1 states that landscape protection is a fundamental principle which underpins all the LDP's policies. Policy PMD2 requires all new development to integrate with its landscape surroundings and encourages the incorporation of appropriate landscape works (including structure planting or screen planting where necessary), to help integration with surroundings and the wider environment. Policy ED7 criterion (e) specifically notes that rural business proposals must also satisfy Policy PMD2. Policy HD3 (Protection of Residential Amenity) states that any development will be assessed against visual impact effects on existing residential areas.

### *Key Public and Private Visual Receptors*

The proposed site is located at a low point in the landscape. The site may be visible distantly from a small number of properties within the village of Hutton. It cannot be seen from the nearby cemetery, and cannot be seen readily from local public roads. Farm tracks to the south and west of the site do not form part of any recorded access routes or rights of way, but may be used by the public, and from the former in particular the development would be visible, particularly from the access track to the south.

In terms of private visual receptors, the development would not be visible from the dwellinghouse known as 'Four Seasons' or from dwellings north of the public road at Hutton Castle Barns. The three dwellinghouses south of the public road would however be private visual receptors. Two of these houses are understood to be in the ownership of the applicants. The remaining dwellinghouse, Hutton Castle Barns, would be the most affected other private visual receptor

### *Assessment of Landscape and Visual Impacts*

Modern farm buildings are a common and established feature of the Borders landscape and their design is now fairly standardised. The proposed building would feature many of the familiar characteristics of such buildings: a low pitched roof; profiled sheet cladding; and a matt juniper green finish. The scale, and particularly the length of these buildings, are however great and the fit of such buildings into the receiving landscape requires careful attention. The proposed feed bins, which would be 2m higher than the building, are also a key consideration.

The proposed development would introduce a further large building into the surrounding landscape but the careful siting of the building has avoided the need for significant mitigation in this instance. The development would be scarcely visible from any public road, if at all. By siting the building at a low point in the landscape, landform and woodland blocks will screen the building and feed bins from long views to the east, west or south. Whilst it may have been preferable for the building to sit within the confines of a single field, this is not of fundamental concern.

Any views possible from the north would be filtered by existing hedges and mature hedgerow trees. The Landscape Officer has highlighted the importance of the boundary trees both in their own right and for their screening value. A 15m separation distance has been agreed between the proposed development and these trees and further tree protection measures will be secured by condition. The infilling of the hedge and hedgerow treeline to the north has also been agreed with the applicant. Regrettably, but unavoidably, trees would be lost gaining access to the main host field. Trees may also be affected when the junction with the public road is upgraded. This is preferable to a new intrusive access being formed elsewhere.

As noted above, the primary private receptor would be the dwellinghouse known as Hutton Castle Barns, located around 700m to the north-west of the proposed building. The development would be visible from this property in combination with the previous developments known as Sheds 3 and 4, which are now built. Graded bunding already screens both buildings to eaves height or higher. In time, these buildings should be screened entirely from this private view by trees already planted for Shed 3 and which will be planted shortly for Shed 4. This will also aid the landscape integration of the bunding. The bunding will remain fairly intrusive at the access to Sheds 3 and 4 until then. As no bunding is proposed for this new application, Shed 5 would remain partially visible, but at a greater distance, and views would be filtered by the existing mature hedgerow trees and, in time, by the agreed infill hedgerow trees.

Whilst the planning system does not seek to protect the views enjoyed by private residential properties, visual impact is considered. At the distances involved, the visual impact of the proposed development would be negligible. Whilst the applicant went to significant lengths to screen Sheds 3 and 4, putting forward bunding proposals as part of the application proposals, it is not the case that modern farm buildings must be entirely concealed from any public or private view, even those of the scale involved here.

PV panels would be installed on the south-facing roof of the proposed building. PV panels are a prevalent form of renewable energy which planning policies are broadly supportive of. Given the relatively discreet siting of the proposed building, there are no concerns with this.

### *Landscape and Visual Impacts - Conclusion*

Overall, the proposed development would be sufficiently well sited to avoid significant adverse landscape and visual impacts. Cumulative impacts, including this development in combination with the Shed 6 development if it were approved, would be acceptable. Subject to tree protection and hedgerow tree and hedge planting conditions, Policies PMD1 (Sustainability), PMD2 (Quality Standards) and Policy ED7 criterion (e) are considered to be satisfied. Policy HD3 (Protection of Residential Amenity) is satisfied on a similar basis in terms of visual effects from residential properties. Policy EP13 (Trees, Woodlands and Hedgerows) is also met.

### **Ecology and Natural Heritage**

The proposed development would have the potential to affect ecological interests of local, national and international importance during the construction and operational phases of development. There is also potential for cumulative impacts in combination with Sheds 1-4, the proposed Shed 6, and other development within the surrounding area. An Ecological Impact Assessment (EclA) was submitted by the applicant, informed by a Preliminary Ecological Appraisal.

### *Designated Sites*

The proposed building would be located at a significant distance from the Cabby Burn. The burn connects to the Whiteadder Water which in turn is a tributary to the River Tweed and forms part of the latter's Special Area of Conservation (SAC) and Site of Special Scientific Interest (SSSI) designations. The qualifying interests for the SAC include otter, Atlantic salmon, and river lamprey. The SSSI is notified for beetles, flies and plants.

Local Development Plan policy EP1 (International Nature Conservation Sites and Protected Species) aims to give designated Natura sites (including SACs) protection from potentially adverse development. Development which would have a likely significant effect on a Natura site is only permissible where an Appropriate Assessment has demonstrated that it would not adversely affect the integrity of the site or there are no alternative solutions and there are overriding public interest reasons.

For SSSIs, protection is provided by Local Development Plan policy EP2 (National Nature Conservation and Protected Species). This states that developments which would be likely to have a significant adverse effect on a SSSI will not be permitted unless the development will not adversely affect the integrity of the site and any harm would be outweighed by benefits of national importance.

More broadly, Local Development Plan policy EP15 (Development Affecting the Water Environment) states that proposals which would result in a significant adverse effect on the water environment through impacts on its natural or physical characteristics will be refused. This policy applies to all watercourses and wetlands.

Whilst the Cabby Burn is distant from the proposed site, the applicant has verbally confirmed that drains close by connect to it. SUDS systems for the development would discharge to these drains. There is therefore potential for connectivity to the designated sites via local drains and the Cabby Burn. The existing access track south of Shed 4 also crosses the burn directly. The track is proposed for upgrade as part of the development and construction vehicles are also likely to cross it.

The main risks to the designated sites would mainly relate to potential pollution via the Cabby Burn during the track upgrade works, construction or during the operational phase of the development. Contamination could be caused by dust, pollution spills (e.g. chemicals, oils or concrete), or silt, sediment or surface water run-off. Ammonia associated with manure can also affect water quality.

In terms of the construction period, mitigation is proposed in the form of a Construction SUDS system which would ensure surface water is discharged to the local drainage following treatment, preventing risk of contamination or silt-laden run-off. Sheds 3 and 4 were approved subject to similar requirements, and an agreed system was approved via condition, in consultation with SEPA. Whilst SEPA have not requested a similar condition on this occasion, a condition to this effect is recommended and it is envisaged that SEPA would be consulted on any proposals emerging. For Sheds 3 and 4, a Construction Environmental Management Plan (CEMP) was also agreed in advance of development commencing. This outlined a package of measures to prevent contamination to the burn and the construction phase was completed in line with these measures. This approach has been successful and it is anticipated that a similar scheme can be agreed for this development. The Construction SUDS scheme would be agreed as a component of the wider CEMP and agreed under a single condition.

SEPA would take the lead regulatory control role during the operational phase via the Pollution Prevention and Control (PPC) permit process. A range of environmental effects would be monitored and controlled via the PPC process and its well-established inspection regime. A PPC permit is in place for Sheds 1-4. The applicant has confirmed that they will be seeking a variation of this permit to cover Shed 5. SEPA have confirmed that the development is consentable in principle under the PPC process following a SCAIL (Simple Calculation of Atmospheric Impact Limits) assessment which assesses the amount of acidity, nitrogen or sulphur deposited onto a habitat.

SEPA have no objection to what is proposed, provided the septic tank for the staff WC is compliant with the Building Standards. A condition is attached to secure control over the latter point. NatureScot (formerly SNH) were also consulted and do not object provided SEPA are satisfied with the disposal of waste from the building, including release of aerial emissions of nitrogen. The aforementioned condition shall address the minor foul waste implications of the staff WC. The SCAIL assessment addressed the more significant consideration of nitrogen emissions.

The applicant proposes an Operational SUDS system for the operational phase which would be designed by consultants at the Scottish Agriculture College. Previous sheds required the agreement and implementation of operational SUDS in consultation with SEPA. This approach is tried and tested and a similar condition is recommended.

### *Protected Species*

LDP policies EP1 and EP2 also aim to protect European Protected Species including otters, and nationally protected species such as badgers.

The proposed building is located in arable farmland with low biodiversity value. The fields are bound to the north by hedgerow and intermittent mature hedgerow trees. Gappy hedgerow would be lost to accommodate the proposed building and access track, as would a low number of trees.

Badgers are active within the surrounding area and the access track has been rerouted to address this concern. There may also be limited otter activity in the wider area. Red-listed

farmland bird species have also been recorded in the surrounding farmland. Appropriate mitigation during the construction phase can be secured via an already agreed Species Protection Plan for badger, otter and breeding birds.

Subject to the delivery of the identified mitigation requirements via the recommended planning conditions, the proposals shall satisfy Local Development Plan policies relating to protected species.

### *Ecology and Nature Heritage - Conclusion*

Taking into account potential cumulative effects, including those that may arise should the pending Shed 5 development be approved, and subject to compliance with the recommended conditions, the proposed development would satisfy policies EP1 (International Nature Conservation Sites and Protected Species), EP2 (National Nature Conservation and Protected Species), EP3 (Local Biodiversity and EP15 ((Development Affecting the Water Environment).

A Habitats Regulations Appraisal was carried out under the Conservation (Natural Habitats, &c.) Regulations 1994 (aka Habitat Regulations) on account of the connectivity to the European designated sites via local drainage and the Cabby Burn. Subject to conditions, the proposed developments (including the proposed Shed 6) either alone or in combination with the other sheds at this location, will not have an adverse effect on the integrity of the River Tweed SAC.

The proposed Shed 5 development is considered to qualify as Schedule 2 development under The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017. The proposed development has been screened and is not considered to constitute environmental impact assessment development. No Environmental Statement was therefore required.

### **Neighbouring amenity**

Policy HD3 (Residential Amenity) of the LDP states that development that is judged to have an adverse impact on the amenity of residential areas will not be permitted.

The nearest dwellinghouses within the village of Hutton are located over 800m from the easternmost edge of the proposed site. This is closer than the previous poultry developments nearby. To the west/ south-west of the proposed site 'Four Seasons' lies roughly 700m from the proposed building. The nearest dwellinghouses at Hutton Castle Barns building group are within the ownership of the applicant. The next nearest dwellinghouse is located around 750m from the proposed site.

A broad range of amenity impacts can be considered and assessed against Policy HD3. Given the distances to neighbouring properties, there are no concerns in terms of the usual residential amenity considerations of privacy and access to light/ sunlight. Impacts which can affect residential areas over greater distances do however require close consideration. These include nuisance impacts such as noise, odour and dust. Visual impact issues have been assessed above under 'Landscape and Visual Impacts'.

Members will be aware that the free-range poultry business is heavily regulated and modern poultry buildings are set up to minimise impacts on neighbouring dwellings. The proposed building would incorporate many of the latest technologies, including computer controlled climate system connecting to fans and chimneys which would help reduce the amount of noise, odour and dust emanating from the building.

An Operational Plan has been submitted which sets out a suite of detailed operational procedures and practices that the applicant would follow to minimise nuisance. Previously approved poultry developments on this farm are required to operate to similar plans. The Environmental Health team are satisfied with the Operational Plan and the practices set out within the Plan would be secured by condition. Given the distance to neighbouring residential areas, Environmental Health consider potential for adverse amenity impacts to be low. In addition, the development would be subject to the aforementioned PPC permit and inspection regime.

Environmental Health also recommend further conditions which are commonly used to control noise from plant and machinery. Whilst the proposed poultry building would be located at a significant distance from the nearest residential properties, these conditions are nonetheless considered to be appropriate and would give the Planning Authority suitable control over potential noise effects arising from the operational phase of development.

It is acknowledged that the construction phase of these developments affects local amenity, particularly associated vehicle trips. Some degree of disturbance can be expected as a result of almost any development, regardless of the scale. This is not a reason to oppose the proposed development.

Similarly to previous applications, a condition is recommended to control the hours of deliveries and collections which should protect the night-time tranquillity which local residents can reasonably expect to enjoy.

### **Road safety, access and parking**

Local Development Plan policy PMD2 requires developments to have no adverse impact on road safety and adequate vehicular access.

#### Vehicular Access

The proposed development would connect to the public road network via an existing vehicular access which connects to the home farm to the north via an existing farm track. A new access track would connect the existing farm track with the proposed building. This would pass to the south of an existing manure store building before crossing arable farmland to the site. The existing access junction with the public road would be upgraded to our specification and the existing track would be upgraded also. Drawings have been provided to show the extent of works required to deliver the junction upgrade. The use of an existing vehicular access is welcomed in road safety terms as it avoids the addition of an entirely new junction with the public road elsewhere.

#### Road Safety and Traffic

The applicant has provided a detailed Transport Statement which sets out the number of vehicle trips expected during the operational stage of the development. One additional load of feed would be delivered to the site per week. There are currently 14 egg collection lorry movements per month so this would increase by around 4. Manure would be collected by trailer twice per week and moved to the manure store located between the proposed building and the public road - this would avoid public road network entirely. In addition, there would be a flock cycle rotation every 14 months but this would only involve a further 4 lorry movements. Staff movements and miscellaneous additional trips can also be expected. The anticipated increase in traffic would be modest considering the overall scale of the development.

RPS are satisfied that the road network can accommodate this level of additional traffic with the addition of a single passing place. This is in addition to the 3 previous passing places and

road widenings provided at the time of earlier poultry developments and does not include access widenings which can also be used as passing places. As noted above, a further proposed poultry building [known as Shed 6] is also currently pending consideration. RPS require a single further passing place if either or both developments are delivered. The passing place can be secured by planning condition. The wording of the proposed condition provides flexibility for the Planning Authority and applicant. In the event that Shed 6 is approved and a passing place is delivered under that consent first, a second passing place would not be pursued under the proposed condition for this application. This can be communicated by means of an informative.

To reduce vehicle movements to and from the public road, RPS have also sought provision of an internal road between sheds 3 and 4, and the proposed development. This can also be secured by planning condition.

It should be noted that maintenance of the public road is the responsibility of the Council and would not be for the applicant to address or a reason to refuse the application. Responsibility for enforcing speed limits rests with Police Scotland and is not a relevant consideration.

One comment received sought restrictions to traffic movements through Broomdykes to between 0730 and 1800, timed to avoid school transport times. Whilst the purpose of this request is understood, it would not be practical or reasonable to restrict traffic movements during school transport times.

Overall, subject to the delivery of a single further passing place and the internal track link, the public road network is considered capable of accommodating the trips associated with the proposed development, both during construction and during the operational phase, and taking account of cumulative impacts.

## **Access**

There are no Core Paths or recorded Rights of Way within the surrounding area. Visual impact considerations from informal paths and farm tracks have been assessed above.

## **Built Heritage and Archaeology**

### *Setting of Listed Buildings*

Policy EP7 (Listed Buildings) states that the Council will support development proposals that conserve, protect and enhance the setting of Listed Buildings.

The character of the Hutton Hall Barns building group is defined to a significant extent by the category 'C' listed 19<sup>th</sup> century farm steading and associated former farm cottages that lie to the north of the public road serving the hamlet. Broomdykes is similarly characterised largely by its B listed farm steading. The distances and natural barriers between these buildings and the proposed site are significant, and there would be few if any viewpoints from which these buildings would be observed in combination with the proposed development. The setting of these buildings would be suitably protected.

### *Setting of Designed Landscape*

Policy EP10 seeks to safeguard the setting of sites listed in the Council's record of gardens and designed landscapes.

A historic designed landscape around the grounds of Hutton Castle is recorded within the Council's list of Designed Landscapes. Its southern boundary is the public road through Hutton

Castle Barns. It is not recognised by Historic Environment Scotland. The distance to the site shall ensure the designed landscape's setting is not harmed.

### *Archaeology*

Policy EP8 states that development proposals which will adversely affect local archaeological assets will only be permitted if it can be demonstrated that the benefits of the proposal outweigh the heritage value of the asset. All proposals that adversely affect such an asset must include an acceptable mitigation strategy.

The Archaeology Service have identified a cropmark from aerial imagery which lies partially within the application site. The exact nature of this is unknown, and could only be established by archaeological evaluation, before the development commences. The applicant has agreed to this. An appropriate condition is attached.

### **Prime Quality Agricultural Land**

Scottish Planning Policy defines Prime Agricultural Land as being within Class 1, 2 or 3.1 in the James Hutton Institute's 'Land Capability for Agriculture' records. Scotland's Environment Map shows that the site is identified within Class 3.1, meaning it is capable of producing consistently high yields of a narrow range of crops or moderate yields of a wider range. This is the least productive of the three classes.

LDP policy ED7 (Business, Tourism and Leisure Developments within the Countryside) does not preclude the development of green-field land but seeks to tightly control such developments. Local Development Plan policy ED10 (Protection of Prime Quality Agricultural Land and Carbon Rich Soils) seeks to ensure our finite agricultural land resource is retained for farming and food production. The policy states that development which results in the permanent loss of prime agricultural land will not be permitted unless the land is allocated for development; the development meets an established need and no other site is available; the development is small scale and directly related to a rural business. The policy does not state that each of these criteria must be met, and bears some similarity to the criteria listed at Paragraph 80 of Scottish Planning Policy, which states that meeting any of the three criteria is acceptable.

The Reporter's appeal decision in relation to Shed 3 judged the development not to be out of step with Policy ED10, and that the overall loss of agricultural land would not be significant. The same principles apply to this development, and it is deemed that there is an established need for the development based on apparent demand. The applicant's supporting statement advises that a contract is available for the eggs that would be produced from this development and there is known to be strong consumer demand for free-range eggs. The supporting statement notes that many major supermarket chains plan to go "cage-free" by 2025. This shift has in turn created a demand for large poultry units with associated outside space. Free-range developments such as this cannot be contained in the more concentrated arrangement of traditional farm steadings and require a rural location. There is no obvious alternative site that would avoid the loss of prime agricultural land. The cumulative loss of land over multiple applications is a relevant consideration but would not change this position.

### **Flooding**

The proposed site is not located within an area of known flood risk. The Flood Risk Officer has no objections but does require the development to attenuate at set rates to avoid risk to downstream receptors. The applicant has agreed to this. This assurance can be secured by planning condition, subject to which, the proposals shall satisfy policy IS8 (Flooding).

## **Services**

Surface water would be handled by Construction and Operational SUDS schemes. These would be designed by consultants from the Scottish Agricultural College. Discharge from the single staff toilet would be treated by septic tank with discharge to land via a soakaway. Poultry manure would be removed from the proposed building twice a week by trailer for temporary storage at the nearby manure store prior to sale to third parties for use elsewhere. For water supply, the applicants intend to connect to the public mains.

## **Other Matters**

The elevation drawings for the proposed building do not specify which gable elevation faces east or west, and which elevation faces north or south. A condition to control this was considered, but as either arrangement is acceptable, this is unnecessary.

Concerns were raised at the outset of this application process that it was not postponed due to circumstances associated with the Coronavirus pandemic. The Scottish Government issued guidance at the outset of this period which sought to keep the planning system functioning. The application was advertised in the Berwickshire News and the proposals were available for inspection on the Council's Planning Portal during this period. On account of the unusual situation, the Community Council were provided with an extension to submit their consultation response. Separate site visits were carried out by the Case Officer and Landscape Officer prior to the assessment of the application. Due to social distancing policies, these visits were unavoidably delayed by a number of months. The application remained open for comment throughout this period.

An informative has been added to invite the applicant to consider pre-application discussions should any further applications for poultry buildings be envisaged.

## **CONCLUSION**

Subject to 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 AND HOUSING OFFICER:**

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

### Conditions

1. The development hereby approved shall not be carried out other than in complete accordance with the plans and specifications approved by the Planning Authority, unless otherwise agreed in writing by the Planning Authority.  
Reason: To ensure that the development is carried out in accordance with the approved details.
2. No development shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a Written Scheme of Investigation outlining an Archaeological Evaluation. This will be formulated by a contracted archaeologist and approved in writing by the Planning Authority. Access should be afforded to allow investigation by a contracted archaeologist(s) nominated by the developer and agreed to by the Planning Authority. The developer shall allow the archaeologist(s) to conduct a programme of evaluation prior to development. This will include the below ground excavation of evaluation trenches and the full recording of

archaeological features and finds. Results will be submitted to the Planning Authority for review in the form of a Data Structure Report. If significant archaeology is discovered the nominated archaeologist(s) will contact the Archaeology Officer for further consultation and if necessary further investigation, excavation and recording work will be carried out. The developer will ensure that any significant data and finds undergo post-excavation analysis, the results of which will be submitted to the Planning Authority.

Reason: The site is within an area where ground works may interfere with, or result in the destruction of, archaeological remains, and it is therefore desirable to afford a reasonable opportunity to record the history of the site.

3. No development shall commence until a Construction and Environmental Management Plan (CEMP) has first been submitted to and approved in writing by the Planning Authority in consultation with SEPA. The CEMP shall cover the periods of site clearance and preparation, the erection of the building hereby approved and the formation and upgrade of associated tracks, and hard landscaping works. The CEMP shall include: the standards outlined in British Standard 42020 : 2013 – Biodiversity Code of Practice for Planning and Development; details of a Construction SUDS; and a method statement detailing measures to control sediment runoff during the period of construction to comply with General Binding Rule 10 of the Controlled Activities Regulations. Thereafter, construction works shall only be commenced and progressed in accordance with the approved details. The provisions of the approved plan shall be operated and maintained throughout the period of construction.

Reason: To protect the Cabby Burn, the Whiteadder Water and the River Tweed from the adverse effects of sediment runoff during construction.

4. No development shall commence until an internal access track has first been provided between the existing Shed 4 development (approved under 18/01620/FUL) and the proposed site to a route that has first been agreed in writing with the Planning Authority. Thereafter, the farm track be retained throughout the lifetime of the approved development.

Reason: To minimise trips on the public road network.

5. No development shall commence until a Scheme for Tree Protection has been submitted to and approved in writing by the Planning Authority. The Scheme shall include:
  - a) A Tree Protection Plan showing the alignment of protective fencing
  - b) An Arboricultural Method Statement that includes a specification for protective fencing which shall be compliant with BS5837:12
  - c) A Utilities and Drainage Plan showing any works within the tree RPAs.

The development thereafter shall be implemented in strict accordance with the approved Scheme.

Reason: To ensure that the trees to be retained will not be damaged during construction and to protect and enhance the appearance and character of the site and locality.

6. Prior to the commencement of development, a landscape scheme shall be submitted to and approved in writing by the Planning Authority. The Plan shall include:
  - a) Detailed proposals (including species names, plant numbers and plant sizes) for infill planting of the hedgerow to the north-west, north and north-east of the proposed site with hedging and trees.
  - b) A management plan for the new planting. The Plan shall include a 5 year programme for the on-going maintenance, replacement (as required) and protection of all planting, during the first five years of implementation.

Thereafter, all planting comprised in the approved landscape scheme shall be carried out during the first planting and seeding seasons following the occupation or completion of the development hereby permitted, whichever is the sooner.

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

7. Prior to the commencement of development:
  - a) details of materials to be used on all exterior surfaces of the development hereby permitted have been submitted to and approved in writing by the Planning Authority;
  - b) details of the design and siting of external food storage bins/ silos, water tanks and manure collection equipment/ hoppers have been submitted to and approved in writing by the Planning Authority; and
  - c) design proposals for the placement of photovoltaic panels and security lighting have been submitted to and approved in writing by the Planning Authority.Thereafter, the development shall be undertaken wholly in accordance with the approved details.  
Reason: To ensure that the landscape and visual impacts of the development hereby permitted are adequately mitigated.
8. The development hereby approved shall be carried out wholly in accordance with the *Species Protection and Mitigation Plan for Otter, Badger and Breeding Birds (Including provision for a pre-development Supplementary Survey and Mitigation Plan for Badgers and Breeding Birds)* document written by *Confluence Consulting* and submitted to the Planning Authority on 8 September 2020 and dated 8 September 2020, unless otherwise agreed in writing by the Planning Authority.  
Reason: To protect the ecological interest in accordance with Local Development Plan policies EP2 and EP3.
9. During construction and operation of the development hereby approved all vehicle movements to and from the development shall be within the hours of 07:00 to 22:00 on any day unless in cases of emergency.  
Reason: To safeguard the amenity of the area, including surrounding residential properties.
10. Prior to the occupation of the development hereby approved, the vehicular access junction with the public road shall be completed to a specification that has first been agreed in writing with the Planning Authority.  
Reason: To ensure adequate access to the site and to protect the integrity of the public road.
11. Prior to the occupation of the development hereby approved, a passing place shall be provided at an agreed location (with the planning authority) between the proposed site and the B6460, unless otherwise agreed in writing by the Planning Authority.  
Reason: To mitigate the impact of the additional traffic on the public road system.
12. Prior to the occupation of the development hereby approved, the developer shall provide written confirmation that foul drainage arrangements for the staff WC have been agreed via the Building Warrant process, and any such arrangements shall accord fully with the terms of the Building Warrant.  
Reason: to protect the Cabby Burn and designated sites.
13. Prior to the occupation of the development hereby approved, details of an operational sustainable drainage scheme (SUDS), which shall include a maintenance plan for the scheme, shall be submitted to and approved in writing by the Planning Authority. Thereafter, the agreed system shall be delivered in full prior to the occupation of the development.  
Reason: To ensure adequate protection of the water environment from surface water runoff.

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

Reason: To protect the residential amenity of residential properties.

15. Once occupied, the development hereby approved shall at all times be operated in full accordance with the submitted and approved Operational Plan, unless otherwise agreed in writing by the Planning Authority.

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

### Informatives

1. The applicant is invited to engage the Planning Authority in pre-application discussions prior to the submission of any further poultry building planning applications.
2. SEPA have provided regulatory advice for the developer which is contained in their consultation letter dated 20 April 2020 which is available for inspection on the Council Planning Portal. The developer is advised to familiarise themselves with this advice.
3. With respect to condition 10, the access with the public road to have a minimum of 10m radii and the first 5m to be surfaced to the following specification: 40mm of 14mm size close graded bituminous surface course to BS 4987 laid on 60mm of 20mm size dense binder course (base course) to the same BS laid on 350mm of 100mm broken stone bottoming blinded with sub-base, type 1. Measures to be put in place to prevent the flow of water onto the public road boundary.
4. With respect to condition 11, the Planning Authority require only one further passing place to address anticipated additional traffic for both Shed 5 (20/00347/FUL) and Shed 6 (20/00470/FUL). The condition provides flexibility such that in the event Shed 6 is approved and a passing place is delivered under that consent first, a second passing place would not be pursued under the consent hereby approved. The passing place shall be as per SBC standard drawing DC-1 unless otherwise agreed in writing.
5. It should be borne in mind that only contractors first approved by the Council may work within the public road boundary.

### DRAWING NUMBERS

<u>Type</u>	<u>Reference</u>	<u>Received</u>
Location Plan	101 Rev B	09/09/20
Site Plan	100 Rev C	09/09/20
Elevations	233MC-DR-0003	27/03/20
Site Sections	102 Rev A	09/09/20
Junction Detail	103	09/09/20

**Approved by**

Name	Designation	Signature
Ian Aikman	Chief Planning and Housing Officer	

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

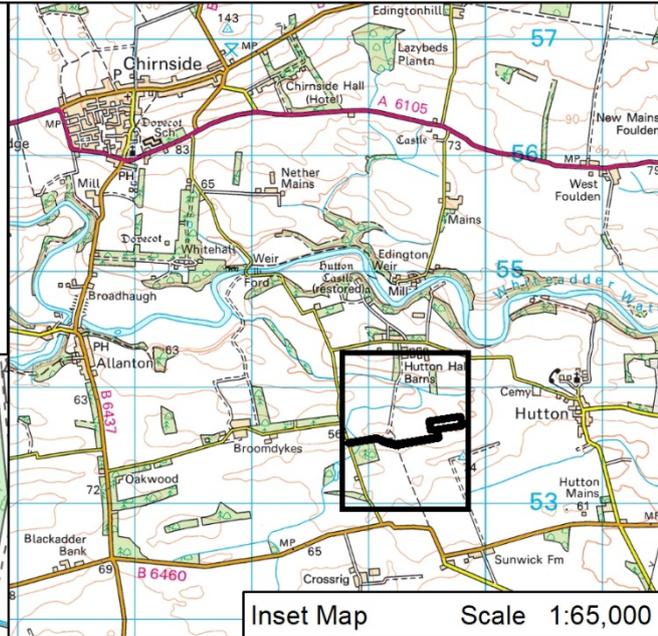
**Author(s)**

Name	Designation
Paul Duncan	Assistant Planning Officer

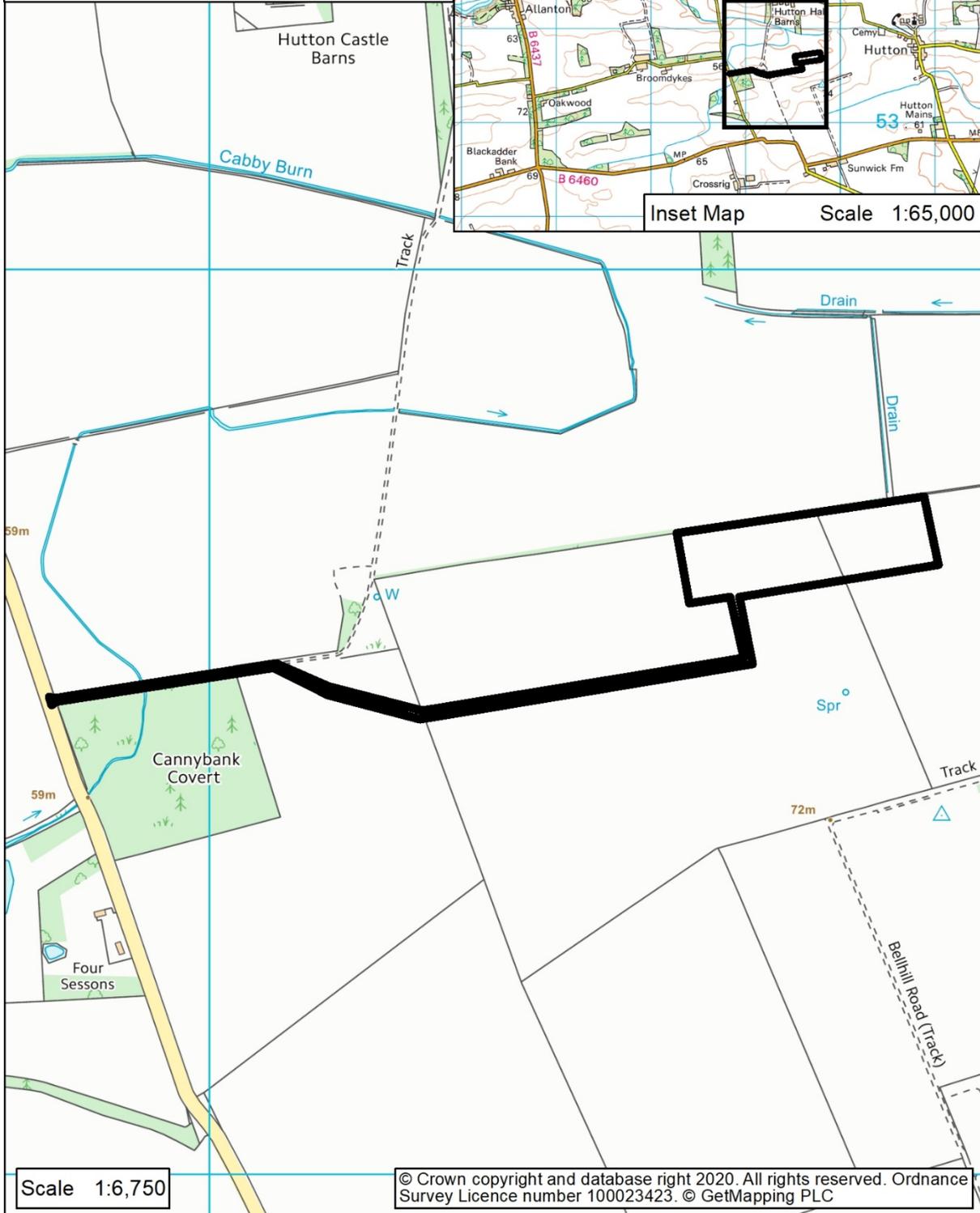


20/00347/FUL

Hutton Hall Barns  
Hutton



Inset Map Scale 1:65,000



Scale 1:6,750

**SCOTTISH BORDERS COUNCIL**

**PLANNING AND BUILDING STANDARDS COMMITTEE**

**5 OCTOBER 2020**

**APPLICATION FOR PLANNING PERMISSION**

**ITEM:** REFERENCE NUMBER: 20/00470/FUL

**OFFICER:** Paul Duncan  
**WARD:** East Berwickshire  
**PROPOSAL:** Erection of poultry building and associated works (Shed 6)  
**SITE:** Hutton Hall Barns, Hutton, Scottish Borders  
**APPLICANT:** MacLean Eggs Ltd  
**AGENT:** Hodgson And White Ltd

**PLANNING PROCESSING AGREEMENT:** A PPA is in place for the application which runs to Monday 5 October 2020. The PPA provides for possible extension to Monday 2 November 2020 in the event Members wish to visit the site prior to determination.

**SITE DESCRIPTION**

The proposed site is situated in rolling arable farmland between the Berwickshire villages of Hutton and Allanton to the east and west respectively, and between the hamlet of Hutton Castle Barns to the north and Sunwick Farm to the south.

The site is located to the far west of a large, sloping, north-facing arable field. The site slopes down gently from south to north and west to east. The proposed development would be positioned roughly midway down the host field. The field is bound by hedgerow and mature trees on all sides. The southern boundary roughly marks a gentle ridge, the northern boundary a low point in the landscape.

The proposed development would be distant to any neighbouring dwellinghouse, watercourse, footpaths or public road. The nearest dwellinghouse is 'Four Seasons' to the west of the proposed site at a distance of around 400m. The village of Hutton is over 1km from the site. The village cemetery is detached from the village also around 1km away. The nearest public road is the minor road serving Hutton Castle Barns where it passes 'Four Seasons'. This road connects Hutton Castle Barns with the B6460 to the south and Hutton to the east.

The surrounding area hosts numerous large scale poultry buildings which have been built in more prominent locations over recent years. To the north-west, towards the public road, the development referred to by the applicant as Shed 4 is close to completion following planning approval last year. To its north, Shed 3 is now operational following planning approval on appeal to the Scottish Ministers in 2018. Further to the north-west, Sheds 1 and 2 sit west of Hutton Castle Barns hamlet. Other earlier poultry developments are also located to the east and north-east of the hamlet.

The proposed building would be located at a significant distance from the Cabby Burn, which meanders through the surrounding fields before discharging into the Whiteadder Water roughly a mile from the site.

## PROPOSED DEVELOPMENT

A single poultry building would house 32,000 free-range birds for the purpose of free-range egg production. The proposed building would have a footprint of 149m by 29m, a ridge height of 7m and an eaves height of less than 3m. The building would be of steel portal frame construction, finished in juniper green steel cladding. A large flat site would be created to accommodate the building. Hardstanding would be formed around the building.

Similarly to the previous sheds, ventilation would be computer controlled and provided by gable wall fans and 40 exhaust air chimneys and fresh air inlet chimneys on the roof. 9m high feed bins would be sited on the north side of the building. The south-facing roof of the building would host a large array of PV panels. The building would also house a staff toilet. Surface water would be directed to three Sustainable Urban Drainage System (SUDS) basins with outfall to existing field tiles. A short new access track would connect the building to tracks proposed under the separate planning application 20/00347/FUL, also under consideration at the October Planning & Building Standards Committee meeting.

## PLANNING HISTORY

There is no planning history at the proposed site. As noted above, poultry developments have been approved previously in the locale and this history is significant to the consideration of this application. There are three distinct clusters of these developments, which are grouped accordingly and detailed below. In addition, and as mentioned above, planning application 20/00347/FUL is also under consideration for a further poultry building nearby, to the north-east of the proposed site.

### East and North East of Hutton Castle Barns hamlet

- 06/00326/FUL - Mobile Poultry Unit. Approved March 2006 (time limit condition modified by approval of 07/01741/FUL).
- 07/01752/FUL - Erection of Mobile Poultry Unit etc. Approved October 2007.
- 08/02047/FUL - Erection of Mobile Poultry Unit etc. Approved March 2009.
- 10/00036/FUL - Erection of Poultry Unit etc. Approved May 2010.
- 14/01347/FUL - Siting of Mobile Poultry Unit. Approved February 2015.

### West of Hutton Castle Barns hamlet

- 15/01173/FUL – Shed 1 - Erection of poultry building etc. Approved by the Planning and Building Standards Committee in February 2016.
- 16/01430/FUL – Shed 2 - Erection of poultry building etc. Approved by the Planning and Building Standards Committee in March 2017.

### South of Hutton Castle Barns hamlet

- 17/00623/FUL – Shed 3 - Erection of poultry building and associated works. Refused by the Planning and Building Standards Committee November 2017 as contrary to LDP policies ED7 (Business, Tourism and Leisure Development in the Countryside), ED10 (Prime Quality Agricultural Land), HD3 (Residential Amenity) and EP1 (International Nature Conservation Sites and Protected Species). Approved on appeal to the Scottish Ministers in November 2018. Now operational.
- 18/01620/FUL- Shed 4 - Erection of poultry building and associated works. Approved by the Planning and Building Standards Committee November 2019. Nearly completed.
- 20/00347/FUL - Shed 5 - Erection of poultry building, upgrade of access junction, formation of access road, and associated works. Pending consideration.

## REPRESENTATION SUMMARY

Objections were received from 4 households. The issues raised are summarised below:

- Overprovision
- Overdevelopment/ impact on the character of the area; poultry developments are encircling Hutton Castle Barns
- Should be treated as a single application with applications for Shed 5
- Application should be considered in conjunction with existing applications for a farm should and for Shed 5
- Industrial scale development
- Incompatible with the character of the area
- The community bears the cost in terms of traffic, pollution and disturbance
- Reference to the development as shed 6 is misleading as the true number is higher
- The maps do not show the full extent of building on the farm
- Traffic
- Road safety
- The Transport Statement does not cover the large volume of traffic involved in construction
- Landscape and visual impact, including cumulative impact/ lack of mitigation
- Not sustainable development
- Proximity to watercourse and potential impact on Blackadder/ Tweed
- Cumulative environmental impact
- Noise impact
- Odour
- It is not appropriate for the application to be introduced when there are no community forums or opportunities to discuss the application due to the Coronavirus
- What further development is proposed?

Six representations were received from members of the public or local businesses in support of the application. These detailed ways in which the applicants support local business, local food supplies and local employment. Comments were also made regarding the importance of the service the farm provides, the good management of the existing developments, and the absence of odour or traffic close in the area.

An anonymous letter was also received.

All representations can be found in full online at the Council's *Planning Portal*.

## APPLICANTS' SUPPORTING INFORMATION

The applicant submitted the following supporting information:

- Supporting Statement
- Ecological Impact Assessment
- Operational Plan
- SCAIL Report
- Transport Statement
- Species Protection and Mitigation Plan for Otter, Badger & Breeding Birds

## **DEVELOPMENT PLAN POLICIES:**

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

PMD1: Sustainability  
PMD2: Quality Standards  
ED7: Business, Tourism and Leisure Development in the Countryside  
ED9: Renewable Energy Development  
ED10: Protection of Prime Quality Agricultural Land and Carbon Rich Soils  
HD3: Protection of Residential Amenity  
EP1: International Nature Conservation Sites and Protected Species  
EP2: National Nature Conservation Sites and Protected Species  
EP3: Local Biodiversity  
EP7: Listed Buildings  
EP8: Archaeology  
EP10: Gardens and Designed Landscapes  
EP13: Trees, Woodlands and Hedgerows  
EP15: Development Affecting the Water Environment  
EP16: Air Quality  
IS7: Parking Provision and Standards  
IS8: Flooding  
IS9: Waste Water Treatment and SUDS

## **OTHER PLANNING CONSIDERATIONS:**

- Biodiversity Supplementary Planning Guidance 2005
- Landscape and Development Supplementary Planning Guidance 2008
- Local Biodiversity Action Plan Supplementary Planning Guidance 2001
- Renewable Energy Supplementary Guidance 2018
- Sustainable Urban Drainage Systems Supplementary Planning Guidance 2020
- Trees and Development Supplementary Planning Guidance 2008
- Waste Management Supplementary Guidance 2015
  
- HES: Managing Change in the Historic Environment: Setting 2020
- Planning Advice Note 39: Farm and Forestry Buildings
- Planning Circular 4/1998: The Use of Conditions in Planning Permissions
- Planning Circular 1/2017: Environmental Impact Assessment regulations
- River Tweed Special Area of Conservation (SAC) and Site of Special Scientific Interest (SSSI) - Advice for developers and competent authorities when considering projects which could affect the River Tweed SAC and SSSI
- Scottish Planning Policy 2014

## **CONSULTATION RESPONSES:**

### **Scottish Borders Council Consultees**

**Archaeology Officer:** There appears to be no definitively archaeological cropmarks recorded within the proposed site, but geological cropmarks seem to occur across the southern part of the field. It is possible that this is misleading, for all archaeological remains need not produce cropmarks. It would be preferred that an archaeological watching brief were carried out in this area in case any archaeological finds, features or deposits. Previous details were submitted by the applicants with regard to Sites 3 and 4; if similar documentation can be submitted for a similar cultivation regime in this field, then for this

application the needs for a watching brief may be removed.

**Ecology Officer:** No objection, subject to conditions to secure Species Protection Plan for otter, badger and breeding birds and a Construction Method Statement to protect waterbodies.

The Phase 1 habitat survey identified that arable fields will be the main habitat affected, of low biodiversity value. The Cabby Burn is approximately 330 m to the north and there is no obvious drainage connectivity from the proposed new shed site to the burn. Mitigation should be required to protect the water environment.

A survey for otter, badger and breeding birds was carried out. An otter spraint was found approximately 250m from the proposed shed. No other signs of otter were recorded. A badger survey recorded three additional setts, not previously recorded in surveys for early sheds at the farm. All appeared to be outlier setts. The report recommends that the access track is relocated to avoid a badger sett. A range of typical farmland bird species were recorded, including a number of red-listed species: grey partridge, skylark and yellowhammer. Barn owl was also recorded (Schedule 1 species). Whilst significant impacts on populations of these species are unlikely to arise, there is potential for disturbance and damage during construction. A condition is recommended to protect otter, badger and breeding birds during construction.

**Environmental Health:** No objection. As the nearest sensitive dwelling is over 700m from the site, the potential for adverse amenity impacts is low.

Poultry sheds have the potential to give rise to issues that can adversely impact nearby residential amenity including odour, noise, insects, vermin, local air quality and light nuisance. The applicant has submitted an Operational Plan that adequately demonstrates how the Poultry Unit will be managed to minimise the likelihood of these issues occurring.

The applicant will require to vary their current PPC license with SEPA which will subsequently entail ongoing monitoring of odour, noise, dust and ammonia emanating from the site.

The poultry sheds will likely contain ventilation machinery that will run continuously. This machinery can produce noise that may impact on nearby residential amenity. As such, it is recommended to use conditions to ensure the noise levels are controlled and machinery maintained.

It is noted that development will be serviced by public mains water supply and there will be new septic tank with soakaway for the toilet.

**Flood Risk Officer:** No objection. SEPA flood risk mapping indicates that the site is not at risk from a flood event with a return period of 1 in 200 years. The road and any other hard surfaces should be attenuated to the existing greenfield run-off rates or 5l/s/Ha, whatever is lower, to ensure that there is no increased risk to downstream receptors. The road and any other hard surfaces should be attenuated to the existing greenfield run-off rates or 5l/s/Ha, whatever is lower, to ensure that there is no increased risk to downstream receptors.

**Landscape Officer:** No objection, subject to conditions. The proposed location for Shed 6 lies on ground rising in a southerly direction. Land form, woodland blocks, hedge and tree boundaries obscure most views from the road and path networks and residences in the area limiting the visual impacts of this development. However, there may potentially be some visibility of the development in the distant views at 1km or more e.g. from Hutton and from Crossrig on higher ground to the south west, partially obscured by landform. To the north from Hutton Castle Barns receptors may experience views of the development, particularly in winter months, partially filtered by the mature tree boundary north of the site at distances of 800m or more. To the west receptors at the 'Four Seasons' property are likely to have the most adverse

views of the upper part of Shed 6 at approximately 400m distance, partially filtered by tree and hedgerow boundary treatments. This latter scenario may be extended for a short distance south from 'Four Seasons' along the minor road. For a short distance north beyond the woodland block close to sheds 3 and 4 there may be some visibility between intervening woodland blocks although receptors are likely to be few.

The landform, woodland blocks, tree and hedgerow features afford this site considerable containment although to a lesser degree than for shed 5. Of concern is the risk posed to the western tree boundary by this development. This mature tree feature is valuable for its potential to aid mitigation of the proposal and if damaged may lead to an opening up of the site to view from the west and increase any adverse effects. The applicant has proposed to position the building more than 15m from the western boundary to protect the tree resource. A Tree Protection Plan (TPP) and Arboricultural Method Statement (AMS) should be submitted for both sites (sheds 5 and 6) to confirm the measures to be taken on site to ensure the protection of the trees during the works.

Subject to conditions, Landscape support this further application for the erection of a poultry shed. However it should be noted that any future proposals of this nature within the locale will risk the dominant feature of the landscape becoming large sheds, towers, access tracks and associated works and could be considered landscape character changing, and therefore unacceptable due to the cumulative effects of these developments across the landscape.

**Roads Planning:** No objections in principle to this proposal. The increase in traffic associated with the proposal can be mitigated by the addition of a further passing place on the minor public road. The vehicular access to the site will also be able to double up as a passing place. Only one passing place will be required for sheds 5 and 6, however as neither have been determined or implemented yet a condition for a passing place will be required on both consents should they be approved. This shed and shed 5 (under consideration) are located in close proximity to the existing sheds 3 and 4 and in terms of minimising trips on the public road network RPS require an internal road be provided between the 4 sheds.

### **Statutory Consultees**

**Scottish Environment Protection Agency (SEPA) - first response:** No objection. SEPA have undertaken a SCAIL assessment for shed 6 at the same time as the assessment of the additional information submitted in relation to shed 5. Whilst the inputs and results differ from those submitted for shed 5, the outcome, based on the information available, is that 6 sheds (5 existing and 1 proposed) do not breach the NCP rules for ammonia, acid and nitrogen deposition and concentration at designated sites within 10km of the farm. In this context, the proposed sixth shed would be consentable in principle. The applicant should note, however, that SCAIL based on actual data for all six sheds should still be run for and accompany any application to vary the PPC permit.

**NatureScot (formerly known as Scottish Natural Heritage):** No comments as the proposals do not meet the criteria for consultation.

**Hutton and Paxton Community Council:** "Once again this application contravenes Planning Policy EH 10, Protection of Prime Quality Agricultural Land by resulting in the permanent loss of the latter under concrete and hardcore. The Policy is unambiguous and makes no room for exceptions. Despite this, crop producing fields lost due to shed building currently amount to over 160 acres.

The application is also contrary to Policy PMD 4 again with no evidence of ambiguity. The extent and scale of this growing development of enormous sheds has prejudiced both the character and visual cohesion of the surrounding area and the adjacent hamlet. Hutton Castle

Barns is a small residential village independent of the two egg producing businesses; it is not in any way part of the latter and should not be seen as such. HPCC, representative of the community, hope and trust that planning officials will view it as such. Allowing a hamlet with its own separate identity to be swallowed up under this development would be shameful and unacceptable if allowed.

We recognise the importance and sanctity of SBC's Planning Policies, painstakingly prepared and approved by both SBC and Government, therefore it is the only lead from which we can draw guidance. However, there is now a growing concern that decisions taken previously on shed applications: nine approved (taking both McLean Eggs and Border Eggs into account) plus two pending, thereby totalling 11, have not adhered to the policies quoted above. This now brings the importance of SBC's Planning Policy into disrepute. Local residents have all but given up commenting for this very reason. We cannot put this to one side. Hutton & Paxton Community Council therefore objects to this application."

### **KEY PLANNING ISSUES:**

The key planning considerations are:

- Impacts on the character and amenity of the surrounding area, including but not limited to residential amenity impacts, taking account of cumulative impacts in combination with existing poultry developments;
- Landscape and visual impacts of the proposed poultry building and associated works, including cumulative impacts and impacts on trees;
- Biodiversity impacts, including impacts to protected species and designated sites, and including cumulative impacts.

### **ASSESSMENT OF APPLICATION:**

#### **Policy Principle**

The principle of these proposals can be assessed against the Council's Local Development Plan policy ED7 (Business, Tourism and Leisure Development in the Countryside). Policy ED7 aims to enable appropriate employment generating rural development whilst protecting the environment. The policy is supportive of development that would be used directly for agricultural operations or for uses which by their nature are appropriate to the rural character of an area. The policy requires such development to respect the amenity and character of the surrounding area and have no significant adverse impact on nearby uses, particularly housing.

Previously, the Planning and Building Standards Committee decision to refuse Shed 3 as contrary to LDP policy ED7 was appealed successfully to the DPEA who granted approval for that development. The Reporter concluded that in principle, poultry developments satisfy the overarching requirements of Policy ED7, which is not worded so as to preclude large scale agricultural developments, provided adverse impacts can be avoided or mitigated.

The proposed development would be sited at a significant distance to neighbouring residential properties, public roads, public footpaths or watercourses. In this regard the proposed site is considered to be greatly more suited to this type of development than more recent, more prominent application sites which were also located very close to the Cabby Burn. It is understood that the host fields have been bought recently by the applicants, presumably for this reason. More recent developments had required significant mitigation measures to bring them to a satisfactory position.

Detailed consideration of landscape, visual and residential amenity impacts is set out further below, under the relevant section. In principle however, it is considered that further poultry development could be accommodated at this location whilst respecting the character and amenity of the surrounding area, as Policy ED7 requires. Nor would neighbouring uses (mainly arable farming) be compromised. The supporting statement submitted with the application also confirms that the development would generate full time employment.

Notwithstanding the above, development of this scale can magnify impacts associated with more modest agricultural developments, particularly where cumulative impacts may arise, and requires very careful consideration. These impacts are considered further below.

## **Landscape and Visual Impacts**

### *Policy Context*

The proposed site is not located within or near to an area designated for landscape quality or special natural landscape protection. Landscape impacts must therefore be assessed against the LDP's standard policies for landscape protection, including PMD1 (Sustainability) and PMD2 (Quality Standards). Policy PMD1 states that landscape protection is a fundamental principle which underpins all the LDP's policies. Policy PMD2 requires all new development to integrate with its landscape surroundings and encourages the incorporation of appropriate landscape works (including screen planting where necessary), to help integration with surroundings and the wider environment. Policy ED7 criterion (e) specifically notes that rural business proposals must also satisfy Policy PMD2. Policy HD3 (Protection of Residential Amenity) states that any development will be assessed against visual impact effects on existing residential areas. Policy EP13 (Trees, Woodlands and Hedgerow) is also relevant.

### *Key Public and Private Visual Receptors*

The proposed site is located roughly midway down a north-facing arable field. It is not prominent in the public realm. It may be distantly visible from a small number of properties in the village of Hutton. It is not visible from the village cemetery, and views from local public roads are distant and filtered by trees and hedging. Farm tracks to the south-east do not form part of any recorded access routes or rights of way, but may be used by the public, and from these the development would be more clearly visible.

In terms of private visual receptors, the gable of the proposed building may be partially visible across a significant distance from the dwellinghouse known as 'Four Seasons'. It would also be visible from the three dwellinghouses south of the public road at Hutton Castle Barns. Two of these houses are understood to be in the ownership of the applicants. The remaining dwellinghouse, Hutton Castle Barns, would be the other most affected private visual receptor.

### *Assessment of Landscape and Visual Impacts*

Modern farm buildings are a common and established feature of the Borders landscape and their design is now fairly standardised. The proposed building would feature many of the familiar characteristics of such buildings: a low pitched roof; profiled sheet cladding; and a matt juniper green finish. The scale, and particularly the length of these buildings, are great and the fit of such buildings in the receiving landscape requires careful attention. The proposed feed bins, which are greater in height than the building itself, are also a key consideration.

The proposed development would introduce a further large building into the landscape but the siting of the building avoids the need for mitigation as extensive as that agreed for Sheds 3 and 4. This development would not be prominent from any public road, though may be visible in long views. Landform and woodland blocks will screen most views from the public road. On

account of the greater visibility of this site compared to the neighbouring Shed 5 application, the outlines of a tree planting scheme have been agreed to the north, west and south of the building that in time, would serve to screen the building further. This scheme can be further refined via condition. In the immediate term, views from the west and north-west would be filtered by existing hedges and mature hedgerow trees, particularly in summer. The Landscape Officer has highlighted the importance of these trees both in their own right and for their screening value. A 15m separation distance has been agreed between the proposed development and these trees and further tree protection measures will be secured by condition. The infilling of the hedge and hedgerow trees has also been agreed with the applicant.

The dwellinghouse known as 'Hutton Castle Barns' would also be a private visual receptor. The proposed site is located over 800m from this property. The development would be visible from this property in combination with the previous developments known as Sheds 3 and 4, which are now built. Graded bunding already screens both these buildings to eaves height or higher. In time, they should be screened entirely from this private view by trees already planted for Shed 3 and which will be planted shortly for Shed 4. Shed 6 would remain partially visible in the medium term, until planting matures, but at a significantly greater distance, and views would be filtered by the existing mature hedgerow trees.

Whilst the planning system does not seek to protect the views enjoyed by private residential properties, visual effects are considered. At the distances involved, the visual impact of the proposed development would be negligible. The applicant went to significant lengths to screen Sheds 3 and 4, putting forward bunding proposals as part of the application proposals, but it is not the case that modern farm buildings must be entirely concealed from any public or private view, even those of the scale involved here.

PV panels would be installed on the south-facing roof of the proposed building. PV panels are a prevalent form of renewable energy which planning policies are broadly supportive of. Given the relatively discreet siting of the proposed building, there are no concerns with this.

#### *Landscape and Visual Impacts - Conclusion*

Overall, with tree planting in and around the proposed site, the proposed development would be sufficiently well sited to avoid significant adverse landscape and visual impacts. Cumulative impacts, including this development in combination with the Shed 5 development if it were approved, are acceptable with the mitigation that has been secured. Subject to tree protection and hedgerow tree and hedge planting conditions, Policies PMD1 (Sustainability), PMD2 (Quality Standards) and Policy ED7 criterion (e) are considered to be satisfied. Policy HD3 (Protection of Residential Amenity) is satisfied on a similar basis in terms of visual effects from residential properties. Policy EP13 (Trees, Woodlands and Hedgerows) is also met.

#### **Ecology and Natural Heritage**

The proposed development would have the potential to affect ecological interests of local, national and international importance during the construction and operational phases of development. There is also potential for cumulative impacts in combination with Sheds 1-4, the proposed Shed 5, and other development within the surrounding area. An Ecological Impact Assessment (EclA) was submitted by the applicant, informed by a Preliminary Ecological Appraisal.

#### *Designated Sites*

The proposed building would be located at a significant distance from the Cabby Burn. The burn connects to the Whiteadder Water which in turn is a tributary to the River Tweed and forms part of the latter's Special Area of Conservation (SAC) and Site of Special Scientific

Interest (SSSI) designations. The qualifying interests for the SAC include otter, Atlantic salmon, and river lamprey. The SSSI is notified for beetles, flies and plants.

Local Development Plan policy EP1 (International Nature Conservation Sites and Protected Species) aims to give designated Natura sites (including SACs) protection from potentially adverse development. Development which would have a likely significant effect on a Natura site is only permissible where an Appropriate Assessment has demonstrated that it would not adversely affect the integrity of the site or there are no alternative solutions and there are overriding public interest reasons.

For SSSIs, protection is provided by Local Development Plan policy EP2 (National Nature Conservation and Protected Species). This states that developments which would be likely to have a significant adverse effect on a SSSI will not be permitted unless the development will not adversely affect the integrity of the site and any harm would be outweighed by benefits of national importance.

More broadly, Local Development Plan policy EP15 (Development Affecting the Water Environment) states that proposals which would result in a significant adverse effect on the water environment through impacts on its natural or physical characteristics will be refused. This policy applies to all watercourses and wetlands.

The applicant has verbally confirmed that field tiles close to the proposed site connect to the Cabby Burn. SUDS systems for the development would discharge to the field tiles. There is therefore connectivity to the designated sites via field tiles and the Cabby Burn.

The main risks to the designated sites would mainly relate to potential pollution via the Cabby Burn during construction or during the operational phase of the development. Contamination could be caused by dust, pollution spills (e.g. chemicals, oils or concrete), or silt, sediment or surface water run-off. Ammonia associated with manure can also affect water quality.

In terms of the construction period, mitigation is proposed in the form of a Construction SUDS system which would ensure surface water is discharged to the field tiles following treatment, preventing risk of contamination or silt-laden run-off. Sheds 3 and 4 were approved subject to similar requirements, and an agreed system was approved by condition, in consultation with SEPA. Whilst SEPA have not requested a similar condition on this occasion, a condition to this effect is recommended and it is envisaged that SEPA would be consulted on any proposals emerging, as SNH have sought. For Sheds 3 and 4, a Construction Environmental Management Plan (CEMP) was also agreed in advance of development commencing. This outlined a package of measures to prevent contamination to the burn and the construction phase was completed in line with these measures. This approach has been successful and it is anticipated that a similar scheme can be agreed for this development. The Construction SUDS scheme would be agreed as a component of the wider CEMP and agreed under a single condition.

SEPA would take the lead regulatory control role during the operational phase via the Pollution Prevention and Control (PPC) permit process. A range of environmental effects would be monitored and controlled via the PPC process and its well-established inspection regime. A PPC permit is in place for Sheds 1-4. The applicant has confirmed that they will be seeking a variation of this permit to cover Shed 6. SEPA have confirmed that the development is consentable in principle under the PPC process following a SCAIL (Simple Calculation of Atmospheric Impact Limits) assessment which assesses the amount of acidity, nitrogen or sulphur deposited onto a habitat.

NatureScot (formerly SNH) were consulted but declined to comment on the basis that the application does not meet their consultation thresholds. Development which affects SAC or

SSSI designated sites would normally meet NatureScot consultation thresholds but it is assumed NatureScot do not believe the development would do so.

SEPA were also consulted and advise that the development would need to comply with CAR General Binding Rule 10 to ensure harm does not result from discharges to the water environment during the construction phase. They note this may require control via planning condition. The aforementioned CEMP condition would address this.

The applicant proposes an Operational SUDS system for the operational phase which would be designed by consultants at the Scottish Agriculture College. Previous sheds required the agreement and implementation of operational SUDS in consultation with SEPA. This approach is tried and tested and a similar condition is recommended.

### *Protected Species*

LDP policies EP1 and EP2 also aim to protect European Protected Species including otters, and nationally protected species such as badgers.

The proposed building would be located in arable farmland with low biodiversity value. Badgers are active within the wider area as may be otter. Red-listed farmland bird species have also been recorded in surrounding farmland. Appropriate mitigation during the construction phase can be secured via an already agreed Species Protection Plan for badger, otter and breeding birds.

Subject to the delivery of the identified mitigation requirements via the recommended planning conditions, the proposals shall satisfy Local Development Plan policies relating to protected species.

### *Ecology and Nature Heritage - Conclusion*

Taking into account potential cumulative effects, including those that may arise should the pending Shed 5 development be approved, and subject to compliance with the recommended conditions, the proposed development would be considered to satisfy policies EP1 (International Nature Conservation Sites and Protected Species), EP2 (National Nature Conservation and Protected Species), EP3 (Local Biodiversity and EP15 ((Development Affecting the Water Environment).

A Habitats Regulations Appraisal was carried out under the Conservation (Natural Habitats, &c.) Regulations 1994 (aka Habitat Regulations) on account of the connectivity to the European designated sites via local drainage and the Cabby Burn. Subject to conditions, the proposed developments (including the proposed Shed 5) either alone or in combination with the other sheds at this location, will not have an adverse effect on the integrity of the River Tweed SAC.

The proposed Shed 6 development is considered to qualify as Schedule 2 development under The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017. The proposed development has been screened and is not considered to constitute environmental impact assessment development. No Environmental Statement was therefore required.

### **Neighbouring amenity**

Policy HD3 (Residential Amenity) of the LDP states that development that is judged to have an adverse impact on the amenity of residential areas will not be permitted.

The nearest dwellinghouse would be 'Four Seasons' which lies roughly 400m to the west of the proposed site. Further dwellinghouses are located more distant from the site including at Hutton Castle Barns and Hutton.

A broad range of amenity impacts can be considered and assessed against Policy HD3. Given the distances to neighbouring properties, there are no concerns in terms of the usual residential amenity considerations of privacy and access to light/ sunlight. Impacts which can affect residential areas over greater distances do however require close consideration. These include nuisance impacts such as noise, odour and dust. Visual impact issues have been assessed above under 'Landscape and Visual Impacts'.

Members will be aware that the free-range poultry business is heavily regulated and modern poultry buildings are set up to minimise impacts on neighbouring dwellings. The proposed building would incorporate many of the latest technologies, including computer controlled climate system connecting to fans and chimneys which would help reduce the amount of noise, odour and dust emanating from the building.

An Operational Plan has been submitted which sets out a suite of detailed operational procedures and practices that the applicant would follow to minimise nuisance. Previously approved poultry developments on this farm are required to operate to similar plans. The Environmental Health team are satisfied with the Operational Plan and the practices set out within the Plan would be secured by condition. Given the distance to neighbouring residential areas, Environmental Health consider potential for adverse amenity impacts to be low. In addition, the development would be subject to the aforementioned PPC permit and inspection regime.

Environmental Health also recommend further conditions which are commonly used to control noise from plant and machinery. Whilst the proposed poultry building would be located at a significant distance from the nearest residential properties, these conditions are nonetheless considered to be appropriate and would give the Planning Authority suitable control over potential noise effects arising from the operational phase of development.

It is acknowledged that the construction phase of these developments affects local amenity, particularly associated vehicle trips. Some degree of disturbance can be expected as a result of almost any development, regardless of the scale. This is not a reason to oppose the proposed development.

Similarly to previous applications, a condition would be attached to control the hours of deliveries and collections which should protect the night-time tranquillity which local residents can reasonably expect to enjoy.

### **Road safety, access and parking**

Local Development Plan policy PMD2 requires developments to have no adverse impact on road safety and adequate vehicular access.

#### Vehicular Access

The separate pending Shed 5 application includes proposals to upgrade an existing vehicular access junction with the public road and form a new connecting access track. This application proposes to connect to the new access track a short distance north of the proposed Shed 6 building. RPS have confirmed that the junction upgrade will be required prior to the occupation of this development. A condition is attached to secure this. As well as reducing the landscape impact of the development, the use of an existing vehicular access is welcomed in road safety terms as it avoids the addition of a new junction with the public road.

## Road Safety and Traffic

The applicant has provided a detailed Transport Statement which sets out the number of vehicle trips expected during the operational stage of the development. One additional load of feed would be delivered to the site per week. There are currently 14 egg collection lorry movements per month, so this would increase by around 4. Manure would be collected by trailer twice per week and moved to the manure store located between the proposed building and the public road - this would avoid public road network entirely. In addition, there would be the flock cycle rotation every 14 months but this would only involve a further 4 lorry movements. Staff movements and miscellaneous additional trips can also be expected. The anticipated increase in traffic would be modest considering the overall scale of the development.

RPS are satisfied that the road network can accommodate this level of additional traffic with the addition of a single further passing place. This is in addition to the 3 previous passing places and road widening provided at the time of earlier poultry developments and does not include access widening which can also be used as passing places. As noted above, a further proposed poultry building [known as Shed 5] is also currently pending consideration. RPS require a single further passing place if either or both developments are delivered. The passing place can be secured by planning condition. The wording of the proposed condition provides flexibility for the Planning Authority and applicant. In the event that Shed 5 is approved and a passing place is delivered under that consent first, a second passing place would not be pursued under the proposed condition for this application. This can be communicated by means of an informative.

To reduce vehicle movements to and from the public road, Roads Planning have also sought provision of an internal road between sheds 3 and 4, and the proposed development. This can also be secured by planning condition.

The effect of the construction phase of the development is a separate consideration. As noted above, it is acknowledged that this phase can affect local amenity. It will also generate traffic. This is the case with many rural developments although RPS have raised no concerns with regards to construction traffic.

It should be noted that maintenance of the public road is the responsibility of the Council and would not be for the applicant to address or a reason to refuse the application. Responsibility for enforcing speed limits rests with Police Scotland and is not a relevant consideration.

Overall, subject to the delivery of a single further passing place and the internal track link, the public road network is considered capable of accommodating the trips associated with the proposed development, both during construction and during the operational phase, and taking account of cumulative impacts.

## **Access**

There are no Core Paths or recorded Rights of Way within the surrounding area. Visual impact considerations from informal paths and farm tracks have been assessed above.

## **Built Heritage and Archaeology**

### *Setting of Listed Buildings*

Policy EP7 (Listed Buildings) states that the Council will support development proposals that conserve, protect and enhance the setting of Listed Buildings.

The character of the Hutton Hall Barns building group is defined to a significant extent by the category 'C' listed 19<sup>th</sup> century farm steading and associated former farm cottages that lie to the north of the public road serving the hamlet. Broomdykes is similarly characterised largely by its B listed farm steading. The distances and natural barriers between these buildings and the proposed site are significant, and there would be few if any viewpoints from which these buildings would be observed in combination with the proposed development. The setting of these buildings would be suitably protected.

### *Setting of Designed Landscape*

Policy EP10 seeks to safeguard the setting of sites listed in the Council's record of gardens and designed landscapes.

A historic designed landscape around the grounds of Hutton Castle is recorded within the Council's list of Designed Landscapes. Its southern boundary is the public road through Hutton Castle Barns. It is not recognised by Historic Environment Scotland. The distance to the site shall ensure the designed landscape's setting is not harmed.

### *Archaeology*

Policy EP8 states that development proposals which will adversely affect local archaeological assets will only be permitted if it can be demonstrated that the benefits of the proposal outweigh the heritage value of the asset. All proposals that adversely affect such an asset must include an acceptable mitigation strategy.

The proposed site for the 'Shed 5' development extends across part of a cropmark of potential archaeological significance which lies partially within the same field as the proposed 'Shed 6' site. There are no immediate archaeological interests within the proposed site and following decades of farming activities (including ploughing, subsoiling and stone removal) any archaeological finds are likely to have been disturbed. However, on a precautionary basis the Archaeology Officer suggests that a watching brief be carried out during groundworks. The applicant has agreed to this being covered by condition.

### **Prime Quality Agricultural Land**

Scottish Planning Policy defines Prime Agricultural Land as being within Class 1, 2 or 3.1 in the James Hutton Institute's 'Land Capability for Agriculture' records. Scotland's Environment Map shows that the site is identified within Class 3.1, meaning it is capable of producing consistently high yields of a narrow range of crops or moderate yields of a wider range. This is the least productive of the three classes.

LDP policy ED7 (Business, Tourism and Leisure Developments within the Countryside) does not preclude the development of green-field land but seeks to tightly control such developments. Local Development Plan policy ED10 (Protection of Prime Quality Agricultural Land and Carbon Rich Soils) seeks to ensure our finite agricultural land resource is retained for farming and food production. The policy states that development which results in the permanent loss of prime agricultural land will not be permitted unless the land is allocated for development; the development meets an established need and no other site is available; the development is small scale and directly related to a rural business. The policy does not state that each of these criteria must be met, and bears some similarity to the criteria listed at Paragraph 80 of Scottish Planning Policy, which states that meeting any of the three criteria is acceptable.

The Reporter's appeal decision in relation to Shed 3 judged the development not to be out of step with Policy ED10, and that the overall loss of agricultural land would not be significant.

The same principles apply to this development, and it is deemed that there is an established need for the development based on apparent demand. The applicant's supporting statement advises that a contract is available for the eggs that would be produced from this development and there is known to be strong consumer demand for free-range eggs. The supporting statement notes that many major supermarket chains plan to go "cage-free" by 2025. This shift has in turn created a demand for large poultry units with associated outside space. Free-range developments such as this cannot be contained in the more concentrated arrangement of traditional farm steadings and require a rural location. There is no obvious alternative site that would avoid the loss of prime agricultural land. The cumulative loss of land over multiple applications is a relevant consideration would not change this position.

## **Flooding**

The proposed site is not located within an area of known flood risk. The Flood Risk Officer has no objections but does require the development to attenuate at set rates to avoid risk to downstream receptors. The applicant has agreed to this. This assurance can be secured by planning condition, subject to which, the proposals shall satisfy policy IS8 (Flooding).

## **Services**

Surface water would be handled by Construction and Operational SUDS schemes. These would be designed by consultants from the Scottish Agricultural College. Discharge from the single staff toilet would be treated by septic tank with discharge to land via a soakaway. Poultry manure would be removed from the proposed building twice a week by trailer for temporary storage at the nearby manure store prior to sale to third parties for use elsewhere. For water supply, the applicants intend to connection to the public mains.

## **Other Matters**

Concerns regarding over-provision of poultry units within the vicinity are noted, but the planning system does not seek to control market supply of goods and it is for the applicant to satisfy themselves that suitable demand exists. The applicant's supporting statement advises that a contract is available for the eggs that would be produced from this development.

At the outset of this application, objectors proposed that the application should be treated as a single development together with the application for Shed 5 [20/00347/FUL]. The two applications were submitted separately, over a month apart. Due to delays resulting from restrictions arising from the Coronavirus pandemic the two applications have now reached the determination stage simultaneously. However, it remains appropriate to consider the two applications separately, on their own merits, taking account of any relevant cumulative impacts where necessary.

The elevation drawings for the building do not specify which gable elevation faces east/ west, and which elevation faces north/ south. A condition to control this was considered, but as either arrangement is acceptable, the condition is not unnecessary.

It is acknowledged that the applicant's numbering system for these developments does not reflect the full number of poultry buildings in the area. The numbering is understood to refer to the developments operated by separate businesses. This is a matter for the applicant. The extent of poultry developments within the area is set out within the planning history section of this report. There is no requirement for the plans within the application to show each of these developments. In any event, the applicant's numbering system itself infers that there are further poultry buildings in addition to those the plans do show.

An informative has been added to invite the applicant to consider pre-application discussions should any further applications for poultry buildings be envisaged.

## **CONCLUSION**

Subject to 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 AND HOUSING OFFICER:**

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

### Conditions

1. The development hereby approved shall not be carried out other than in complete accordance with the plans and specifications approved by the Planning Authority, unless otherwise agreed in writing by the Planning Authority.  
Reason: To ensure that the development is carried out in accordance with the approved details.
2. No development shall take place until the applicant has secured a programme of archaeological work in accordance with a Written Scheme of Investigation outlining a Watching Brief, unless otherwise agreed in writing by the Planning Authority. This will be formulated by a contracted archaeologist and approved in writing by the Planning Authority. Access should be afforded to allow investigation by a contracted archaeologist(s) nominated by the developer and agreed to by the Planning Authority. The developer shall allow the archaeologist(s) to observe relevant below ground excavation during development, investigate and record features of interest and recover finds and samples if necessary. Results will be submitted to the Planning Authority for review in the form of a Data Structure Report. If significant archaeology is discovered below ground excavation should cease pending further consultation with the Planning Authority. The developer will ensure that any significant data and finds undergo post-excavation analysis, the results of which will be submitted to the Planning Authority. All unless otherwise agreed in writing by the Planning Authority.  
Reason: The site is within an area where ground works may interfere with, or result in the destruction of, archaeological remains, and it is therefore desirable to afford a reasonable opportunity to record the history of the site.
3. No development shall commence until a Construction and Environmental Management Plan (CEMP) has first been submitted to and approved in writing by the Planning Authority in consultation with SEPA. The CEMP shall cover the periods of site clearance and preparation, the erection of the building hereby approved and the formation of associated tracks, and hard landscaping works. The CEMP shall include: the standards outlined in British Standard 42020 : 2013 – Biodiversity Code of Practice for Planning and Development; details of a Construction SUDS; and a method statement detailing measures to control sediment runoff during the period of construction to comply with General Binding Rule 10 of the Controlled Activities Regulations. Thereafter, construction works shall only be commenced and progressed in accordance with the approved details. The provisions of the approved plan shall be operated and maintained throughout the period of construction.  
Reason: To protect the Cabby Burn, the Whiteadder Water and the River Tweed from the adverse effects of sediment runoff during construction.

4. No development shall commence until an internal access track has first been provided between the existing Shed 4 development and the proposed site to a route that has first been agreed in writing with the Planning Authority. Thereafter, the farm track be retained throughout the lifetime of the approved development.  
Reason: To minimise trips on the public road network.
  
5. No development shall commence until a Scheme for Tree Protection has been submitted for the written approval of the Planning Authority. The Scheme shall include:
  - a) A Tree Protection Plan showing the alignment of protective fencing
  - b) An Arboricultural Method Statement that includes a specification for protective fencing which shall be compliant with BS5837:12
  - c) A Utilities and Drainage Plan showing any works within the tree RPAs.
 The development thereafter shall be implemented in strict accordance with the approved Scheme.  
Reason: To ensure that the trees to be retained will not be damaged during construction and to protect and enhance the appearance and character of the site and locality.
  
6. Prior to the commencement of development, a landscape scheme shall be submitted to and approved in writing by the Planning Authority. The Plan shall include:
  - a) Detailed proposals (including species, plant numbers and plant sizes) for the infilling of the hedgerow to the north-west, west and south-west of the proposed site with hedging and trees.
  - b) Detailed proposals (including species, plant numbers and plant sizes) for the tree belt trips to the north, west and south of the proposed building.
  - c) Detailed proposals (including species, plant numbers and plant sizes) for the infill planting of land between the manure store and the new access track.
  - d) A management plan for the new planting. The Plan shall include a 5 year programme for the on-going maintenance, replacement (as required) and protection of all planting, during the first five years of implementation.
  - e) A timescale for (a) to (c).
 The approved landscape scheme shall be carried out and maintained in accordance with the approved details and documentation which demonstrates compliance shall be submitted by the developer to the Planning Authority on an annual basis for a five-year period.  
Reason: To ensure that the landscape and visual impacts of the development hereby permitted are adequately mitigated and that planting is properly implemented and maintained.
  
7. Prior to the commencement of development:
  - a) details of materials to be used on all exterior surfaces of the development hereby permitted have been submitted to and approved in writing by the Planning Authority;
  - b) details of the design and siting of external food storage bins/ silos, water tanks and manure collection equipment/ hoppers have been submitted to and approved in writing by the Planning Authority; and
  - c) design proposals for the placement of photovoltaic panels and security lighting have been submitted to and approved in writing by the Planning Authority.
 Thereafter, the development shall be undertaken wholly in accordance with the approved details.  
Reason: To ensure that the landscape and visual impacts of the development hereby permitted are adequately mitigated.
  
8. The development hereby approved shall be carried out wholly in accordance with the *Species Protection and Mitigation Plan for Otter, Badger and Breeding Birds (Including provision for a pre-development Supplementary Survey and Mitigation Plan for Badgers and Breeding Birds)* document written by *Confluence Consulting* and submitted to the

Planning Authority on 8 September 2020 and dated 8 September 2020, unless otherwise agreed in writing by the Planning Authority.

Reason: To protect the ecological interest in accordance with Local Development Plan policies EP2 and EP3.

9. During construction and operation all vehicle movements to and from the development hereby permitted shall be within the hours of 07:00 to 22:00 on any day unless in cases of emergency.  
Reason: To safeguard the amenity of the area, including surrounding residential properties.
10. Prior to the occupation of the development hereby approved, the vehicular access junction with the public road shall be completed to a specification that has first been agreed in writing with the Planning Authority.  
Reason: To ensure adequate access to the site and to protect the integrity of the public road.
11. Prior to the occupation of the development hereby approved, a passing place shall be provided at an agreed location with the planning authority between the proposed site and the B6460, unless otherwise agreed in writing by the Planning Authority.  
Reason: To mitigate the impact of the additional traffic on the public road system.
12. Prior to the occupation of the development hereby approved, details of an operational sustainable drainage scheme (SUDS), which shall include a maintenance plan for the scheme, shall be submitted to and approved in writing by the Planning Authority. Thereafter, the agreed scheme shall be delivered in full prior to the occupation of the development.  
Reason: To ensure adequate protection of the water environment from surface water runoff.
13. Once occupied, any noise emitted by plant and machinery used on the premises hereby approved will not exceed Noise Rating Curve NR20 between the hours of 2300 – 0700 and NR 30 at all other times when measured within all noise sensitive properties (windows can be open for ventilation). The noise emanating from any plant and machinery used on the premises should not contain any discernible tonal component. Tonality shall be determined with reference to BS 7445-2.  
Reason: To protect the residential amenity of residential properties.
14. Once occupied, the development hereby approved shall at all times be operated in full accordance with the submitted and approved Operational Plan, unless otherwise agreed in writing by the Planning Authority.  
Reason: To ensure that the operation of the poultry buildings hereby approved has no unacceptable impacts upon the amenity of the surrounding area or upon the amenity of any neighbouring residential properties, by ensuring that all potential sources of nuisance are appropriately managed and controlled.

### Informatives

1. The applicant is invited to engage the Planning Authority in pre-application discussions prior to the submission of any further poultry building planning applications.
2. SEPA have provided regulatory advice for the developer which is contained in their consultation letter dated 3 June 2020 which is available for inspection on the Council Planning Portal. The developer is advised to familiarise themselves with this advice.

3. With respect to condition 10, the access with the public road to have a minimum of 10m radii and the first 5m to be surfaced to the following specification: 40mm of 14mm size close graded bituminous surface course to BS 4987 laid on 60mm of 20mm size dense binder course (basecourse) to the same BS laid on 350mm of 100mm broken stone bottoming blinded with sub-base, type 1. Measures to be put in place to prevent the flow of water onto the public road boundary.
4. With respect to condition 11, the Planning Authority would require only one further passing place to address additional traffic for Shed 5 (20/00347/FUL) and Shed 6 (20/00470/FUL). The wording of the proposed condition provides flexibility for the Planning Authority and in the event that Shed 6 is approved and a passing place is delivered under that consent first, a second passing place would not be pursued under any consent granted under the consent hereby approved. The passing place shall be as per standard drawing DC-1 unless otherwise agreed in writing.
5. Only contractors first approved by the Council may work within the public road boundary.

#### DRAWING NUMBERS

Type	Reference	Received
Site Plan	001 Rev F	18.09.20
Location Plan	002 Rev D	18.09.20
Site Sections	003 Rev A	18.09.20
Floorplans	187MC-DR-C-0006 Rev C01	21.05.20
Elevations	233MC-DR-C-0003 Rev 01	05.05.20

#### **Approved by**

Name	Designation	Signature
Ian Aikman	Chief Planning and Housing Officer	

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

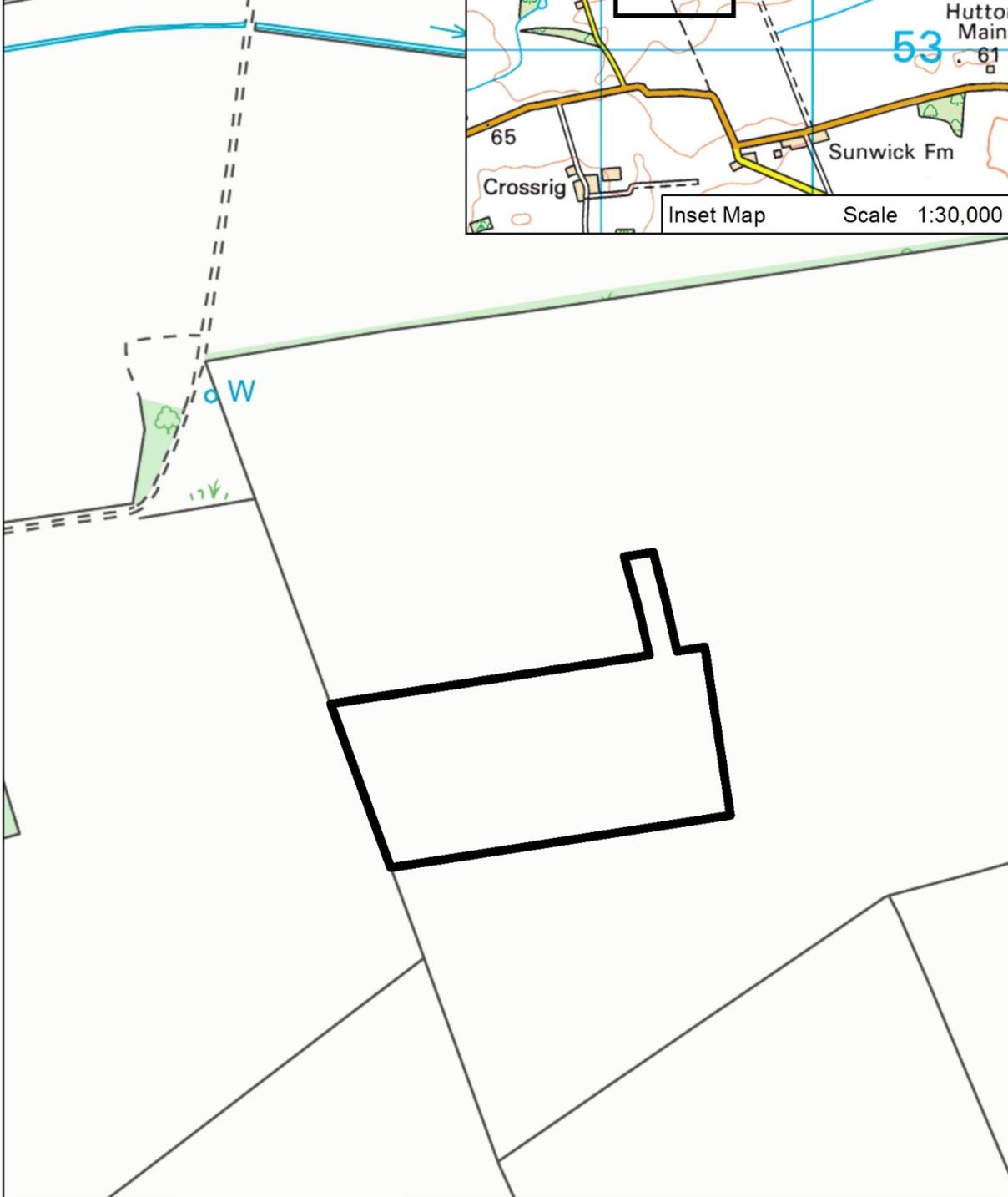
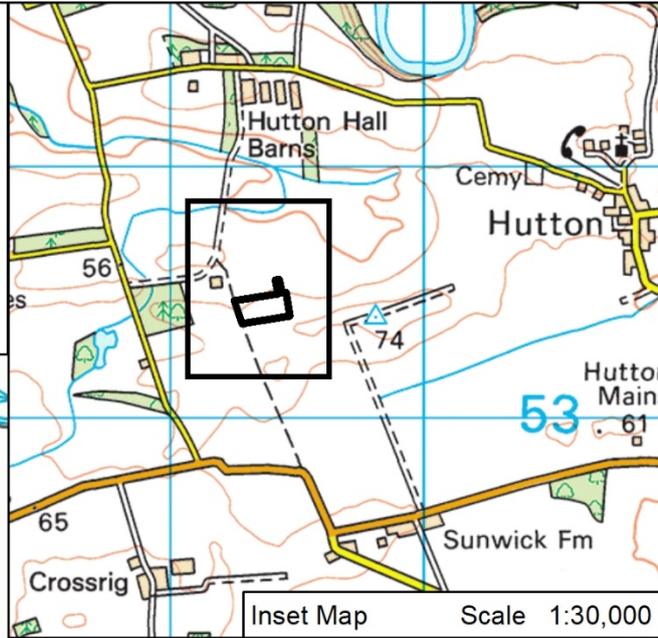
#### **Author(s)**

Name	Designation
Paul Duncan	Assistant Planning Officer



20/00470/FUL

Hutton Hall Barns  
Hutton



Scale 1:3,500

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**SCOTTISH BORDERS COUNCIL**

**PLANNING AND BUILDING STANDARDS COMMITTEE**

**5 OCTOBER 2020**

**APPLICATION FOR PLANNING PERMISSION**

<b>ITEM:</b>	<b>REFERENCE NUMBER:</b> 20/00390/FUL
<b>OFFICER:</b>	Mr C Miller
<b>WARD:</b>	Mid Berwickshire
<b>PROPOSAL:</b>	Erection of 4 No poultry buildings together with associated infrastructure including link corridor, store rooms, egg packing facilities, staff facilities, loading bay, installation of 4 No feed bins, underground dirty water containment tank, drainage attenuation pond and formation of new access
<b>SITE:</b>	Falsidehill Farm, Kelso
<b>APPLICANT:</b>	Mr Stuart Ramsey
<b>AGENT:</b>	Ian Pick Associates Ltd

**PLANNING PROCESSING AGREEMENT**

A Planning Processing Agreement exists for extension to decision up until 5 October 2020.

**SITE DESCRIPTION**

The site is located on agricultural land, lying west of Hume and south-east of Gordon. The site is part of Falsidehill Farm, the farmhouse and steading grouping lying approximately 800m to the north-east. Other isolated steading groupings lie around the site at similar distances, notably Hardiesmill and Stenmuir. Hume village is the closest settlement 2.7km to the east. The site does not lie within any landscape or historic land designation, albeit the boundary of Mellerstain Historic Garden and Designed Landscape lies to the south-west, mainly on the opposite side of the A6089.

The northern boundary to the site is bounded by a minor public road which connects Hume and other farms and houses with the A6089. The site is prime quality agricultural land apart from the lower southern half of the site. There is a slight drop in the ground from north to south and from west to east, with small burns to the south and east boundaries. A dry stone dyke runs along the roadside and down the western side, other boundaries consisting of hedging.

Scheduled Monuments lie to the south and east, comprising Hareheugh Craigs, Sweethope Hill and Hume Castle, Hareheugh Craigs being the nearest at 1.25km. Hareheugh Craigs is also a Site of Special Scientific Interest (SSSI). Further SSSIs lie at Lurgie Loch 850m south of the site and Sweethope Hill 2km south-east.

**PROPOSED DEVELOPMENT**

The application is submitted for full planning permission to construct a poultry farm for the purpose of producing fertile eggs for hatching. Four buildings are proposed accommodating 37,060 hens and cockerels in total. The operation involves delivery of

birds at 17 weeks of age, then operated for a flock cycle of 48 weeks. Following this, the birds are removed and the buildings cleaned over a period of four weeks before a new flock is introduced. During the four week period, poultry manure will be disposed of via covered trailers away from the site and the site washed with high pressure hoses.

The main buildings are on a north-west/south-east axis, each building approximately 92 x 16m with a ridge height of just over 5m. A link corridor and other rooms for egg packing, storage and staff connect the four buildings at the northern end. The overall floor area of the built development totals 6777 square metres. The development also incorporates a loading bay, tool store, four feed bins to the north-eastern corner of the buildings, underground dirty water tank and a drainage attenuation pond.

The buildings will be clad in olive green polyester coated profile sheeting to the walls and roof, the base course being formed in concrete. The feed bins will also be clad in green plastic. The buildings are to be fitted with ridge mounted ventilation fans in black plastic. The site section indicates a small amount of cut at the western end and fill at the eastern end. The intended floor level and existing site levels also indicate a similar cut and fill intention north-west to south-east, the amount of fill being less than a metre at its greatest extent.

Landscaping is proposed in the form of planted bunding around all boundaries, the bunding varying in depth from 17-42m, undulating in height and planted with a variety of trees and shrubs, bordered by hedgerows.

Access to the site will involve two accesses onto the minor public road running along the northern boundary, dedicated as an "in" and "out". The existing stone roadside wall will be kept between and beyond the access points. Visibility splays of 2.4m by 215m are intended in both directions. A concrete yard is designed to the northern and southern ends of the buildings with perimeter tracks.

The Design and Access Statement anticipates limited commercial traffic associated with the development, mostly grouped around the end/start of the flock cycle when 10 HGV movements are envisaged bringing in and taking away birds, together with 52 tractor/trailer movements dealing with the poultry manure and dirty water. During regular operation, no more than six movements per week are envisaged by HGV relating to egg collection, feed delivery and fallen stock removal. All HGV traffic will be from the A6089 to the south-west and not via Hume from the east.

The application is classed as a 'Major' development under the Hierarchy of Developments (Scotland) Regulations 2009. The applicants publicised and held a public event prior to the application being submitted (held pre-Covid lockdown) as well as consultation with Greenlaw and Hume Community Council and Westruther and Gordon Community Council.

The outcome of the public consultation exercise has been reported in a Pre-Application Consultation Report (PAC) submitted with the application. Following queries from this Department, an addendum to the PAC was submitted with further detail of the community engagement. The requirements of the Development Management Procedure (Scotland) Regulations 2013 have now been satisfied.

In addition to the submitted plans and drawings, there are also statements and reports in support of the application, as follows:

- Ammonia Assessment
- Design and Access Statement

- Preliminary Ecological Appraisal
- Flood Risk and Drainage Assessment
- Landscape and Visual Impact Assessment
- Noise Impact Assessment
- Odour Assessment

## **PLANNING HISTORY**

Planning permission for a cattle shed was approved on the northern roadside boundary of the site in 2006. The building was intended to be 7m to ridge and measuring 36 by 18m. Although the building was isolated from Falsidehill Farm steading, the location was accepted subject to planting and appropriate colouring.

## **CONSULTATION RESPONSES:**

### **Scottish Borders Council Consultees**

**Roads Planning:** No objections but there will need to be improvements to the public road leading to the A6089 by means of four passing places, details agreed by condition. Conditions also to cover the access details into the site and surface water interception.

**Environmental Health:** No objections, noting that the Noise and Odour Assessments predicted negligible impacts on nearby residential amenity. Initially sought further information on lighting and raised questions over the poultry manure disposal methods. Upon receipt of responses, accepted the varied route of the poultry manure removal but seeks condition to ensure trailers are covered and that lighting would still be controlled by environmental protection legislation.

**Landscape Architect:** Initially required an amended landscaping plan. Accepted the LVIA findings generally and that the main impacts will be from the minor road passing the site. Agrees that with the scale of the landscape, distance from property and subject to suitable colouring, proposals are minimised in terms of visual impact. However, planting and bunding details needed including cross sections and bunding extent/shape. Birch and Willow recommended for new planting mix.

Upon receipt of amended plans, raised issues over the roadside drystone dyke, hedging, variation of bund height and slopes, cell grown new planting, deer protection and addition of Birch. After further amendments, accepts the proposals subject to further variation and amendment by condition, including to the shape and localised height of the bunding, tree mix, no variations without approval, existing hedgerow retention and details of walls, gates and signage at the site entrance. Recommends conditions including replacement of defective planting and a maintenance programme.

**Flood Protection:** No objections. Notes submitted Flood Risk and Drainage Assessment and that the site is out with the 1 in 200 year flood risk from watercourses but is slightly more at risk from surface water flooding. Asks for clarity on attenuation, greenfield run-off, culvert crossings and flood risk protection.

**Ecology Officer:** No objections but whilst the Ammonia Assessment appears to confirm acceptable impacts on Lurgie Loch SSSI, no such impacts are assessed for Hareheugh Craigs SSSI which is part of a local biodiversity site. As this has grassland interest, impacts of ammonia should also be assessed in an amended report. Accepts the findings of the Preliminary Ecological Appraisal and the mitigation intended for

limited wildlife impacts, including provision for bats, breeding birds and hedgehogs. Requires conditions covering Species Protection and Biodiversity Enhancement Plans. Upon receipt of revised Ammonia Assessment, notes that impacts are within acceptable levels at Hareheugh Craigs and Sweethope Hill SSSI and local wildlife/biodiversity sites and also notes that SNH envisage no significant impacts.

**Archaeology Officer:** No direct archaeological impacts expected based upon the site location but concerns over visual impacts on Scheduled Monument at Hareheugh Craigs. Requested further visual information in the form of photographs from the asset looking towards the site and also that Historic Environment Scotland should be consulted. Upon receipt of photographs, believes that whilst the development will be visible from Hareheugh Craigs and Hume Castle, there will be little impact on setting and also notes the views of Historic Environment Scotland in that respect. Landscape screening and cutting in the building would reduce any impacts further.

**Economic Development:** Response awaited.

### **Statutory Consultees**

**Historic Environment Scotland:** No objections, the proposals do not raise issues of national significance. In terms of impacts from Hareheugh Craigs and Hume Castle Scheduled Monuments, accepted that the settings will take in the land including the development and that some of these settings are wide and low-lying in comparison with the elevated position of the assets. However, whilst the development will be visible, there are other large farm buildings in the area and the development will not challenge the dominance of the assets nor interrupt key views or landscape features. Mitigation will minimise impacts further through careful choice of materials and colours.

**Scottish Natural Heritage:** No objections. Both Lurgie Loch and Hareheugh Craigs SSSIs are not impacted to any qualifying extent and, thus, the proposal raises no national interest.

**Scottish Water:** Response awaited.

**SEPA:** Initially objected to the application on grounds of lack of drainage information and flood risk. Watercourses are small in the area with very limited dilution and information on foul water treatment and SUDs is inadequate. The Flood Risk Assessment is also inadequate as it has only drawn from flood risk maps and would not take into account the impacts from the watercourses to the east and south. A full assessment is needed. Also clarifies that ammonia and odour impacts are a matter for the Council and lists the other controls regulated by SEPA for intensive agriculture.

When a revised Flood Risk Assessment was received, maintained objection as there was still no acceptable derivation of accurate 1 in 200 year flood levels nor an appropriate finished floor level.

Sent a further revised Assessment and views awaited at the time of writing this report.

**Greenlaw and Hume Community Council:** Although noting job creation, expresses concerns over:

- Visual intrusion of buildings
- Prevailing wind and emissions having negative impact on Hume and area
- Traffic generated would need passing places to the A6089

- Hume would see an increase in traffic
- After care proposals needed if use ceases

**Westruther and Gordon Community Council:** response awaited

## **REPRESENTATION SUMMARY**

Objections have been received to the application from 12 properties and households. There was also a petition received with approximately 22000 names contained on it. These can be viewed in full on the Public Access website and the main grounds of objection include the following:

### Policy

- Contrary to LDP Policies including ED7

### Welfare

- Concerns over poultry farming, cruelty, welfare and suffering of birds
- Concerns over disease, human health and pandemic connections

### Traffic/Transport

- Road system inadequate to safely cater for increased traffic, being narrow, poor condition and lacking passing places
- Potential structural damage to Hume Castle from vehicle movement

### Amenity

- Significant air pollution and ammonia will affect residential amenity, from operation and transfer of manure
- Prevailing wind will carry pollution to Hume

### Landscape/visual impact

- Large industrial scale of buildings being a poor rural and landscape fit and adverse environmental visual impact.
- Impacts from spectacular westwards view from Hume Castle and elevated land, looking down on sheds in an unspoilt vista.
- This view previously considered important by SBC Archaeology.
- Landscape screening will be ineffective from elevated views.
- Impacts from Hareheugh Craigs

### Other matters

- Detrimental impacts on drainage and pollution of watercourses from operation waste
- Concern over precedent and future expansion if consent granted
- Despite Covid-19, a site visit is essential to understand the impacts
- Potential detrimental effects on local ecology and wildlife from ammonia emission, including Hareheugh Craigs
- Detrimental impacts on tourism

## **DEVELOPMENT PLAN POLICIES:**

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

- PMD1 Sustainability
- PMD2 Quality Standards
- ED7 Business, Tourism and Leisure Development in the Countryside
- ED10 Protection of Prime Quality Agricultural Land and Carbon Rich Soils
- HD3 Protection of Residential Amenity
- EP1 International Nature Conservation Sites and Protected Species
- EP2 National Nature Conservation Sites and Protected Species
- EP3 Local Biodiversity
- EP8 Archaeology
- EP10 Gardens and Designed Landscapes
- EP13 Trees, Woodlands and Hedgerows
- EP15 Development Affecting the Water Environment
- EP16 Air Quality
- IS4 Transport Development and Infrastructure
- IS7 Parking Provision and Standards
- IS8 Flooding
- IS9 Waste Water Treatment Standards and Sustainable Urban Drainage

## **OTHER PLANNING CONSIDERATIONS**

- SESpplan Strategic Development Plan 2013
- Scottish Planning Policy 2014
- National Planning Framework 3 2014
- PAN 39 Farm and Forestry Buildings 2008
- PAN 61 Planning and Sustainable Urban Drainage Systems 2001
- SPG Landscape and Development 2008
- SPG Placemaking and Design 2010
- SPG Biodiversity 2005
- SPG SUDS 2020

## **KEY PLANNING ISSUES**

The main determining issues with this application are impacts on landscape, residential amenity, biodiversity, cultural heritage, road safety and the water environment, and compliance with relevant Local Development Plan Policies and Supplementary Planning Guidance.

## **ASSESSMENT OF APPLICATION**

### Planning Policy

The application should be mainly assessed against Local Development Plan Policy ED7 (Business, Tourism and Leisure Development in the Countryside). Policy ED7 aims to enable employment generating rural development whilst protecting the environment and ensuring development is appropriate for a rural location. The policy is supportive of development that would be used directly for agricultural operations or for uses which, by their nature, are appropriate to the rural character of an area. The policy requires such development to respect the amenity and character of the surrounding area and have no significant adverse impact on nearby uses, particularly housing.

The Council have previously accepted poultry developments within rural locations as being appropriate, subject to impacts not being adverse and able to be satisfactorily mitigated. Indeed, on a number of appeal decisions, Reporters have concluded that poultry developments satisfy the overarching requirements of Policy ED7, in that the Policy is not worded to preclude large scale agricultural developments in rural locations, provided adverse impacts can be avoided or mitigated.

Policy ED7 does require new business development in the countryside to be accompanied by a business case to support the proposal. The submitted Design and Access Statement details the business background which involves the landowner diversifying from his 675 acre cattle farm at Falsidehill to create a fertile egg production business. The applicant contends that as the proposal relates directly to an agricultural use and it is accepted that this is in compliance with the principle of Policy ED7.

Whilst large scale poultry developments are not fundamentally incompatible with a rural location, they can increase the usual impacts associated with standard agricultural developments. This report assesses those impacts on the environment.

A number of the objections, together with the petition, question moral and welfare issues associated with intensive poultry units. Whilst Members may note the concerns expressed, such matters are not for consideration within a planning application and relate more to national policy and statutory regulations governing the operation of such uses. The planning application must be judged on the provisions of the Development Plan and any other material planning considerations only.

#### Prime Quality Agricultural Land

Scottish Planning Policy defines Prime Agricultural Land as being within Class 1, 2 or 3.1 in the James Hutton Institute's 'Land Capability for Agriculture' records. Scotland's Environment Map shows that the northern part of the site is identified within Class 3.1, meaning it is capable of producing consistently high yields of a narrow range of crops or moderate yields of a wider range. This is the least productive of the three classes.

LDP policy ED7 (Business, Tourism and Leisure Developments within the Countryside) does not preclude the development of green-field land but seeks to tightly control such developments. Local Development Plan policy ED10 (Protection of Prime Quality Agricultural Land and Carbon Rich Soils) seeks to ensure our finite agricultural land resource is retained for farming and food production. The policy states that development which results in the permanent loss of prime agricultural land will not be permitted unless the land is allocated for development; the development meets an established need and no other site is available; the development is small scale and directly related to a rural business. The policy does not state that all criteria must be met, and is similar to the criteria listed at Paragraph 80 of Scottish Planning Policy, which states that meeting any of the three criteria is acceptable.

As with other applications for poultry units in the Borders and, indeed decisions on appeal, developments on prime quality land have generally not been considered contrary to Policy ED10, in that the overall loss of agricultural land would not be significant and there is an established need for the development based on apparent demand. There is also no obvious alternative site within the land holding that would avoid the loss of prime agricultural land. It is also the case that it is swapping one type of agriculture and food production for another, that the site is only partly covered by the prime land designation and the immediately adjoining field to the west exhibits marshy conditions despite also being covered by the prime designation, highlighting how indicative the designation can be.

In summary, it is not considered that the proposal is contrary to Policy ED10.

### Landscape and Visual Impacts

The proposed site is not located within or adjoining any areas designated for landscape quality or special landscape protection. The eastern fringes of the Mellerstain Gardens and Designed Landscape come to within 1.5km of the site, to the west adjoining the A6089. Landscape impacts must therefore be assessed against the LDP's standard policies for landscape protection, including PMD1 (Sustainability) and PMD2 (Quality Standards). Policy PMD1 states that landscape protection is a fundamental principle which underpins all the LDP's policies. Supplementing this, Policy PMD2 requires all new development to integrate with its landscape surroundings and encourages the incorporation of appropriate hard and soft landscape works (including structure planting or screen planting where necessary), to help integration with surroundings and the wider environment. Policy ED7 criterion (e) specifically notes that rural business proposals must also satisfy Policy PMD2.

The site lies within a general depression in the surrounding land form, sloping down generally to the south. As a result, the vast majority of views from houses, roads and other viewpoints will be looking down on the site. A Landscape and Visual Impact Assessment was submitted by the applicant which firstly identifies the "Lowland Margin" and "Lowland Margin with Hills" Landscape Character Types, identifying the general landscape pattern and characteristics which include:

- Even gently sloping landform with extensive flat areas
- Large fields divided by stone dykes and hedgerows
- Widely dispersed woodlands
- Large open scale of landscape
- Conical and dome shaped hills above gently rolling landform
- Medium density scattered villages and farm steadings

The LVIA contends that the site and development would comply with the above pattern and character of development due to the site being a distinct gently sloping field surrounded by dykes and hedges, with pockets of woodland and steading groups distant but visually connected with the site. It is suggested that with mitigation in the form of design, colours of materials and landscape screening, the development will be able to successfully integrate into the landscape without adversely affecting the landscape character.

The LVIA is also supported by a ZTV and five viewpoints taken from local roads surrounding the site – three close to the site from the north, east and south, and two more distant views from the north and east near Hume village. The ZTV reveals that the site may be immediately visible to an area of 1-2km around its boundaries and at more distance from the north. However, there is little visibility from the south and very limited visibility further from the east or west. The Landscape Officer accepts the findings of the LVIA that, on balance, the large scale of the landscape together with the low-lying nature of the site and distance from sensitive receptors, determines that landscape impact will be acceptable provided appropriate mitigation is achieved through siting, colours and landscape screening.

It is considered that the site has a generally limited visibility, localised around the three roads surrounding it and the isolated steadings and groups of houses at Hardiesmill to the west, Stenmuir on higher land to the south and the applicant's own farm steading at Falsidehill to the east. There will be a more distant visibility from the western

entrance to Hume village. The applicant's suggestion that this row of four buildings with linking section to the north, will be viewed very much as part of the overall pattern of isolated groups of farm buildings, separated by distance, gently rolling farmland and sporadic groups of woodland and shelter belts is accepted. The fact that it is contained within a single field which slopes down to a minor burn adds to the containment from the surrounding landscape. Furthermore, the linking of the four buildings together as one complex reduces the visual envelope and landscape intrusion compared to four isolated and separate buildings which has precedent elsewhere in the Borders.

As with all poultry developments, there is significant length to the buildings (91m), generally much greater length than farm steading and general purpose agricultural buildings. However, the visual impacts are minimised by the orientation at 90 degrees to the adjoining road from which the greatest visual impacts would be expected. The buildings are also relatively low in height with an eaves of 2.89m and a ridge height of 5.09m. In terms of planning history, planning consent has already previously been granted for an isolated cattle shed at this site on the roadside, 7m to ridge and 46m length. There has, therefore, been previous acceptance that the site can accommodate an agricultural development without significant adverse impact on the surrounding landscape or receptors.

Apart from the relatively low height and 90 degree alignment, further mitigation is still necessary relating to building colours, levels and boundary treatment, in order to successfully integrate such long buildings into the landscape. Colours are generally intended to be olive green plastic coated metal sheeting with 450mm base course in concrete. The regular ventilation chimneys will be in black but the four feed bin structures to the north-east of the complex will be in green to match the buildings. Green is generally the most appropriate colour for this complex, given its location within an overall landscape of open farmland but the precise choice of colour and samples should be reserved for further agreement by condition, relating to all buildings and feed bin structures.

In terms of levels on the site, there is a gentle slope to the south and to the east. Whilst the Landscape Officer had requested cutting in of the buildings, the site section and existing levels plans do indicate that there will be cut to the north and west, with some fill and underbuilding to the south and east. The overall fill areas are generally less than a metre in depth, however, so it is considered that the general floor levels of the buildings are appropriate for the site, resulting in little obvious alteration to the ground form.

In terms of landscape screening around the site, this has been amended during the processing of the application to address comments from the Landscape Officer. The proposals will now retain the roadside dyke, apart from removals to facilitate the two accesses. The dyke will be curved on the entrance radii. Continuous earth bunding will now be provided around all sides of the development, again with breaks to facilitate the two access points. The bunding varies in width around the site from 17m to 42m, all contained within the existing field boundaries and not breaking into adjoining fields. The bunding is intended to be 1.5m in height with an asymmetrical shape, the gentler slope facing out from the development to help integrate with the surrounding landform. The bunding will be planted with a variety of evergreen and deciduous trees and shrubs on a staggered basis at 2m centres, taller species being planted on the roadside bund in particular.

There are several responses from the Landscape Officer to note but the most recent one dated 18 August accepts the latest planting proposals subject to a number of amendments, including matching any new stone walling, final gradient of the roadside

bund, bund height increase adjoining the feed bins, removal of proposed yew, planting out with the eastern bund edge and final details of hedges, walls, gates and maintenance. All of these matters can be addressed by applying appropriate conditions to seek a final detailed landscape plan and maintenance schedule. However, the principles of what have been shown on the submissions thus far suggest that the development, aided by landscape mitigation, can be successfully accommodated into the surrounding landscape, despite the length of the units and their relative isolation from other buildings and steading groups. Although some objectors and the Community Council believe the impacts to be dominant and a poor landscape fit, especially from higher ground to the east, the design and landscape mitigation previously mentioned should reduce the impacts to acceptable levels, especially as the new screening matures.

Although the ZTV suggests theoretical visibility from the Mellerstain HGDL to the west, visibility will be intermittent, separated by the A6089, areas of woodland and other steading groups such as Hardiesmill. It is also at least 2km distant to the heart of the designated area. It is, therefore, not considered that the setting of the designed landscape will be adversely impacted by the development, in compliance with Policy EP10.

In conclusion, it is considered that in terms of landscape and visual impact, the development would comply with the requirements of Policies PMD1, PMD2, ED7 and EP10 subject to the imposition of appropriate conditions.

#### Residential Amenity

Policies PMD2 and HD3 state that developments should be compatible with neighbouring uses and should not have an adverse impact on residential areas. Although HD3 is applicable in rural situations, it is particularly aimed at impacts on areas where the predominant use is residential, rather than in open countryside where residential properties are isolated and mixed with farm buildings and land uses. The nearest residential properties to the site are in three distinct locations at Hardiesmill, Stenmuir and Falsidehill, generally in the order of 800m – 1km distant and all within an existing farming context.

There have been generally been no objections on visual impact from residential properties in terms of impacts from windows or gardens. It is unlikely there will be much visibility from any houses within the Hardiesmill Group. From Falsidehill, the aspect from the roadside cottages is north and south, the development being at least 800m due west. Only the houses on the crest of the hill at Stenmuir will view the complex as part of a wider open vista north towards the Lammermuir Hills. However, the complex will be at a lower elevation and will be seen as an isolated group of agricultural buildings set on low sloping ground within the overall landscape and with minimal impact, especially once the bunding and landscaping is established. Although some objectors and the Community Council have criticised the visual impact and referred to the industrial nature of the scale of the development, it is considered that their impact, in terms of outlook and visual impacts on residential properties, is very limited, distant and affects very few properties.

Residential amenity is also affected by other issues such as noise, lighting, air pollution and traffic routing impacts. A number of the objectors and the Community Council have raised such matters, especially in relation to the potential of prevailing wind carrying odour eastwards to Hume village and also impacts from traffic through Hume.

In terms of odour, modern poultry complexes are heavily regulated and designed to minimise such impacts on neighbouring dwellings. In the submissions, the applicant has produced an Odour Assessment which reflects national, DEFRA and SEPA guidance on odour emissions and bases the assessment on operational impacts from the ridge mounted ventilation chimneys. The assessment takes into account sensitive residential receptors at the three locations previously mentioned (Hardiesmill, Falsidehill and Stenmuir) as well as a more distant receptor at Sweethope.

Members will note that in Table 10 of the Assessment, the significance of the impacts was only measured as “negligible” at any of the receptors. National guidance on odour assessment states that only if the impact is greater than “slight”, would it then be classed as significant. Whilst no impacts were assessed on receptors further from the site, such as at Hume village, the receptors at Falsidehill and Stenmuir are downwind of the prevailing wind direction and much closer to the site than Hume – thus any results for these locations would be expected to be greater than the impacts for Hume village, which is at least twice as distant. The Odour Assessment, therefore, concludes that impacts would be acceptable and not a constraint to approval of the scheme. Environmental Health have accepted the findings of the Odour Assessment and SEPA have confirmed that they have no remit as the proposal is below the PPC 2012 Schedule 1 threshold.

There was additional dialogue between the applicant and Environmental Health over manure disposal at the end of each flock cycle. It was noted that up to 50 tractor and trailer removals of manure were intended over a 3-4 day period, which could result in odour issues if close to residential property. The applicant clarified that the manure was not waste but a fertiliser with significant demand and the destination each year would vary depending on the customer. Environmental Health have accepted that as the route may vary each year, impacts on one particular property or set of properties would be unlikely. Further mitigation, as advised in the Design and Access Statement, would be to ensure the trailers are covered with sheets before transit away from the site. It is not likely to be enforceable, nor justifiable, to specify a particular destination each year for the manure, but the sheeting can be required by planning condition. This should minimise the impacts of odour on what would only be 3-4 days per year.

It is, therefore, concluded that residential amenity would not be significantly impacted upon in relation to odour and this can, in practice, be monitored and regulated by Environmental Health under pollution prevention control regulations directly.

Residential amenity can also be impacted by noise and lighting pollution. In terms of the latter, a lighting plan was submitted at the request of Environmental Health which showed four gable end floodlights only to be used at the end of each flock cycle and seven low powered bulkhead lights on dusk to dawn timers. Environmental Health accepted the proposals but reminded the applicant that the provisions of the Environmental Protection Act still apply.

In terms of noise impacts, a Noise Assessment was submitted with the application and this considered both operational noise from the extract fans and noise from transport vehicles servicing the site. This assessed impacts on properties at Hardiesmill, Falsidehill and Stenmuir and concluded that noise levels would be negligible to very low. It did make suggestions for careful site management involving no revving or running of engines for longer than necessary, avoidance of forklift scraping and maintenance of the concrete apron.

These are matters that would be difficult to enforce in isolation, as they are referred to only in the Noise Assessment. For other poultry developments, however, applicants

have submitted Operational Plans to demonstrate how the units would be operated and managed in order to minimise disruption and impact on surrounding neighbours. Although the applicant has explained the development and some operational methods and mitigation within the various Assessments and Design and Access Statement, it is justifiable to seek a specific Operational Plan by condition, in order to control the operation and management of the use and to ensure impacts are minimised. This can incorporate the measures being taken to reduce odour, noise, lighting and transport impacts. Impacts from traffic routing are discussed in the Access section of this report.

In summary and subject to the aforementioned conditions, it is considered that the development is both sufficiently distant from residential property and can be developed and operated with mitigation and control to enable compliance with Policies PMD2 and HD3.

### Cultural Heritage

The development does not directly affect any known cultural heritage sites but does lie 1-3km from three Scheduled Monuments at Hareheugh Craigs, Sweethope Hill and Hume Castle. Policy EP8 of the Local Development Plan requires the setting of Scheduled Monuments to be protected and development that would destroy or adversely affect the setting of such assets will not be permitted. However, the Policy also states that any development that may create adverse effects on setting should include mitigation acceptable to the Council.

A number of the objections to the development have concentrated on this aspect, the claim being that the development would interrupt the spectacular westwards view from Hume Castle and elevated land, looking down on the development in an unspoilt vista. Objectors argue that this view was previously considered important by SBC Archaeology and that the proposed landscape mitigation would be ineffective from elevated views. There are also objections to similar impacts from Hareheugh Craigs.

The Council Heritage Officer and Historic Environment Scotland have been consulted on the development and they have considered the potential impacts on the setting of these Scheduled Monuments. The Heritage Officer requested further visual information in the form of photographs from Hareheugh Craigs looking towards the development. Upon receipt of the photographs, he considered that whilst the development would be visible from Hareheugh Craigs and Hume Castle, there would be little impact on setting and landscape screening and cutting in the building would reduce any impacts further.

Historic Environment Scotland were of a similar opinion in terms of impacts from Hareheugh Craigs and Hume Castle. They accepted that the settings would include the development and that some of the settings are wide and low-lying in comparison with the elevated position of the assets. However, whilst the development would be visible, they considered that as there are other large farm buildings in the area, the development would not challenge the dominance of the assets nor interrupt key views or landscape features. Mitigation would minimise impacts further through careful choice of materials and colours.

Given the opinion from Historic Environment Scotland and the Council Heritage Officer and in consideration of the photographic material supplied with the application, it is not considered that the impacts on setting would be adverse to the extent of contravention of Policy EP8. Whilst photographs have only been supplied from Hareheugh Craigs, this is the nearest Scheduled Monument to the site and as effects are considered acceptable from there, the impacts will be even less from the more distant Monuments

of Hume Castle and Sweethope Hill. From Hareheugh Craigs, the steading and buildings of Stenmuir are immediately obvious and much closer to the Monument affecting its setting to a much greater degree than the application site.

It is also noted that mitigation in the form of design, colour and landscaped screening have already been proposed to minimise impacts, as required by Policy EP8. Whilst objectors consider the landscape screening will be ineffective from elevated views, the buildings are only 5m high and will have tree screening surrounding them atop a 1.5m high bund. Even when viewed from elevated positions to the south and east, it is considered that sufficient height of screening will be attained to prove effective.

In conclusion, it is considered that the proposed development, with mitigation, will not adversely impact on the setting of the three identified Scheduled Monuments to the south and east of the site.

### Access

Policies PMD2 and IS4 require safe access to and within developments. The submissions with the application have set out the vehicular movements envisaged, which are infrequent and mainly concentrated in the period between flock cycles when the buildings are cleaned ready for the next flock. The Design and Access Statement States that on average weeks, there would be six HGV or lorry movements in and out delivering feed and collecting eggs and fallen stock. This does not include staff and private car movements. At the end of each flock cycle, there would be a total of 62 movements from mainly tractor and trailers over a period of four weeks but mainly concentrated into 50 movements over a 3-4 day period for manure removal.

The Design and Access Statement states that all HGV movements would be from the A6089 and not from the east or south. In response to concerns and objections over routing through Hume village, the applicant has clarified their acceptance of such prohibition via a condition on the planning consent to secure an HGV management plan. They also confirm their agreement to provide four passing places between the site access and the A6089. The Design and Access Statement, supported by an access drawing, demonstrates two access into the site with curved continuations of the existing stone wall along the roadside and visibility splays of 2.4 x 215m in both directions, unaffected by the wall.

The Roads Planning Service (RPS) have taken into account the nature of the development and the anticipated traffic generation. They accept the development but are clearly concerned that the minor public road leading from the site to the A6089 is narrow and lacks passing opportunities. They seek four passing places to be created at agreed locations, by condition. Whilst the applicant's land holding does not appear to extend in the direction required, such opportunities can normally be created within verge and the boundaries of the road. RPS also seek full details of the site accesses and measures to ensure surface water is discharged away from the road.

RPS are clearly content with the proposals based upon the estimated traffic generation and improvements to the public road to the west which can be secured by condition. The traffic generation is generally very low for most of the year with the vast majority of movements being concentrated into a 3-4 day period to facilitate manure removal. The concerns over HGV movements eastwards are understood, especially regarding the narrow nature of the public roads, the number of bends and the potential impacts on Hume village. Whilst tractor/trailer manure removal may use this route on occasion, this is "agricultural" traffic only over a very short period. Use of these roads by HGVs would be particularly unsuitable and the concerns of the objectors and Community

Council are understood in this regard. The agent recognises this and would be agreeable to prohibition of HGVs in an easterly direction via a condition securing an HGV management plan.

The impacts of traffic movements must also be considered in relation to residential amenity. The routing of HGVs to the A6089 and not through Hume village or the network of narrow roads to the east and south would be an important mitigation to reduce potential impacts. There are very few properties would be impacted by use of the westerly route to the A6089. Whilst the direction and number of HGVs can be controlled by condition within the aforementioned HGV management plan, there could also be concern at limiting such movements to reasonable daytime hours. This matter can also be considered in the management plan.

The greatest number of vehicular movements would be the tractor and trailer removal of poultry manure at the end of each flock cycle, albeit this would be concentrated into a 3-4 day period in the year and the routes may vary. 50 movements are envisaged in total which could mean up to 17 per day and even during hours of darkness. Nevertheless, given the agricultural nature of the vehicles, the limited number of days in the year and the requirement, by condition, that the trailers be sheeted, it is not considered that there is sufficient residential amenity impact, in terms of noise or odour, to oppose the development.

### Ecology

Ecological assets are protected by Policies EP1-EP3 of the Local Development Plan covering a range of sites and species from international to local interest. A Preliminary Ecological Appraisal was submitted with the application. Although there have been third party objections to the potential impacts of the development on ecology and the local designated sites, the advice from consultees is that the impacts would be acceptable.

The Ecology Officer accepts the findings of the Preliminary Ecological Appraisal and the mitigation intended for limited wildlife impacts, including provision for bats, breeding birds and hedgehogs. He recommends that conditions are imposed covering Species Protection and Biodiversity Enhancement Plans.

The application was also supported by an Ammonia Assessment which calculated the impacts of the proposed poultry unit emissions on nearby ecological designations – Lurgie Loch SSSI, Hume Craigs Local Wildlife Site (LWS) and Sweethope Hill Local Biodiversity site. Using dispersion modelling, this concluded that the sites were not at any significant risk from ammonia impacts and this conclusion was accepted by the Ecology Officer.

However, the Ecology Officer identified that the original Ammonia Assessment omitted consideration of Hareheugh Craigs SSSI which is part of a local biodiversity site. As this has grassland interest, impacts of ammonia were requested to be assessed in an amended report. The revised Ammonia Assessment was submitted and included assessment of impacts on Hareheugh Craigs SSSI/LWS, concluding that impacts were within acceptable levels. This revised report was accepted by the Ecology Officer. Scottish Natural Heritage were also consulted and they accepted that there would not be an impact on the SSSIs.

In conclusion, impacts on ecology have been demonstrated to be within acceptable levels. Direct impacts have been addressed in the Preliminary Ecological Appraisal and can be controlled by conditions relating to Species Protection and Biodiversity

Enhancement Plans. Indirect impacts on nearby designations have been demonstrated to be acceptable within the Revised Ammonia Assessment. The development is, therefore, considered to be in compliance with Local Development Plan Policies EP1-EP3.

### Drainage and Flood Risk

Impacts on the water environment and flood risk potential are controlled by Policies EP15, IS8 and IS9. The application was submitted with a Flood Risk and Drainage Assessment which concluded that the site was not at significant risk of flooding and that surface water could discharge to an existing ditch at no greater than the greenfield run-off rate. An overflow attenuation pond will also be provided on the site. Foul drainage will be handled via a package treatment plant with discharge to an existing ditch. The Assessment considers the development can be sited and drained in accordance with Scottish Planning Policy.

The Assessment and proposals have been considered by SEPA and the Council's Flood Risk Officer. The latter noted that SEPA flood maps and the Flood Risk Assessment indicated no fluvial flood risk. In terms of surface water flood risk, the findings were generally accepted by the Flood Risk Officer although further clarification was sought relating to the nature of the flood risk event, greenfield run-offs being at their existing rate and flow control mechanisms being agreed.

SEPA objected to the application principally on lack of drainage information and flood risk. They required further information on the treatment plant discharge, field tile proposals and SUDs. They also considered the Flood Risk and Drainage Assessment to be inadequate and that it should not be based upon their own flood risk maps which would not have taken into account the small watercourses to the eastern and southern boundaries. They asked that the flows at the site take these into account in assessing flood levels at the site.

At the time of writing this report, the applicant has now submitted a revised Flood Risk and Drainage Assessment and this has been forwarded to SEPA and the Flood Risk Officer. The Assessment does not seem to provide any additional information on drainage details. However, there is further information on flood risk assessment. The revised Assessment concludes that before and after the development, the eastern drainage ditch surface water flow remains "in-bank" and does not pose a flood risk to the site, especially considering the normal 150mm floor level position of buildings above the existing ground. Indeed, it is considered that water levels drop as a result of the development and compared to the greenfield state pre-development.

Members will be updated on the responses from SEPA and the Flood Risk Officer at the meeting. This report is written on the basis that SEPA accept the revised Assessment and remove their objections, given that the Council Flood Risk Officer had raised no objections subject to some clarification of certain issues. Appropriate conditions are attached to the report relating to foul and surface water drainage. Should the SEPA objection be maintained, then notification to the Scottish Ministers would be required if Members agree to approve the application.

### Other issues

There have been other issues raised by objectors which have been considered but do not alter the assessment or recommendation on this application. Site restoration proposals raised by the Community Council are not generally applied to permanent development considered non-reversible. Fears over structural damage to Hume Castle

caused by heavy vehicles can be addressed by the routing of HGVs away to the west in the HGV Management Plan. Precedent for further development cannot be used as a reason to oppose the development as each proposal must be dealt with on its own merits and in accordance with the provisions of the Local Development Plan and any other material considerations at the time. Concerns over tourism impact are understood but, in reality, the development will appear in the landscape as an agricultural complex of buildings and there is no information to suggest that, in a rural area, such groups of buildings would prove a deterrent to tourism.

### Conclusion

In conclusion, the principle of the development is supported by Policy ED7 in that the development is appropriate to a rural area and meets a demand for the product. The landscape and visual impacts of the development are mitigated by the location of the site in a general landform depression with limited visibility in terms of both receptors and distance, and by the bunded landscaping proposals which will provide effective screening.

This mitigation will also be effective at reducing impacts from residential and cultural heritage receptors to acceptable levels, when combined with appropriate conditions relating to operation, traffic management etc. Impacts on ecology can be addressed by appropriate conditions as can impacts on the water environment – subject to SEPA withdrawing their objection.

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

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

1. No development shall commence until an Operational Management Plan is submitted to, and approved in writing by, the Planning Authority. The Plan to include the methods of operation and management of the use, including ventilation, noise, odour and lighting control and transport. Once approved, the development then to be operated in accordance with the Plan.  
Reason: To ensure that the operation of the use has no unacceptable impacts upon the amenity of the surrounding area or neighbouring residential properties, by ensuring that all potential sources of nuisance are appropriately managed and controlled.
2. No development shall commence until a Waste Management Plan is submitted to, and approved in writing by, the Planning Authority. The Plan to include details of the nature and frequency of manure removal from the site, and methods to ensure odour control including the use of sheeted/covered trailers. Once approved, the development then to be operated in accordance with the Plan.  
Reason: To ensure that the operation of the use has no unacceptable impacts upon the amenity of neighbouring residential properties that may be on the route of manure removal movements.
3. No development shall commence until a Heavy Goods Vehicle (HGV) Management Plan is submitted to, and approved in writing by the Planning Authority. The Plan to include details of the route, frequency and hours of intended HGV movements and to avoid use of the public road through Hume village. Once approved, the development then to be operated in accordance with the Plan.

Reason: To ensure that heavy vehicle traffic movements associated with the use have no unacceptable impacts upon the amenity of neighbouring residential properties.

4. No development shall commence until:
  - a) details of materials to be used on all exterior surfaces of the development hereby permitted have first been submitted to and approved in writing by the Planning Authority;
  - b) details of the design and siting of external food storage bins/ silos and ventilation chimneys have first been submitted to and approved in writing by the Planning Authority; and
  - c) design proposals for the placement of any photovoltaic panels and security lighting have first been submitted to and approved in writing by the Planning Authority.

Thereafter, the development shall be undertaken wholly in accordance with the approved details.

Reason: To ensure that the landscape and visual impacts of the development hereby permitted are adequately mitigated.

5. Notwithstanding the details supplied in support of the planning application, including the Planting Plan, no development shall commence until a detailed Landscape and Management Plan has first been submitted to and approved in writing by the Planning Authority. The Plan shall include:
  - a) An updated landscape plan for the development, including revised planting details and species as recommended by the Council Landscape Officer in her email dated 18 August 2020
  - b) Retention of the existing stone dyking and hedgerows on the site boundaries with details of the matching stone dyke treatment on the access radii and any boundary fencing and gates
  - c) Final details of the width, height and profile of all earth bunding, including an increase in height at the feed silos
  - d) A full management and maintenance schedule for the new planting, including the procedure for replacement of any trees or planting that fail to establish.

The approved Landscape and Management Plan shall be implemented in accordance with the approved details before the end of the first planting season following commencement of operation of the development hereby permitted

Reason: To ensure that the landscape and visual impacts of the development hereby permitted are adequately mitigated and that planting is properly implemented and maintained.

6. No development shall commence until precise details of four passing places on the "C" class road between the site and the A6089 are submitted to, and agreed in writing by, the Planning Authority. Once agreed, the passing places to be completed in accordance with the agreed details prior to the use becoming operational, unless otherwise agreed in writing by the Planning Authority.

Reason: To ensure adequate access to the site and to protect the public road edge.

7. The vehicular accesses to the site shall be constructed and surfaced to the specification of the Council prior to the development becoming operational, including visibility splays of 2.4m by 215m in both directions and measures to prevent the flow of water onto the public road.

Reason: To ensure adequate access to the site and to protect the public road edge

8. No development shall commence until a scheme of foul and surface water drainage is submitted to, and approved in writing by, the Planning Authority in consultation with SEPA. The scheme to include the following:
  - a) Greenfield run-off rates being demonstrated to be limited to their existing rate;
  - b) The attenuation pond being installed as proposed and to mitigate against a 1 in 100 plus climate change flood event;
  - c) Details of the flow control at the attenuation pond; and
  - d) Details of any culverts, watercourse crossings or alterations to crossings.Reason: To safeguard the water environment and ensure the development is adequately serviced
  
9. No development shall commence until a Species Protection Plan and Biodiversity Enhancement Plan are submitted to, and approved in writing by, the Planning Authority. The Plans to be based upon the species mitigation outlined in the Preliminary Ecological Appraisal. The development then to proceed in accordance with the approved Plans.  
Reason: To preserve and protect ecological interests at the site.

### Informatives

1. SEPA have provided the following regulatory advice for the development:
  - This proposal is below the PPC 2012 Schedule 1 threshold therefore SEPA have no remit in relation to odour or noise. The Enforcing authority is the Local Authority Environmental Health Department. Please also note the points below in relation to regulatory requirements for the applicant.
  - Surface water proposals must adhere to General Binding Rule (GBRs) 10, 11 & 21.
  - Vehicle Wash areas must adhere to Pollution Prevention Guidelines 13.
  - All slurry stores built or substantially altered after 1 September 1991 must adhere to the Silage, Slurry and Agricultural Fuel Oil (Scotland) Regulations 2003 – known as SSAFO: All slurry and manure storage and spreading must adhere to General Binding Rule (GBR) 18.
  - Any abstractions over 10m<sup>3</sup> per day must be authorised by SEPA. Please contact your local office for further information.
  - Foul effluent from the offices should be served by an appropriately sized septic tank/treatment plant and soak away (where suitable). An application for registration will be required if under 15pe, otherwise a licence. The system must be designed in accordance with the Building Standard Technical Handbook Section 3 – Environment.
  - All relevant oil storage (domestic storage of more than 2500 litres and all other oil storage of more than 200 litres) must adhere to the Water Environment (Oil Storage) (Scotland) Regulations 2006 (link to SEPA Website Oil Storage Advice).
  
2. With regards to Condition 6 the passing places should be formed as per SBC approved specification DC-1/DC-1a.
  
3. With regards to Condition 7, the specification for the vehicular access to the site shall be a 40mm layer of 14mm size close graded bituminous surface course to BS 4987 laid on a 100mm layer of 28mm size dense base (road base) to the same BS laid on a 310mm layer of 100mm broken stone bottoming blinded with sub-base, type 1.

4. It should be borne in mind that only contractors first approved by the Council may work within the public road boundary.

**DRAWING NUMBERS**

Location Plan	IP/SR/01
Site Plan	IP/SR/02B
Elevations	IP/SR/03
Floor Plans	IP/SR/04
Site Levels	IP/SR/05
Section Location	IP/SR/06
Site Sections	IP/SR/07
Soft Landscape Proposals	IPA 1091
Lighting Plan	IP/SR/08

**Approved by**

Name	Designation	Signature
Ian Aikman	Chief Planning and Housing Officer	

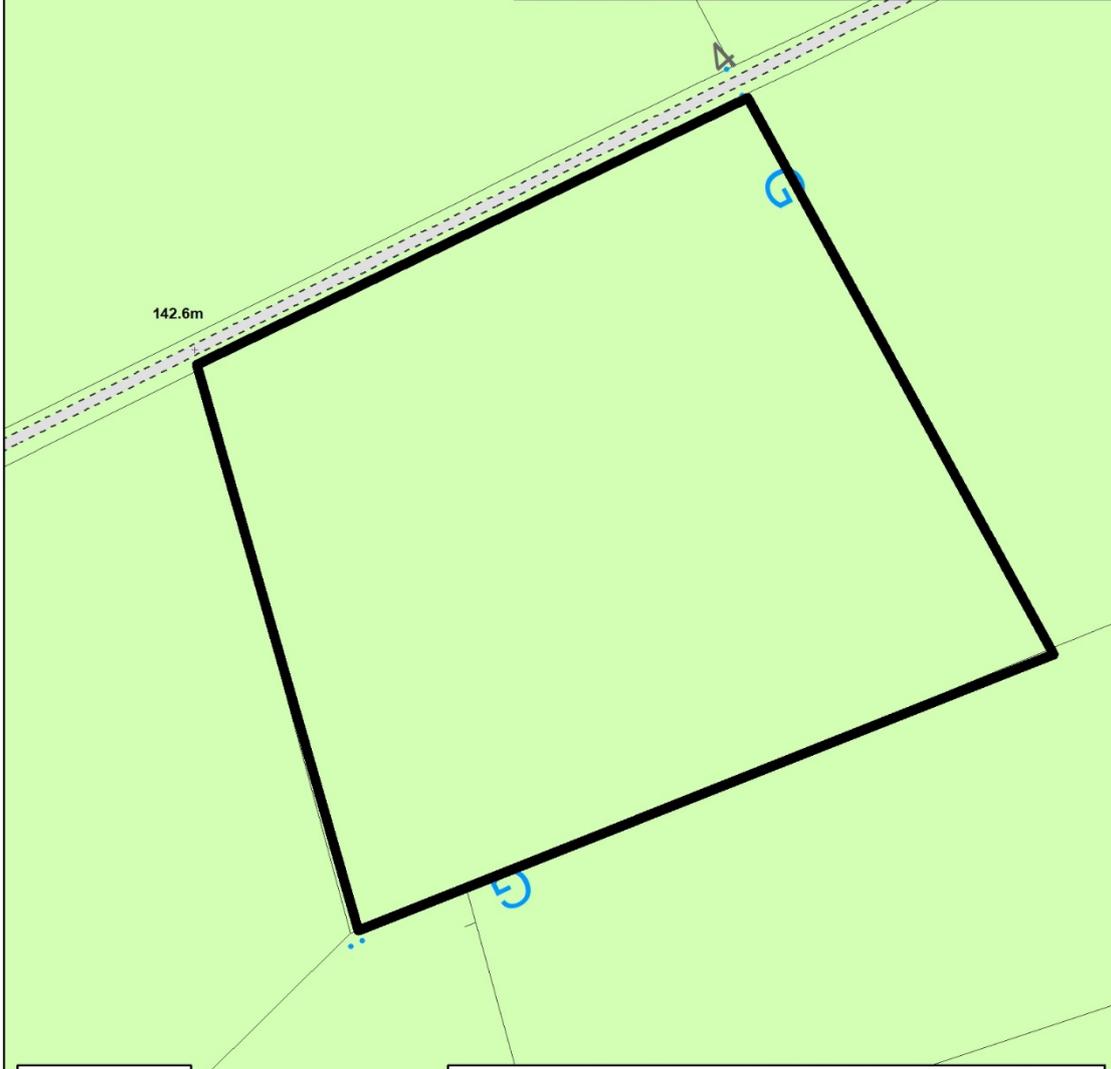
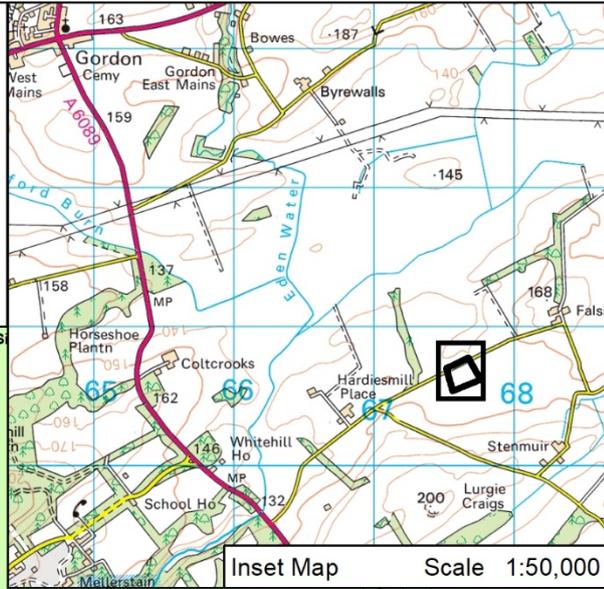
The original version of this report has been signed by the Chief Planning and Housing Officer and the signed copy has been retained by the Council.

**Author(s)**

Name	Designation
Craig Miller	Principal Planning Officer



20/00390/FUL  
Falsidehill Farm  
Kelso



Scale 1:2,000

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**SCOTTISH BORDERS COUNCIL**

**PLANNING AND BUILDING STANDARDS COMMITTEE**

**5 OCTOBER 2020**

**THE ELECTRICITY ACT 1989 (SECTION 36C)**  
**THE ELECTRICITY GENERATING STATIONS (APPLICATIONS FOR VARIATION**  
**OF CONSENT) (SCOTLAND) REGULATIONS 2013**

<b>ITEM:</b>	<b>REFERENCE NUMBER:</b> 20/00789/S36
<b>OFFICER:</b>	Mr Craig Miller
<b>WARD:</b>	Tweeddale West
<b>PROPOSAL:</b>	Variation to operating life from 25-30 years, increasing tip height from 133.5m to 136.5m and clarification on drawing listed as Annex E on consent
<b>SITE:</b>	Whitelaw Brae Wind Farm, Fruid, Tweedsmuir
<b>APPLICANT:</b>	Whitelaw Brae Wind Farm Limited

**PLANNING PROCESSING AGREEMENT:**

A timescale for response has been agreed with the Energy Consent Unit (ECU) and the applicants for this variation to be considered at the October meeting of the PBS Committee.

**PURPOSE OF REPORT**

To advise the Scottish Government of the response from Scottish Borders Council (SBC) on an application submitted under section 36C of the Electricity Act 1989 to vary the existing section 36 consent and section 57 of the Town and Country Planning (Scotland) Act 1997 to vary the deemed planning permission at Whitelaw Brae Wind Farm, Fruid, Tweedsmuir.

**PROCEDURE**

Members will be aware from previous Section 36 applications coming before this Committee that Scottish Borders Council (SBC) is a consultee as a 'relevant planning authority' for the purposes of this application process. The views of SBC will be passed to the Energy Consents Unit (ECU) at Scottish Government, the body responsible for processing and determining onshore Section 36 planning applications. The ECU advertises the application and carries out consultation with other interested bodies. There is, therefore, no need for SBC to undertake a tandem process although consultation has taken place with relevant specialists within the Council.

It should be noted that if permission is granted, the local authority (rather than the ECU) would become the relevant enforcement authority responsible for monitoring compliance with the terms of an approval and any conditions imposed thereon.

**SCHEDULE 9 OF THE ELECTRICITY ACT 1989**

Schedule 9 of the Electricity Act 1989 imposes specific obligations on electricity companies in respect of the environment. They:

- (a) shall have regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest; and
- (b) shall do what he reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects.

In determining the variation against the provisions of the Development Plan, there must also be consideration of the requirements of Schedule 9 of the Electricity Act. This is particularly so for the ECU as the decision-making body on the variation request.

## **SITE DESCRIPTION**

The application site covers the same area as that of the consented Whitelaw Brae wind farm which is located 3km south of Tweedsmuir and directly west of the Fruid Reservoir. Development works have not yet commenced on site.

## **PLANNING HISTORY**

Whitelaw Brae Wind Farm was granted consent on 7 December 2017 by the Scottish Ministers following a Public Local Inquiry after SBC objected to the proposals.

The consented development comprises of 14 turbines with a tip height of 133.5m and hub height of 80m, along with ancillary works and buildings including tracks, foundations, substation, battery storage, borrow pits and compounds.

Development works have not yet commenced but the applicants have begun to purify a number of suspensive pre-commencement planning conditions with the Council. A five year timescale to commence the development was imposed, therefore, the consent remains implementable once all suspensive conditions are purified.

## **PROPOSED DEVELOPMENT**

The variation request seeks three amendments to the consent:

1. Extension of the 25 year operating life of the development to 30 years (Conditions 1 and 24 of the S36 consent)
2. Increase in tip height of all turbines from 133.5 to 136.5m (Condition 6 of the deemed planning permission)
3. Condition 5 of the deemed planning permission referred to Annex E listing the approved drawings but no Annex E was attached. Variation suggests cross-referring Annex E to Figure FEI 3.1 of the original scheme showing the site layout

The variation makes it clear that no other elements of the scheme are changing. The turbines are in exactly the same positions and all ancillary elements remain as originally proposed. Whilst the nearest “best fit” turbines to those candidate turbines in the original Environmental Assessment result in greater rotor diameters (from 107m to 117m), this still does not mean any further tip height increase than the 3m sought and also would mean a consequent reduction in the hub height of two metres. The applicant points out that no variation has been sought for the rotor diameter change as only the tip height is controlled in the consent.

The application for variation has been supported by:

- A supporting letter with annexes
- Planning Statement
- EIA Screening Report

A screening exercise undertaken by the ECU, after consultation with the Council, concluded that the proposed development variation would not require an EIA.

## **REPRESENTATION SUMMARY**

Third party representations are submitted to the ECU for their consideration in dealing with the S36C variation request. One representation was received by the Council but this is for the ECU to consider, relating principally to the delay in implementation and the Eskdalemuir Noise Budget (ENB). It is the responsibility of the ECU to carry out any other consultations on a variation request as they see fit, including the MOD. It is noted that the MOD have objected to the ECU on the basis the scheme now exceeds the ENB allowance for the site.

## **DEVELOPMENT PLAN POLICIES:**

### **SESplan Strategic Development Plan June 2013:**

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

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

PMD1: Sustainability  
PMD2: Quality Standards  
ED9: Renewable Energy Development  
HD3: Protection of Residential Amenity  
EP1: International Nature Conservation Sites and Protected Species  
EP2: National Nature Conservation Sites and Protected Species  
EP3: Local Biodiversity  
EP5: Special Landscape Areas  
EP7: Listed Buildings  
EP8: Archaeology  
EP9: Conservation Areas  
EP10: Gardens and Designed Landscapes  
EP13: Trees, Woodlands and Hedgerows  
EP15: Development Affecting the Water Environment  
IS2: Developer Contributions  
IS5: Protection of Access Routes  
IS8: Flooding  
IS9: Waste Water Treatment Standards and Sustainable Urban Drainage

## **OTHER PLANNING CONSIDERATIONS:**

### **Adopted SBC Supplementary Planning Guidance (SPG) and other documents:**

- Renewable Energy 2018
- Biodiversity 2005

- Local Landscape Designations 2012
- Developer Contributions 2011
- Visibility Mapping for Windfarm Development 2003
- Ironside Farrar Study on Wind Energy Consultancy Landscape Capacity and Cumulative Impact 2016
- Borders Landscape Assessment 1998 Ash Consulting Group- updated SNH 2019

#### **Scottish Government Policy and Guidance:**

- The Climate Change (Scotland) Act 2009
- The Scottish Renewable Action Plan 2009
- 2020 Routemap for Renewable Energy in Scotland – Update 2015
- National Planning Framework for Scotland (3) June 2014
- Scottish Planning Policy (SPP) June 2014
- Scottish Planning Policy and Electricity Generation Policy Statement 2013
- Onshore Wind Turbines – Planning Advice 2014
- Climate Change Plan 2018
- Onshore Wind Policy Statement 2017
- Scottish Energy Strategy 2017
- Climate Change (Emissions Reductions Targets) (Scotland) Bill 2019
- Climate Change Committee Progress Report 2019
- Climate Change Committee Annual Report 2020
- Advisory Group Report on Economic Recovery 2020

#### **Scottish Government On-line Advice:**

- Circular 3/2011 Environmental Impact Assessment (Scotland) Regulations
- PAN 69 Flood Risk 2015
- PAN 60 Planning for Natural Heritage 2008
- PAN 51 Planning, Environmental Protection and Regulation
- PAN 75 Planning for Transport
- PAN 81 Community Engagement Planning with People
- PAN 1/2011 Planning and Noise
- PAN 2/2011 Planning and Archaeology
- PAN 1/2013 Environmental Impact Assessment
- Scottish Government Good Practice Principles for Shared Ownership of Onshore Renewable Energy Development 2016

#### **Historic Environment Scotland Publications:**

- Historic Environment Scotland Policy Statement June 2016

#### **SNH Publications:**

- Siting and Designing Windfarms in the Landscape Version 3 February 2017
- Visual Representation of Wind Farms Version 2.2 February 2017
- Assessing the Cumulative Impact of Onshore Wind Energy Developments 2012
- Spatial Planning for Onshore Wind Turbines – Natural Heritage Considerations 2015

#### **Other Publications:**

- ETSU-R-97: The Assessment and Rating of Noise from Wind Farms

## **CONSULTATION RESPONSES:**

### **Scottish Borders Council Consultees**

**Access Officer:** Response awaited

**Archaeology Officer:** The existing consent is subject to conditions including a written scheme of investigation and interpretation of fieldwork by the Biggar Archaeological Group. Whilst there may be further archaeological implications as a result of the variation request, these can be addressed in the existing conditions.

**Ecology Officer:** Noted that the variation was supported by an update to the collision risk modelling which indicated a slight increase in collision risk for certain bird species such as pink-footed goose, merlin, curlew etc. This could be addressed in a revised Habitat Management and Enhancement Plan. However, further information is now available in relation to Schedule 1A species at the site and notes that SNH consider the original baseline of bird species using the site is out of date and a further year of Schedule 1A survey is necessary. Whilst the original conditions should be amended to account for the operational life of the wind farm, further information on Schedule 1A species impacts is still needed. If consent is granted, then conditions should be revised to account for impacts on Schedule 1A species.

**Environmental Health:** Requires an updated noise impact assessment before any increase in tip height and rotor diameter can be supported

**Landscape Architect:** Acknowledges that rotor diameter will be increased but the effect of that is very difficult to convey and has not been attempted. Assessed the comparative wirelines and agree that the change in rotor dimensions, reduction in tower height and slight increase in tip height would be only barely perceptible and have very limited visual impacts so are unlikely to increase the significance of effects to such an extent that she would have further serious concerns.

**Roads Planning Service:** Response awaited

### **Statutory Consultees**

Statutory consultees are reported to the ECU and are available on the Government's planning portal. At the time of writing this Report, it is known that the MOD have objected due to the scheme now exceeding its allocated allowance under the Eskdalemuir Noise Budget. It is also known that SNH are seeking a further year of Schedule 1A bird surveys.

## **KEY PLANNING ISSUES:**

Whether a 3m increase to the tip height of all turbines, and an increase in operating life to 30 years, will cause unacceptable adverse landscape, visual or any other material planning impacts over and above the perceived impacts of the turbines already consented. Assessed against the provisions of the Development Plan and Schedule 9 of the Electricity Act.

## **ASSESSMENT OF APPLICATION:**

### **Planning Policy Principle**

The determination of the Scottish Ministers to grant consent for the development of Whitelaw Brae Wind Farm at this site (which included the erection of 14 turbines 133.5m to tip height) is a significant material consideration in the determination of this variation application. The original S36 consent remains implementable regardless of any decision on this variation application. Although the Council objected to the scheme on grounds of impacts on landscape character, wild land, visual effects, cultural heritage and residential amenity effects. Ministers approved the scheme and only the variations and associated impacts must be assessed against current national and local Policies and Guidance. The principle of the development cannot be questioned afresh. A wind farm of the scale and siting consented is acceptable at this location and in line with Policies and Guidance.

The developer has concluded, after researching turbines within the candidate range of the original S36 consent, that a 3m tip height increase will lift the output from the turbines by an appreciable amount, ranging from 2.93 GW to 6.21 GW. Their argument is that this increase in yield, added to the additional five year operating life sought, both improves viability of the scheme but also complies with the various changes in UK and Scottish Government emphasis resulting from climate change and Covid-19 crises. They also claim an increase in CO2 savings.

Taking into account the variations sought to the consent and in considering the requirements of the Development Plan (Policy ED9 and the Renewable Energy SPG), the main impacts likely to result from the tip height and increased operating life involve landscape and visual effects, residential amenity, noise and ornithology. This report considers these matters below.

### **Landscape and Visual Impact**

The Council had objected to the original scheme due to the perceived unacceptable and significantly adverse effects on the Talla Hart Fell Wild Land designation, the Tweedsmuir Uplands SLA, public receptors including roads and dwellinghouses and cumulative impacts resulting from the Clyde and Glenkerie wind farms. All these issues of landscape and visual impact were fully considered by the Reporters who presided over the Public Local Inquiry, in their recommendations to the Scottish Ministers, and in the Decision Notice from the Ministers.

The Reporters concluded as follows, in consenting the scheme:

*“We conclude that the negative effects of the proposal would be localised and would generally be limited in scale. Our principal concern is with effects on the visual amenity of the Fruid valley, where the proposed turbines would be prominent and harmful additions to a landscape that is unexceptional and already strongly influenced by human development but nevertheless a quiet and attractive place. The sensitivity of this valley is increased by the presence of a number of residential properties, the residents of which would see many of the proposed turbines not only from their homes and gardens but from the approaches to their properties, which we acknowledge to be important to their residential amenity.*

*In assessing the weight to be given to this issue, we have had regard to the fact that, although clearly visible, none of the proposed turbines would be so close to, or would have such a visually dominant effect upon, the valley and its residents that it could*

*reasonably be said to have an overbearing presence. There can be no doubt that the turbines would significantly change the experience of valley residents and of those who visit it for recreation or other purposes, as the proposed turbines would become the main visual focal point on the western horizon. However, the visual context within which they would be seen is one that already features a visually unexceptional valley side, a reservoir, dam and other man-made features.”*

The Reporters also took into account the renewable energy and greenhouse gas reduction benefits of the scheme and felt that any adverse effects were outweighed by the contribution to the “...very clear Scottish Government aspirations” in those regards.

Taking into account the assessment by the Reporters that the negative effects of the original scheme would be localised and limited in scale, there must firstly be consideration of whether a 3m tip height increase on turbines, that were already consented at 133.5m, would introduce a scale and degree of adverse landscape and visual impact to the extent that the scheme would no longer be compliant with national and local Policies and guidance. The potential effects should also be balanced against the benefits of increased yield of output described by the applicants in their variation request.

As part of their variation application, the applicants have stated that the candidate turbines being investigated would also have a wider rotor diameter than those detailed in the original Environmental Statement, increasing from 107m to 117m. They consider that the consent does not specify a rotor diameter or hub height and have, therefore, not requested a variation from the ECU for this amendment. Nevertheless, as Condition 6 of the deemed consent states that the proposed turbines should be “consistent with the candidate turbine or range assessment in the environmental statement”, they have informed the ECU of the likely rotor increase. However, had there been no intention to increase the tip height, it is doubtful that the rotor increase, in itself, would have needed a formal variation and it could have been considered that the turbines were still consistent with the range identified in the environmental statement.

In effect, it is likely that the rotor diameter increase would be more noticeable from distance than the 3m tip height increase. Whilst there would be a wider sweep of blades and a reduction in separation between the blades of each turbine, the visual impact would also be slightly offset by the reduced hub height and vertical extent of the towers. Although the Landscape Architect has considered the rotor diameter increase (together with the hub height increase), and whilst she recognises the difficulty of attempting to demonstrate the change in effects as a result, she still considers that the resulting impact would be very limited and the change in effects barely perceptible.

The impacts of the tip height increase are considered by the applicant in their request for a Screening Opinion to the ECU, the landscape and visual effects of the increase being assessed by their Landscape Consultants as unchanged and as previously reported to, and accepted by, the Reporters and Scottish Ministers. They also state that, in their opinion, a 3m increase and associated rotor diameter change “...would be barely perceptible when considered in the context of the scale and nature of the existing consented scheme”.

Their assessment of landscape and visual effects includes a ZTV, four wirelines and a cumulative narrative, all comparing the consented scheme with the proposed variation. The assessment also takes into account changes in landscape policy and guidance since the initial scheme was considered, including the SBC “Renewable Energy” SPG.

It concludes no change to their previous findings on landscape character, sensitive receptors, landscape designations or cumulative effects. They consider that the changes will be negligible and barely perceptible, as demonstrated by the comparative wirelines and ZTV.

The ZTV only demonstrates very small areas of additional visibility to the south of Moffat and in the M74/Beattock area. Assessing the submitted comparative material and taking into account the small scale nature of the tip height increase (2.2% of the overall vertical height), the proposed variation will have a negligible effect and does not give rise to any additional significantly adverse and unacceptable landscape or visual impacts, including impacts on the wild land designation. The Reporters agreed with the applicant that the original scheme did not compromise the wild land designation and, therefore, it is accepted that the negligible tip height increase and additional five year operating life would not change this assessment.

The four wirelines also demonstrate such minor changes that it is certainly difficult to perceive any amendment from the consented scheme. Viewpoint 2 from the A701 at Glenbreck perhaps reveals the wider sweep of the blades but this is offset by the lowering of the hub heights. Certainly, it is very difficult to perceive any height increase and, thus, any consequent adverse landscape or visual effects. Similarly, Viewpoint 3 from the A701 at Tweedhopefoot does not reveal any more turbines breaking the skyline than the five from the consented scheme, albeit increased blade lengths are perhaps more noticeable from the outlying turbines T3 and T11. In reality, however, the increase is so marginal that vegetation and screening will probably render the increase imperceptible.

Viewpoint 4 from the minor road flanking the Fruid Reservoir was of particular concern to the Council during consideration of the previous scheme and the Reporters did not disagree that the visual impacts in the Fruid Valley were probably greatest and most significant, compared to all other effects of the scheme. Nevertheless, and despite being part of a Special Landscape Area, they considered the landscape to be unremarkable and already impacted by man-made interventions including the reservoir and dam. Whilst they recognised the magnitude of change in this area, including to residents at either end of the reservoir, they did not consider the effects to be of a magnitude that would outweigh the other benefits of the scheme in the overall planning balance.

Comparing the consented and proposed wirelines from Viewpoint 4, the scheme will already have a significant impact and it is difficult to perceive any real change. Whilst some of the foreground turbines might appear very slightly more dominant, the fact that most of these turbines are visible from, or near to, their bases determines that the 2.2% tip height increase is being compared to almost the full height, meaning that the change is visually insignificant. Some of the background turbines, indeed, recede in impact slightly due to the two metre hub height drop and despite the 3m blade tip increase. The final submitted comparative viewpoint is a more distant one from Right of Way BT100 but the changes are, again, very difficult to perceive.

In terms of impacts on residential amenity, the Council were concerned mostly with the impacts on the limited number of properties at either end of the Fruid Reservoir. Whilst other properties were affected in the Tweed valley along the A701 corridor, it was these properties within the intimate and small scale nature of the Fruid Reservoir and valley that would have experienced the most significant effects. In consenting the scheme, the Reporters did recognise that these residents would see many of the turbines from their homes, gardens and approaches. However, they did not consider the turbines

would have such a visually dominant effect that they could be considered to be overbearing.

Whilst the Council had partly objected to the original scheme for reasons of impact on residential amenity, it is accepted that the Reporters did not feel the impact was overbearing nor sufficiently dominant to warrant refusing the S36 application. Given their opinion, in assessing the minimal changes proposed to the scheme of a 3m tip height increase and how perceptible that is in terms of visual effects, it is concluded that the changes would not result in an overbearing impact on residential amenity. Viewpoint 4 is probably the most representative of residential amenity impacts, of the comparative viewpoints provided with the S36C variation request. As mentioned above, it is considered that any change in impact is difficult to perceive from this viewpoint.

There should also be consideration of cumulative impacts in terms of the variation request and also the extended operating time over which the effects would be experienced. The applicant notes that the biggest change in the cumulative assessment since initially carried out is the withdrawal of the Earlshaugh scheme, together with the implementation of the Minnygap and Clyde Extension schemes. Whilst significant cumulative effects were originally identified on summit viewpoints, in the Fruid valley and from Right of Way BT100, the 3m tip height increase and extended operating life do not exacerbate the cumulative effects, especially when taking into account the withdrawal of the Earlshaugh scheme.

The applicant's submission had a cut-off date of 15 April 2020 for the inclusion of wind farm schemes for the purpose of cumulative assessment. A new 27 turbine wind farm scheme ("Grayside") with 200m tip heights has now also been submitted for Scoping to the ECU, adjoining the Scottish Borders administrative boundary with South Lanarkshire. This wind farm appears as a northern extension to the Clyde Wind Farm extension. It is nearer to Whitelaw Brae than Glenkerie but further away than the Clyde extension. Had the Scoping request been submitted before 15 April, then the applicant would have clearly considered this to be a significant change to the baseline cumulative position.

In terms of the impacts on this variation application, whilst any scheme in relation to cumulative effects should be taken into account given its proximity, less weight should be given to schemes at planning stages, compared to schemes with consent or under construction. "Grayside" is only at Scoping stage and, indeed, the impacts of the Whitelaw Brae existing consent would have more of a significant bearing on decisions over the "Grayside" S36 application when that application is lodged and considered. Furthermore, it is not the cumulative impact of the Whitelaw Brae existing consent compared with "Grayside" that should be considered, but only the variation which is the 3m tip height increase and extra five year operating life. Given the very slight changes in visibility as demonstrated by the ZTV, the inclusion of "Grayside" within the cumulative assessment would not change the significance of the visual impacts.

Since 15 April 2020, a Scoping submission to the ECU has also been made for a wind farm at Scawd Law north-east of Walkerburn. As this is just outside the 35km Cumulative Assessment study area, the impacts on the variation request at Whitelaw Brae will be extremely limited.

Overall the proposed variation is judged to have a negligible effect which does not give rise to any unacceptable landscape or visual impacts, when considering the requirements of Local Development Plan Policy ED9 and the "Renewable Energy"

SPG. Similarly, landscape and visual effects have been fully considered under Schedule 9 of the Electricity Act.

### **Noise**

The approved scheme was subject to conditions to limit the noise levels in order to avoid adverse impacts on the amenity of residential properties and also set procedures in the event of a statutory noise complaint. This position was accepted by the Reporters and by the Council.

In being consulted on the variation request, the Environmental Health Officer has asked for an updated noise impact assessment. However, the position of the applicant is that as no changes to the layout and the same number of turbines are intended, Condition 19 on the deemed consent sets the maximum dB limits at specified properties and this will still apply to the variation. It is also the case that had there not been a tip height increase but only an increase in rotor diameter, then no variation to the S36 consent would have been sought and there would have been no opportunity to seek a revised noise assessment.

Ultimately, and whilst the Environmental Health Officer's request is noted, the slight increase in tip height and the fact that the original noise limits on residential locations still remain, do not justify the requirement for a new noise impact assessment. It remains the responsibility of the developer to ensure that they operate within these limits previously imposed.

### **Cultural Heritage**

The original scheme was partly objected to as it was considered there would be significant detrimental impacts on two archaeological sites of national significance, Asset HA5 and the Scheduled Hawkshaw Castle. However, the Reporters noted the mitigation proposed by the applicant which involved removal and moving of turbines in relation to Hawkshaw Castle, and relocation of the site compound and a programme of interpretation in relation to Asset HA5. They concluded that the mitigation was acceptable and met with the requirements of Schedule 9 of the Electricity Act.

The applicant submitted an assessment of cultural heritage impacts within the Screening request (including comparative wirelines) and concluded that, although there have been changes to historic environment policy and guidance since the original assessment and decision, the slight tip height increase and longer operational life of the wind farm will not change the impacts on the aforementioned assets nor the mitigation. The Council Heritage Officer has commented that the existing consent is subject to conditions including a written scheme of investigation and interpretation of fieldwork by the Biggar Archaeological Group. Whilst there may be further archaeological implications as a result of the variation request, he considers that these can be addressed in the existing conditions which should still apply to the variation.

Given this, the Reporters' previous acceptance of the cultural heritage impacts and the negligible changes intended in the variation, it is not considered that the variation, in itself, would result in significant adverse effects on cultural heritage.

### **Seismology**

Policy ED9 seeks to ensure that wind farm developments must consider their impact on aviation and defence infrastructure. The increase in the height of turbines and operating life could potentially impact both of these interests. It is important to note,

however, that the main consultees such as the MOD, NATS, Edinburgh Airport etc. make their responses directly to the ECU on S36 applications and the Council are not required to undertake duplicate consultations. It will then be for the ECU to assess any responses they receive in relation to aviation and defence matters. This is the reason why, on the original application, the Council did not address aviation and defence matters. Had it been a planning application, then consultations would have been carried out, and responses considered by, the Council as part of the overall assessment of the application and reflecting the Council's role as decision-makers.

For the advice of Members, however, it is known at the time of writing this report that the ECU had consulted the MOD on the variation request and they have objected to the request for reasons of impact on the Eskdalemuir Seismological Recording Station. They state the following:

*“The noise budget required for this revised development, exceeds the amount of budget previously allocated to the Whitelaw Brae Wind Farm Application Win-140-4 that was granted at appeal in December 2017. Therefore, the MOD objects to the variation as it will result in the exceedance of the allocated budget.”*

It is known that the applicant is discussing the matter with the MOD but their stated position, at the time of writing this report, is that the tip height increase would result in the noise budget being exceeded. It is a matter for the ECU to consider how the MOD objection should influence their decision on the variation request and it is not for the Council to duplicate that objection in relation to defence matters.

Other aviation matters would still be addressed by the original conditions attached to the S36 and deemed planning permissions, including agreement of a radar mitigation scheme in liaison with NATS.

### **Ecology and ornithology**

There were no ecological reasons to oppose the original scheme and Reporters were content to approve the development subject to a number of associated conditions. These included appointment of an Ecological Clerk of Works, Construction and Habitat Environmental Management Plans and Species Mitigation Plans.

However, the extension of the tip heights and operating life has the potential to affect ornithology, primarily by increasing the risk of collision and disturbing habitats. As part of the Screening submission preceding the variation request, further collision risk information was submitted by the applicants who calculated the increased risk from a tip and rotor diameter increase, over the extended period. The results were negligible across all species and were considered acceptable

The Council Ecology Officer has considered this information and the overall variation request. He comments that further information is now available in relation to Schedule 1A species at the site and that further Schedule 1A surveys are now necessary. If consent is granted, then conditions should be revised to account for impacts on Schedule 1A species. It is also known that the ECU have also received responses from SNH and the RSPB. SNH are advising that as Schedule 1A species are now known to be using the site, they require a further year of bird surveys to ascertain what potentially significant effects there might be. The RSPB refer to the black grouse habitat enhancement measures by condition and seek to provide input into the process.

It would appear that there has been a change to the baseline information with regard to Schedule 1A bird species at or near to the site. However, there is already a valid

consent for a scheme subject to Condition 15 which seeks a Species Mitigation and Protection Plan. The Condition is worded as follows:

*“Prior to the commencement of any works or development on the site a Species Mitigation and Management Plan in accordance with the Draft Species Protection Plan contained within the ES at Technical appendices 7.7 (including bats, otter, badger, red squirrel, breeding curlew, black grouse birds and reptiles) shall be submitted to and approved in writing by the Planning Authority in consultation with SNH. All on-site works and development shall thereafter be carried out in accordance with the approved Plan unless otherwise agreed in writing with the Planning Authority in consultation with SNH.”*

Whilst this lists specific species that had already been identified in the Environmental Statement (ES), the list is not exhaustive nor complete as it uses the word “including” and it also states “birds” as well as specific birds such as black grouse and breeding curlew. Whilst there is no doubt the original ES does not reflect the latest findings of a new Schedule 1A species at the site, it is considered that the wording of original condition 16 could provide sufficient protection and control as a result of the list of species not being exhaustive and also including reference to birds generally. This condition will need to be discharged for the existing consent even if the variation request is either denied or allowed but not proceeded with. Furthermore, should the discharge of that condition require further surveys which could take time to compile, then the applicant is already seeking a five year extension to the operating life of the wind farm and this should offset the impacts of any delay in undertaking the necessary survey work.

However, the wording of Condition 15 could be made more specific to include further survey and species protection for the Schedule 1 species now identified at the site. In the circumstances, it is suggested that there is justification to recommend to the ECU that they amend Condition 15 appropriately, should the variation request be granted. Subject to this, there are no ecological or ornithological reasons to oppose the variation request and, thus, the scheme is still compliant with Policy ED9 and Schedule 9 of the Electricity Act.

## **Annex E**

Condition 5 of the deemed planning consent stated that the development should be carried out in accordance with approved drawings listed at Annex E of the consent. However, as no Annex E was actually attached to the consent, the applicant is suggesting the original site layout drawing (Figure FEI 3.1) is specifically referred to in the Condition. As there has been no changes to the number or siting of any turbine, referring implementation of the development to this drawing is acceptable. The tip height and appearance of the turbines is controlled by Condition 6, for which a separate variation is sought to lift the tip heights.

## **Suggested Variations**

Table 1 of the submitted variation request identifies proposed amendments which are required to the consent issued for Whitelaw Brae should consent be granted for the variation. This would require amendment to the following parts;

- Operating life
- Annex 1 blade tip height
- Condition 5 – reference to Figure FEI 3.1 Site Layout as Annex E

- Condition 6 – design and operation of the turbines
- Condition 24 – site decommissioning, restoration

The variations proposed to each of the above are judged to be acceptable and will continue to adequately control the increased tip heights and operating life duration followed by decommissioning. If Members are minded to offer no objections to this proposal, it is recommended that this is subject to the imposition of the proposed variations noted in the aforementioned Table 1.

## CONCLUSION

Provided all the previously imposed conditions are still applied to the variation, including an adjustment to Condition 15 to include Schedule 1A species, it is considered that the impacts arising from the 3m increase in height of the turbines and 5 year extension to their operating life would not be significant. The proposed development is, therefore, consistent with the Development Plan and does not raise any other material considerations that would justify departure from the Development Plan. It would also be in accordance with Schedule 9 of the Electricity Act through the identification of impacts on the natural environment and proposed mitigation.

## RECOMMENDATION BY CHIEF PLANNING AND HOUSING OFFICER:

That the Council indicate to the Scottish Government that it does not object to the application to increase the height of all turbines by 3m, extend their operating life to 30 years and refer to the original FEI Site Layout as Annex E of the S36 consent, subject to the imposition of the relevant conditions and informative notes of the original consent which remain necessary to adequately control this development, including an adjustment to Condition 15 to include Schedule 1A species.

## DRAWING NUMBERS

Drawing Number	Date Received	Description
Figure 1.1	17.07.2020	Site Location Plan
Figure 1.2	17.07.2020	Application Site Boundary
Figure 3.1	17.07.2020	Proposed Site Layout

## Approved by

Name	Designation	Signature
Ian Aikman	Chief Planning and Housing Officer	

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

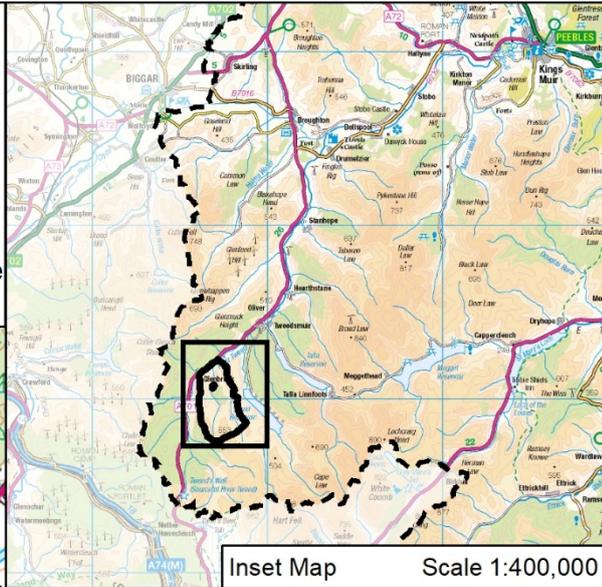
## Author(s)

Name	Designation
Craig Miller	Principal Planning Officer



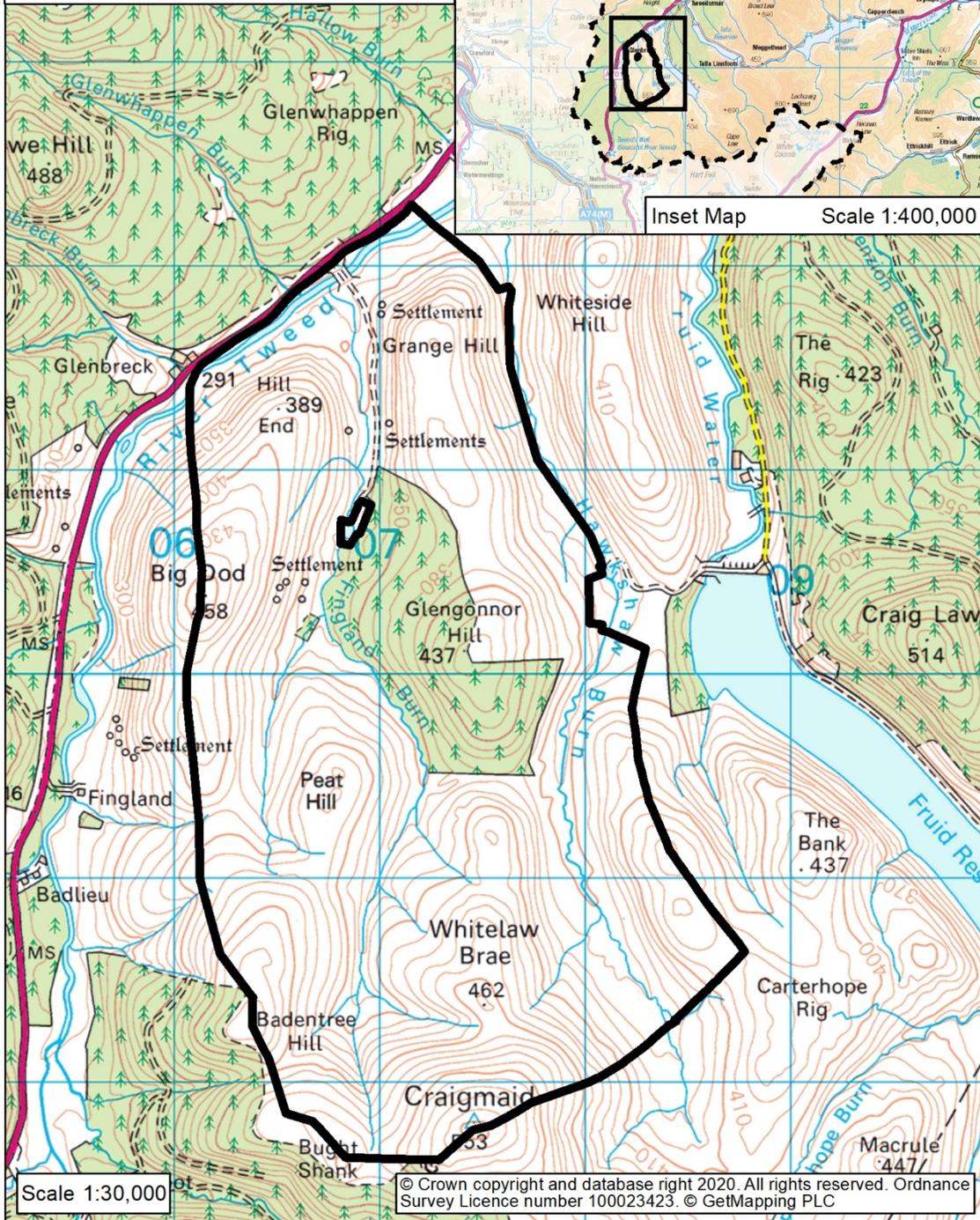
20/00789/S36

(Whitelaw Brae Wind Farm)  
Land South East Of Glenbreck House  
Tweedsmuir



Inset Map

Scale 1:400,000



Scale 1:30,000

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## **PLANNING APPEALS & REVIEWS**

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

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## **PLANNING AND BUILDING STANDARDS COMMITTEE**

**5<sup>th</sup> October 2020**

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### **1 PURPOSE**

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

### **2 APPEALS RECEIVED**

- 2.1 Planning Applications

Nil

- 2.2 Enforcements

Nil

- 2.3 Works to Trees

Nil

### **3 APPEAL DECISIONS RECEIVED**

- 3.1 Planning Applications

Nil

- 3.2 Enforcements

- 3.2.1 Reference: 19/00206/UNDEV  
Proposal: Erection of structure  
Site: Land West of 1 Linthaugh Farm Cottage, Jedburgh  
Appellant: Mr Neil Gilmour

Reason for Notice: It appears to the Council that the above breach of planning control has occurred within the last 4 years. A building has been erected on land without the benefit of permitted development or planning permission. The owner of the land has been provided with the opportunity

to submit a retrospective planning application to regularise the breach in planning control however has declined to submit such an application at this time.

Grounds of Appeal: 1. The breach of control which is alleged in the notice has not occurred. 2. When the Notice was issued it was already too late to take enforcement action. 3. The steps required by the notice are excessive and less onerous steps would remedy the breach or to any injury to amenity which has been caused by any such breach.

Method of Appeal: Written Representations

Reporter's Decision: Dismissed

Summary of Decision: The Reporter, Keith Bray, upheld the enforcement notice, but has varied the terms of the notice and allowed a period of 6 months for the requisite work to be carried out due to the current Covid-19 pandemic.

### 3.3 Works to Trees

Nil

## 4 APPEALS OUTSTANDING

4.1 There remained 2 appeals previously reported on which decisions were still awaited when this report was prepared on 24<sup>th</sup> September 2020. This relates to sites at:

- |   |  |
|---|--|
| • Land North of Carcant Lodge Wull Muir Wind Farm, Heriot | • Land North West of Willowdean House, Foulden |
|---|--|

## 5 REVIEW REQUESTS RECEIVED

5.1 Reference: 20/00714/PPP  
Proposal: Erection of two dwellinghouses  
Site: Paddock North of Station House, Cowdenburn  
Appellant: Mr Stuart Corrigan

Reason for Refusal: 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 it would not relate sympathetically to an existing building group and would comprise sporadic development in a linear manner alongside the public road. No economic or other overriding case would override this conflict. Furthermore, the nearest building group has been increased by the maximum permissible in terms of policy HD2 within the current Local Development Plan period and no overriding case has been substantiated for allowing additional dwellinghouses.

## 6 REVIEWS DETERMINED

6.1 Reference: 19/01256/FUL  
Proposal: Erection of 15 No huts with associated access and car parking

Site: Land East of Wester Deans, West Linton  
Appellant: Ms Jess Windsor

Reasons for Refusal: 1. The development would be contrary to Policy ED7 of the Local Development Plan 2016 in that it would not respect the amenity and character of the surrounding area as a result of its visual impact, and would fail to comply with all the siting and design criteria set out in Policy PMD2, as required by Policy ED7, in that it would not be compatible with and respect the character of the surrounding area, and no overriding case for the development has been substantiated. Other material considerations do not outweigh this conflict. 2. The development would be contrary to Policy PMD1 of the Local Development Plan 2016 in that the location of the site would mean that there would be significant reliance on private vehicles, with limited potential for the development to be accessed by other transport modes including public transport, ultimately amounting to unsustainable development. No overriding case for the development has been substantiated. Other material considerations do not outweigh this conflict.

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Overturned (Subject to Conditions & Informatives)

6.2 Reference: 20/00343/FUL  
Proposal: Siting of 3 No glamping pods and associated works  
Site: Land South West of Stouslie Farmhouse, Hawick  
Appellant: Mrs Carly Anderson

Reason for Refusal: The development is contrary to Policy ED7 and criterion h), k) and m) of Policy PMD2 of the Local Development Plan 2016 in that the site occupies an isolated and exposed location where the landscape and visual impacts of the proposals would fail to sympathetically integrate with the character, appearance and sense of place of the surrounding rural area and the proposed landscaping does not provide sufficient mitigation of the resulting landscape and visual impacts. Other material considerations do not outweigh this conflict.

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Overturned (Subject to Conditions)

## 7 REVIEWS OUTSTANDING

7.1 There remained 3 reviews previously reported on which decisions were still awaited when this report was prepared on 24<sup>th</sup> September 2020. This relates to sites at:

• Garden Ground of 7 Heriot House, Heriot	• Garden Ground of Clifton Cottage, High Street, Kirk Yetholm
• Land North West of Strathmyre Old Belses, Jedburgh	•

## 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 24<sup>th</sup> September 2020. This relates to sites at:

• Fallago Rig 1, Longformacus	• Fallago Rig 2, Longformacus
• Crystal Rigg Wind Farm, Cranshaws, Duns	•

**Approved by**

**Ian Aikman  
Chief Planning & Housing Officer**

**Signature .....**

**Author(s)**

Name	Designation and Contact Number
Laura Wemyss	Administrative Assistant (Regulatory) 01835 824000 Ext 5409

**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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Email: PLACetransrequest@scotborders.gov.uk