

# Public Document Pack



## PLANNING AND BUILDING STANDARDS COMMITTEE MONDAY, 27TH MARCH, 2023

A MEETING of the PLANNING AND BUILDING STANDARDS COMMITTEE will be held in the COUNCIL CHAMBERS, COUNCIL HEADQUARTERS, NEWTOWN ST BOSWELLS AND VIA MICROSOFT TEAMS on MONDAY, 27TH MARCH, 2023 at 10.00 AM

All attendees, including members of the public, should note that the public business in this meeting will be livestreamed and video recorded and that recording will be available thereafter for public view for 180 days.

J. J. WILKINSON,  
Clerk to the Council,

17 March 2023

<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 - 8) Consider Minute of the Meeting held on 6 March 2023 for signature and approval by the Chair. (Copy attached.)
5.	<b>Application</b> Consider the following application for planning permission:
	(a) <b>Land South West of Cowieslinn Quarry, Peebles - 22/01205/FUL and 22/01206/FUL</b> (Pages 9 - 22) 22/01205/FUL – Variation of Conditions 6 and 7 of planning permission 97/00640/MIN to enable night time operation of the existing asphalt plant; and,  22/01206/FUL - Variation of Conditions 6 and 7 of planning permission 09/00468/MIN to enable night time operation of the existing asphalt plant.  (Copy attached.)
6.	<b>Appeals and Reviews</b> (Pages 23 - 28) Consider briefing note by Chief Planning and Housing Officer. (Copy attached.)

7.	<b>Any Other Items Previously Circulated</b>
8.	<b>Any Other Items which the Chair 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), J. Cox, M. Douglas, D. Moffat, A. Orr, N. Richards, S. Scott, E. Small and V. Thomson

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**SCOTTISH BORDERS COUNCIL  
PLANNING AND BUILDING STANDARDS**

MINUTES of Meeting of the PLANNING AND BUILDING STANDARDS COMMITTEE held in Council Chamber, Council Headquarters, Newtown St Boswells, and via Microsoft Teams on Monday, 6th March, 2023 at 10.00 am

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Present:- Councillors S. Mountford (Chair), J. Cox, M. Douglas, D. Moffat, A. Orr, N. Richards, S. Scott, E. Small and V. Thomson

In Attendance:- Planning and Development Standards Manager, Lead Planning Officer (B. Fotheringham), Lead Roads Planning Officer (D. Inglis), Solicitor (S. Thompson), Lead Officer Heritage and Design (D. McLean), Heritage and Design Officer (S. Roberts), Democratic Services Team Leader, and Democratic Services Officer (W. Mohieddeen)

**ORDER OF BUSINESS**

The Chair varied the order of business as shown on the agenda and the Minute reflects the order in which the items were considered at the meeting.

1. **MINUTE.**

There had been circulated copies of the Minute of the Meeting held on 6 February 2023.

**DECISION**

**AGREED to approve the Minute for signature by the Chair.**

2. **NEWSTEAD SUPPLEMENTARY PLANNING GUIDANCE: NEWSTEAD CONSERVATION AREA APPRAISAL AND MANAGEMENT PLAN**

There had been circulated copies of a report by Director Infrastructure and Environment that proposed approval for public consultation of the Draft Newstead Conservation Area Appraisal and Management Plan Supplementary Planning Guidance. The Newstead Conservation Area Appraisal and Management Plan (CAA & MP) was the first of a programme for review of all 43 conservation areas in the Scottish Borders. The review would result in a CAA & MP being produced for each conservation area. It was proposed that the Draft Newstead Conservation Area Appraisal and Management Plan Supplementary Planning Guidance, detailed in Appendix A of the report, was subject to public consultation for a period of 12 weeks. Responses received as part of the public consultation would be used to inform a finalised CAA & MP. A summary of responses to the public consultation and the finalised CAA & MP would be brought back to Planning and Building Standards Committee for adoption. The Chair invited Sanne Roberts, Heritage and Design Officer, and Debbie McLean, Lead Officer Heritage and Design, to present the report and answer Members' questions. Conservation areas were explained and Members were advised that there were 43 conservation areas in the Scottish Borders. The Conservation Area Appraisal set out the history of the area and identified special architectural and historic interest, including elements such as layout, views, landscape, trees, buildings, structures and spaces. The Management Plan provided guidance on how change can happen in a way that preserved and enhanced special character which included development guidelines and enhancement opportunities. Local authorities were obligated to produce CAAs and MPs under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and were also a requirement of the National Planning Framework 4 and the Local Development Plan under Policy EP9. The purpose

of the CAA and MP for Newstead was to provide clarity and transparency for the planning process, promote special aspects the local community and heritage of the area, and to support local funding applications. The Lead Officer Heritage and Design presented slides of the Newstead Conversation Area. The Appraisal summarised the historic context of the village and its architectural character. The Management Plan set out guidance on maintenance and planning advice. A 12-week consultation on the CAA and MP was proposed with responses to be collated and inform a report and supplementary planning guidance to be submitted to the Committee at a future meeting. In response to a question on solar panels, Members were advised that there was guidance available to help with net zero ambitions and discrete climate actions for conversation areas. The draft Management Plan also referred to available advice on replacement windows and doors which advised owners of their responsibilities. Members were advised that the CAA and MP were to help the Committee balance area conservation aspects in planning decisions and not to prevent development. The consultation was due to begin after Easter 2023 and a report would be anticipated to be presented to the Committee in the autumn. It was anticipated there would be two conservation reviews per year.

## **DECISION**

**AGREED the draft Newstead Conservation Area Appraisal and Management Plan Supplementary Planning Guidance for public consultation.**

### **3. UPDATE ON NATIONAL PLANNING FRAMEWORK AND IMPLICATIONS FOR LOCAL DEVELOPMENT PLAN AND PLANNING DECISIONS**

3.1 The Chair invited the Planning and Development Standards Manager to present an update on the National Planning Framework 4 (NPF4). NPF4 was adopted by the Scottish Government on 13 February 2023 and differed substantially from previous iterations which were largely focused on facilitating development and economic growth at a very strategic level. While these would remain important considerations, the document signalled a different emphasis which prioritised climate action and an ambition to achieve a net zero, sustainable Scotland by 2045. NPF4 would have a significant bearing on how local authorities undertook preparation of Local Development Plans (LDPs). In particular, NPF4 guided how local authorities could quantify future housing requirements and allocate development sites. NPF4 became part of the development plan and replaced the SESPlan regional development plan and the 2014 Scottish Planning Policy which were now no longer Scottish Government policy. There were three parts to NPF4 covering the National Spatial Strategy for Scotland 2045, the National Planning Policy, and annexes which added detail to the framework. There were six spatial principles which were detailed as:

- A just transition to net zero;
- Conserving and recycling of assets;
- Local living;
- Compact urban growth;
- Rebalanced development; and,
- Rural revitalisation.

3.2 These principles were expected to deliver on three overarching themes linked to the UN sustainable development goals which were:

- Sustainable places;
- Liveable places; and,
- Productive places.

3.3 NPF4 covered regional priorities for 5 geographic areas in Scotland. The Planning and Development Standards Manager advised there was one area that directly affected and one area that indirectly affected the Scottish Borders – one that covered the central belt, and the other that covered south Scotland. Priorities for south Scotland included the protection of environmental assets and stimulation of investment in natural and engineered solutions to climate change whilst decarbonising transport and building resilient physical and digital connections; increasing the population by improving local

liveability and supporting sustainable rural development and supporting local economic development whilst making substantial use of the area's world-class environmental assets to innovate and lead greener growth.

- 3.4 There were 33 policies in part 2 of NPF4 grouped by the three overarching themes. These were effectively directions for matters to be covered in revised Local Development Plans but, because it became a formed part of the development plan, also included matters which would be considered in the determination of individual planning applications. Where there were contradictory policies, NPF4 acknowledged them and confirmed that decision-makers were to determine which priorities were to take precedence. Part 3 of NPF4 set out appendices which provided additional detail on national development, spatial priorities and housing allocations. NPF4 was now referred to in planning reports and officers were content there was not major inconsistencies with the LDP2. Copies of NPF4 would be circulated by officers to the committee and support from officers on NPF4 would be available. Development of the next local development plan would incorporate developments in the policy framework outlined in NPF4.

**DECISION**

**NOTED the update.**

4. **PLANNING PERFORMANCE FRAMEWORK FEEDBACK**

The Planning and Development Standards Manager presented slides on an update on a summary of feedback from the Scottish Government on the annual planning performance framework. The 11th iteration of the Planning Performance Framework was presented which was established in 2012 to provide a rounded approach to assess the planning service incorporating indicators for performance and good practice. Speed of decision-making was not the only indicator, but there was focus on effectiveness and performance. Indicators were ranked on a red-amber-green scale and Scottish Borders Council attained 12 green rating and one red rating. The 'red' rating on the local development plan was due to the local development being over 5 years old which was affected by Covid-19 response. Decision-making timescales were shown to be 'green' rated across three indicators. The Chair noted this was the best report on the Planning Performance Framework since he had joined the committee on 2012.

**DECISION**

**NOTED the update.**

5. **APPEALS AND REVIEWS.**

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

**DECISION**

**NOTED that:**

- (a) **Two appeals had been received in respect of:**
- (i) **Installation of signage to gable wall (retrospective), 1 Hall Street, Galashiels; and,**
  - (ii) **Change of Use of an existing agricultural building to dwellinghouse, The Old Cow Shed, Lennel, Coldstream;**
- (b) **There remained one appeal previously reported on which a decision was still awaited when the report was prepared on 23 February 2023 which related to a site at Land West of Slipperfield House Slipperfield Loch, West Linton.**
- (c) **Review requests had been received in respect of:**

- (i) Erection of boundary fence (retrospective), 100 Abbotseat, Kelso; and,
  - (ii) Erection of 4 no dwellinghouses, Land West of Greenburn Cottage, Auchencrow,
- (d) The following reviews had been determined as shown:
- (i) Erection of residential holiday let with associated facilities, Townfoot Hill, Land North West of Cunzier-ton House, Oxnam, Jedburgh – Decision of Appointed Officer Overturned (subject to conditions).
- (e) There remained 9 reviews previously reported on which decisions were still awaited when the report was prepared on 23 February 2023 which related to sites at:

<ul style="list-style-type: none"> <li>• Land North East of Runningburn Farm, Stichill</li> </ul>	<ul style="list-style-type: none"> <li>• Land at Silo Bins Edington Mill Chirnside, Edington Mill Road, Chirnside</li> </ul>
<ul style="list-style-type: none"> <li>• Land South West of Castleside Cottage, Selkirk</li> </ul>	<ul style="list-style-type: none"> <li>• Land South West of Corstane Farmhouse, Broughton</li> </ul>
<ul style="list-style-type: none"> <li>• Land North and East of Clay Dub, Duns Road, Greenlaw</li> </ul>	<ul style="list-style-type: none"> <li>• 17 George Street, Eyemouth</li> </ul>
<ul style="list-style-type: none"> <li>• Dove Cottage Gate Lodge Press Castle, Coldingham, Eyemouth</li> </ul>	<ul style="list-style-type: none"> <li>• Ravelaw Farm, Duns</li> </ul>
<ul style="list-style-type: none"> <li>• Land South West of West Loch Farmhouse, Peebles</li> </ul>	

- (f) There remained one Section 36 Public Local Inquiry previously reported on which a decision was still awaited when the report was prepared on 23 February 2023 which related to a site at Land West of Castleweary (Faw Side Community Wind Farm), Fawside, Hawick.

### **URGENT BUSINESS**

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

### **6. UPCOMING WIND FARM PLANNING APPLICATIONS**

The Lead Planning Officer provided Members with a position update on wind energy planning applications that were likely to be considered by Committee in the coming months. The Cloich wind farm application was likely to be presented to the Committee on at its 27 March meeting and Members were offered the opportunity to have a site visit. Officers would contact members to arrange a date for a site visit and transport could be available. Accessible points would be selected at the site visits to support Members with mobility needs. In response to a question from Members, the Lead Planning Officer advised that section 36 applications related to applications that exceeded 50 megawatts were determined by the Scottish Government Energy Consents Unit and that Scottish Borders Council were a consultee. Section 42 applications were related to modifications of earlier granted permissions for wind farms such as extension of lifespan or changes in height. Heights of turbines which were to be considered were averaging between 150 metres and 200 metres. In response to a question regarding studies that informed wind farm applications, the Planning and Development Standards Manager advised that previous guidance from Ironside Farrar may still have a role in the context of NPF4 in determining responses to wind farm applications depending on suitability and context. With regards to roads in wind farm applications, this would only come to Committee for consideration if roads there were new roads planned. Cumulative impact of windfarms in landscapes were usually considered to guide development.

**DECISION  
NOTED the update.**

*The meeting concluded at 11.20 am.*

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**SCOTTISH BORDERS COUNCIL**

**PLANNING AND BUILDING STANDARDS COMMITTEE**

**27 MARCH 2023**

**APPLICATIONS FOR PLANNING PERMISSION**

**ITEM:** **REFERENCE NUMBERS:** 22/01205/FUL & 22/01206/FUL

**OFFICER:** Mr C Miller  
**WARD:** Tweeddale West  
**PROPOSALS:** 22/01205/FUL – Variation of Conditions 6 and 7 of planning permission 97/00640/MIN to enable night time operation of the existing asphalt plant  
22/01206/FUL - Variation of Conditions 6 and 7 of planning permission 09/00468/MIN to enable night time operation of the existing asphalt plant

**SITE:** Land South West of Cowieslinn Quarry, Peebles  
**APPLICANT:** Breedon Trading Limited  
**AGENT:** Breedon Trading Limited

**PLANNING PROCESSING AGREEMENT**

A Planning Processing Agreement exists on both applications for decision up until 24 April 2023.

**SITE DESCRIPTION**

The site is Cowieslinn Quarry, a hard rock facility 10km north of Peebles in the Eddleston Water valley. Current access leads from the A703 to the quarry, the Shiplaw Burn bordering the southern end of the site and the Cowieslinn Burn running through the site under the access road. The Shiplaw Burn is part of the River Tweed Special Area of Conservation. The site is surrounded by agricultural land, individual farms and isolated houses, together with a small group of houses known as Waterheads between the quarry and the A703.

The applications relate to the asphalt plant that is located within the quarry to the northeastern part. Plate 1 in the submitted Planning Statement shows the appearance and scale of the plant, the highest part reaching 23.2m from ground level.

**PROPOSED DEVELOPMENT**

Unless specifically referred to otherwise, the contents of this report refers to both Section 42 applications, including the consultations, representations and issues considered.

A Section 42 application is a planning application that seeks to vary or omit one or more planning conditions attached to the original consent. If such applications relate to a development, which was originally classified as a “Major” application, then the S42 applications are also treated the same way. This means that the final decision on the applications is not a delegated matter and must be taken by the Committee, irrespective of the recommendation or number of objections.

Circular and case law suggests the following for S42 assessment:

- Section 42 applications must be considered in terms of the development plan and any relevant material considerations,
- While Councils should consider only the conditions to which any new permission should be granted, this does not prevent consideration of the overall effect of granting the consent,
- BUT primarily where the previous permission has lapsed or is incapable of being implemented,
- In such cases, this may involve reconsideration of the principle of development in light of any material change in the development plan policies, but will not require consideration of new in every case.

As both minerals consents related to the S42 applications have been implemented, established advice is that in such cases, only the conditions and any amended conditions should be considered – not the principle of the whole development. In the particular circumstances of this development, consideration should be given primarily to the effects and impacts of the variation of Conditions 6 and 7 imposed on the original consents, to allow for night-time operation of the existing asphalt plant within the quarry and associated vehicle movements. Nevertheless, if consents are issued, then they are stand-alone permissions and all original conditions should still be applicable alongside any revised conditions agreed by the S42 consideration. There can be agreement reached thereafter, if any of the original conditions have already been discharged.

The Conditions sought to be varied were the same wording on both consents and are as follows:

#### Condition 6

The hours of operations for all working, with the exception of measures required in an emergency situation, servicing, maintenance and testing of plant, shall be limited to the hours of 0700 hours and 2000 hours Mondays to Fridays and 0700 hours to 1200 hours on both Saturdays and Sundays. In addition, no operations shall be permitted on 25th and 26th December and 1st and 2nd January.

Reason: In the interests of amenity.

#### Condition 7

Minerals shall only be dispatched from the site between 0700 hours and 1800 hours on Mondays to Fridays and 0700 hours and 1200 hours on Saturdays, with no movements on Sundays.

Reason: In the interests of amenity.

The S42 applications seek to amend these conditions to read as follows (with the amendments shown in italics for clarity):

#### Condition 6

a) The hours of operations for all working, with the exception of *the asphalt plant and* measures required in an emergency situation, servicing, maintenance and testing of plant, shall be limited to the hours of 0700 hours and 2000 hours Mondays to Fridays and 0700 hours to 1200 hours on both Saturdays and Sundays. In addition, no operations shall be permitted on 25th and 26th December and 1st and 2nd January.

*b) In addition to the hours of operation stipulated in part a), the asphalt plant shall be permitted to operate between the hours of 2000 hours and 0700 hours Mondays to Fridays on up to 75 occasions per calendar year.*

#### Condition 7

a) Minerals shall only be dispatched from the site between 0700 hours and 1800 hours on Mondays to Fridays and 0700 hours and 1200 hours on Saturdays, with no movements on Sundays.

*b) Notwithstanding the terms of part a) above, the dispatch of asphalt shall be permitted between the hours of 2000 hours and 0700 hours Mondays to Fridays on up to 75 occasions per calendar year.*

As explained within the remainder of this report, the above-amended conditions have now been amended further and it is these amended conditions that are now sought under the S42 applications. They are shown below with the further amendments shown in bold:

#### Condition 6

a) The hours of operations for all working, with the exception of the asphalt plant and measures required in an emergency situation, servicing, maintenance and testing of plant, shall be limited to the hours of 0700 hours and 2000 hours Mondays to Fridays and 0700 hours to 1200 hours on both Saturdays and Sundays. In addition, no operations shall be permitted on 25th and 26th December and 1st and 2nd January.

b) In addition to the hours of operation stipulated in part a), the asphalt plant shall be permitted to operate between the hours of 20:00 hours and **01:00** hours Mondays to Fridays on up to **50** occasions per calendar year.

**c) Notwithstanding the terms of part (b) above, the asphalt plant operator may make a written request to increase its quota from 50 night time operations in any calendar year (as specified within part (b) above). The Council may agree in writing to increase the annual quota to number of occasions it deems appropriate.**

#### Condition 7

a) Minerals shall only be dispatched from the site between 0700 hours and 1800 hours on Mondays to Fridays and 0700 hours and 1200 hours on Saturdays, with no movements on Sundays.

b) Notwithstanding the terms of part (a) above, the dispatch of asphalt shall be permitted between the hours of 20:00 hours and **01:00** hours Mondays to Fridays **on the occasions the asphalt plant is permitted to operate outwith the usual hours of operation stipulated within Condition 6(a).**

### **PLANNING HISTORY**

The quarry was first established on the site in the 1950s and is operated on the basis of three planning permissions, two of which refer to the quarry and extension with one relating to an access road. The main quarry consent dates from 1998 (97/00640/MIN) with the quarry extension consent dating from 2009 (09/00468/MIN). The quarry outputs 250-300,000 tonnes of aggregate per annum and has 30 years of reserves remaining. The asphalt plant produces 5000 tonnes of asphalt per month and is located towards the northern edge of the operational quarry. Breedon, who run 37 quarries and 19 asphalt plants across Scotland, operates the quarry.

## **CONSULTATION RESPONSES:**

### **Scottish Borders Council Consultees**

**BEAR:** No response

**Roads Planning:** No objections, noting that a low number of vehicles would be generated every night shift, largely outwith peak period and thus having no negative impact on the public road network. Notes that SBC tend not to carry out road surfacing work after 10pm.

**Environmental Health:** Initially objected. Whilst noting that the Noise Impact Assessment predicts noise breakout in the nearest affected dwellings to be within stated maximum guidelines, still consider nature and character of noise to be at most disruptive time of day and also noise levels based upon best practice.

In second response, accepts that NIA is in accordance with PAN50 but that this is only guidance and allows authorities to consider particular circumstances in their areas. Whilst preservation of noise to tolerable levels are demonstrated, amenity protection to a higher standard during the night should be expected. As ambient noise levels in the vicinity should not have changed, there should be no justification to lift the embargo on night-time working.

In third response to the updated NIA, considers its findings more robust as information gathered at one of two nearest and most affected dwellings. Also more demonstration of compliance with other British Standards. Concerns about residential amenity in a very quiet rural area remain and seeks consideration of granting of consent only on a temporary basis, ongoing noise monitoring, limiting the days in the trial period and reducing hours of operation during the night to finish earlier.

In the fourth response, now accepts the amendments made by the applicant to the reduced hours, reduced days in the year and ongoing noise monitoring and accepts the adjustments to conditions accordingly. On this basis, now supports the application.

**Ecology Officer:** Lighting could cause issues for wildlife and seeks more details.

### **Statutory Consultees**

**Eddleston and District Community Council:** No response.

**Lamancha Newlands and Kirkurd Community Council:** Night-time vehicles would not affect the CC area, as they would use the A703 to Leadburn.

## **REPRESENTATION SUMMARY**

As a result of the neighbour notification and advertisement in the Peeblesshire News, a total of seven objections and three general comments were received. They can be viewed in full on Public Access, the main concerns being summarised as follows:

- Little justification for the requests as no local need from Roads Officer comments
- Road safety risks of additional traffic using access onto A703
- Queries over accuracy of Noise Impact Assessment and not actually recorded from affected properties nor at night

- Compromise suggested of earlier shut-off at midnight/1am and 20-50 nights in the year, or a specific schedule
- Any night time working should then be monitored
- Regular meetings also should be held with neighbours
- Noise, dust and light impacts during the night, including from lorries using the access road which is bumpy exacerbating problems
- Applicant has agreed to improve bunding and screening from access road
- Existing problems with flooding, suggesting need for Flood Risk Assessment
- Detrimental wildlife impacts
- Impacts on private water supplies
- Restoration issues
- Breaches of existing planning conditions and controls

## **DEVELOPMENT PLAN POLICIES:**

### **National Planning Framework 4**

Policy 1 Tackling the climate and nature crisis  
 Policy 2 Climate mitigation and adaptation  
 Policy 3 Biodiversity  
 Policy 4 Natural places  
 Policy 7 Historic assets and places  
 Policy 12 Zero waste  
 Policy 18 Infrastructure first  
 Policy 22 Flood risk and water management  
 Policy 23 Health and safety  
 Policy 26 Business and industry  
 Policy 29 Rural Development  
 Policy 33 Minerals

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

Policy PMD1 Sustainability  
 Policy PMD2 Quality Standards  
 Policy HD3 Protection of Residential Amenity  
 Policy ED7 Business, Tourism and Leisure Development in the Countryside  
 Policy ED11 Safeguarding of Mineral Deposits  
 Policy ED12 Mineral and Coal Extraction  
 Policy EP1 International Nature Conservation Sites and Protected Species  
 Policy EP2 National Nature Conservation Sites and Protected Species  
 Policy EP3 Local Biodiversity  
 Policy EP8 Archaeology  
 Policy EP10 Gardens and Designed Landscapes  
 Policy EP13 Trees, Woodlands and Hedgerows  
 Policy EP15 Development Affecting the Water Environment  
 Policy EP16 Air Quality  
 Policy IS4 Transport Development and Infrastructure  
 Policy IS5 Protection of Access Routes  
 Policy IS7 Parking Provisions and Standards  
 Policy IS8 Flooding  
 Policy IS9 Waste Water Treatment Standards and Sustainable Urban Drainage  
 Policy IS13 Contaminated Land

## **Proposed Scottish Borders Local Development Plan**

Policy IS5 Protection of Access Routes  
Policy IS13 Contaminated and Unstable Land

### **OTHER PLANNING CONSIDERATIONS**

SBC SPG – Biodiversity  
SBC SPG – Trees and Development  
SBC SPG – Landscape and Development  
SBC SPG – Local Biodiversity Action Plan  
SBC SPG – Trees and Development

PAN 50 “Controlling the Environmental Effects of Surface Mineral Workings”  
PAN 51 “Planning and Environmental Protection”  
PAN 60 “Planning for Natural Heritage”  
PAN 64 “Reclamation of Surface Mineral Workings”  
PAN 75 “Planning for Transport”  
PAN 81 “Community Engagement: Planning with People”  
PAN 1/2011 “Planning and Noise”  
PAN 2/2011 “Planning and Archaeology”

### **KEY PLANNING ISSUES**

The main determining issue with these applications is whether the proposed night-time operation of the asphalt plant would adversely affect surrounding residential amenity to an unacceptable extent that would justify refusal of the applications. This would not only relate to the operation of the plant itself but also the associated vehicle movements to and from the A703.

### **ASSESSMENT OF APPLICATIONS**

#### Policy

All applications for planning permission and minerals consent shall be assessed in accordance with the development plan unless material considerations indicate otherwise, as required by Section 25 of the Town and Country Planning (Scotland) Act 1997. The Development Plan consists of the Local Development Plan adopted in 2016 and the recently approved National Planning Framework 4. The Proposed Local Development Plan is now also with the Scottish Ministers for consideration and examination. The relevant minerals and other related policies are the subject of representation so cannot be afforded any particular weight in determining the planning application at this stage.

The adopted Local Development Plan has two specific Policies on mineral extraction, ED11 “Safeguarding of Mineral Deposits” and ED12 “Mineral and Coal Extraction”. As the application is to amend the operation of plant at an existing quarry, ED11 is not applicable as it is aimed at preventing any development that may sterilise economically significant mineral deposits.

Policy ED12 is the most relevant Policy applicable to this application. It is negatively expressed and lists a series of criteria and circumstances where mineral extraction would not be permitted.

The criteria cover the following circumstances:

- Special Areas of Conservation/Special Protection Areas
- National nature designations such as SSSIs
- Local nature and historic interests, including Special Landscape Areas
- Quarrying within 500m of settlements and locally important landscape character
- Impact on the local economy
- Road capacity
- Cumulative impacts

A number of the criteria are required to be weighed in the overall planning balance against the need and public benefits of extraction, including residential amenity impacts. Whilst the criteria are worded to appear to apply only to properties within 500m of a local settlement, this was amended in the Proposed Local Development Plan to clarify that it also relates to any properties within the community or considered sensitive, irrespective of their distance or inclusion within a settlement.

The other most relevant Policy in the adopted LDP is HD3, which seeks to protect existing residential areas from any development that is judged to have an adverse impact on their amenity. Policy PMD2 also seeks reconciliation of incompatible adjoining uses. This is also the aim of NPF4 Policy 33 on Minerals, which specifically seeks demonstration that there would be no significant adverse impacts on nearby homes and local communities, including demonstration of acceptable levels of noise, dust and other potential forms of pollution. This continues to be supported by various Government Guidance documents, including PAN 50 "Controlling the Environmental Effects of Surface Mineral Workings". Policy 23 of NPF4 also seeks to avoid any development that could cause unacceptable noise issues, a Noise Impact Assessment being required where significant effects are likely.

The applications are very clear in their purpose and that is, to allow the operation of the asphalt plant during night-time hours on up to 75 nights per year and associated vehicular traffic to also enter and leave the site during those hours. This would involve operation of the weighbridge, batching and dispatching of lorries. There is no request for any other night-time working or minerals extraction at the quarry. Members will note that the asphalt plant currently produces 5000 tonnes of asphalt per month out of the 250,000-300,000 tonnes of hard rock extracted per annum. It is located within the northern part of the quarry extraction area and whilst parts of the plant structures reach 23.2m above ground level, 20m high quarry faces lie to the north and south of the plant.

The applicant contends that night-time operation has become necessary due to the ambitious road improvement schedule intended within the Borders and the need to carry out such road improvements at night when traffic disruption is less. There is a lack of local choice for such asphalt and there is a need, in the applicant's view, to have the ability to supply hot asphalt for local works during night-time hours. This has not been evidenced by the Council's Roads Service who do not carry out night-time road surfacing works, their works tending to finish by 10pm. There has also been no response from BEAR who carry out improvement work for Transport Scotland in the Scottish Borders. However, the applicant states there were over 60 BEAR projects in SE Scotland in the last year, the vast majority involving overnight closures.

Whilst there has been no detailed evidence for the need to vary night-time hours for the asphalt plant, Policies do not set tests requiring demonstration of justifiable need unless residential impacts can be proven to be adverse and incapable of satisfactory

mitigation. As this application has progressed and more information made available, it would not be possible to justify a position of considering there to be adverse impacts, given the additional information received, amendment to the proposals and withdrawal of the objection from Environmental Health. Consequently, the lack of definitive evidence regarding justification for the night-time working request is not, in itself, reason to refuse the applications.

### Noise

A Noise Impact Assessment was submitted with the applications and this concluded at the nearest residential properties (“Moorfoot View” and “The Burrow”), noise generation from operation of the asphalt plant and vehicles was predicted not to exceed the normally applicable night time limit of 42 dB LAeq, 1h – this is measured at a point 3.5m from any affected property façade. This figure is taken from PAN 50, which also states that discussion on the limit should take place with local Environmental Health Officers to ascertain whether it is reasonable in each particular case. Whilst PAN 50 also has specific advice on dust, traffic, vibration etc, in the case of extended night-time working of only the asphalt plant, it is considered that noise and light disturbance are the most relevant residential amenity issues to be assessed in determining the acceptability of the request.

The applicant contends that as the relevant guidance is followed, the proposal should be considered compliant with Development Plan Policies. However, there were a number of further discussions between the applicant and Environmental Health about the issue of noise levels. This resulted in a field survey of one of the two affected dwellinghouses and a more robust Noise Impact Assessment, including demonstration of how other BS guidance would not be breached. Environmental Health were more satisfied with the revised information but remained sufficiently concerned to suggest a temporary consent be granted, reducing the number of days in the trial period per annum, finishing the night time period earlier in the night and assessment of noise readings throughout the trial period.

Whilst some objectors were opposed to the principle of the request, many had sought a compromise. They felt that the selection of the number of days allowable in a year was arbitrary and queried why such long periods were sought through the night when the applicant stated that no more asphalt would leave the site after 1am. They felt that reductions in both were a reasonable request in the circumstances.

After further discussion and consideration, the applicant could not agree to a temporary consent for reasons of business uncertainty and on that basis, would be unjustified. However, the applicant has now suggested reductions in days per annum and hours per night, together with monitoring of actual night-time operating levels to compare with their predictions. These are described in full earlier in this report. In summary, the applicant now suggests the following:

- A reduction from 75 to 50 trial days per annum
- Within the 50 trial days, a shortened night-time period for operation of the asphalt plant and associated vehicles up to 1am, resulting in a period between 1am and 7am when no activity would be allowed.
- The plant operator may make a request to the Council to increase the 50 days per annum, the final decision on agreeing the increase resting with the Council.
- A new condition imposing a Noise Monitoring Plan, to be agreed with the Authority and then implemented, the intention being to check the accuracy of the predictions



and, if necessary, investigate and mitigate any lack of compliance with the predicted levels.

Environmental Health Officers have considered the amendments and they now support the application subject to the conditions as suggested. Considering this, together with the amendments that have partly addressed the objections of local residents, there is no justification to oppose the applications. The submissions demonstrate that in terms of hours and frequency of potential disturbance, major concessions have been made to ensure that the main part of the night remains undisturbed (between 1am and 7am). Furthermore, the number of instances per annum have been reduced by a third to 50 and there will be approved monitoring of the night time operational noise levels, together with any mitigation to reduce levels if proved necessary. Whilst a Noise Monitoring Plan is already a condition of the quarry extension consent, a specific Plan for night-time hours can be sought by a new condition on the Section 42 consents.

The removal of the Environmental Health objection is supported for the aforementioned reasons, the amended conditions allowing an existing quarry to diversify and meet a perceived market requirement without demonstrating significant adverse residential impacts. The only remaining issue is with the wording of the suggested Condition 6) c) which states:

*c) Notwithstanding the terms of part (b) above, the asphalt plant operator may make a written request to increase its quota from 50 night time operations in any calendar year (as specified within part (b) above). The Council may agree in writing to increase the annual quota to a number of occasions it deems appropriate.*

To clarify that the control is with the Council and that it would still be possible, if justified, to deny the increased quota of days, the following amendments in bold are suggested:

*c) Notwithstanding the terms of part (b) above, the asphalt plant operator may make a written request **to the Planning Authority** to increase its quota from 50 night-time operations in any calendar year (as specified within part (b) above). The Planning Authority **will then decide**, in writing, **whether** to increase the annual quota to number of occasions it deems appropriate.*

It is also noted that the latest amended submission from the applicant continues to request that minerals dispatched from the site be allowed for the 50 days night-time period from 2000 hours to 0700, yet the original conditions imposed on the quarry and quarry extension consent requested cessation of dispatch vehicles by 1800 hours. This means that on the 50 occasions in the year when the asphalt plant can operate from 0700 through to 0100 the next morning, associated vehicles could not leave the site between 1800 and 2000 hours during that period which seems illogical. This issue was raised with the applicant previously during the processing of the applications and they confirmed, by email of 2 November 2022, that this was a typographical error and that the dispatch period sought during the night-time working allowance for the asphalt plant should commence at 1800 hours, not 2000 hours. This matter was raised with the applicant who confirms the error that the request is for continuous dispatch without break, from 0700 to 0100 over the 50 days period per year.

On the above basis, it is considered that the amended S42 applications would comply with LDP Policies PMD2, ED12 and HD3, together with NPF4 Policies 23 and 33 relating to noise impacts from minerals workings in relation to residential amenity.

### Other residential impacts

Whilst noise is probably the most significant issue to be considered when assessing the night time working request, there are other impacts from the quarry that should also be considered – dust, vibration and, in particular, lighting and light pollution. Given the request is to lengthen the operation of the asphalt plant on certain nights in the year, issues of dust and vibration would be generally covered by the existing conditions imposed on the original and extended quarries (including wheel washing, a dust management system, vibration limits, prior warning of blasting etc). The implementation and enforcement of these conditions remains valid in relation to those consents and any S42 approval of night-time working for the asphalt plant will cross-reference all existing conditions that remain pertinent.

In terms of lighting, this has been raised in two respects – light pollution on residential amenity and impacts on wildlife. It is noted that lighting has not been controlled by condition on either the original quarry consent from 1998 or the extension consent in 2009. Given that the S42 applications are to increase the impact of artificial lighting in terms of extending the hours of its use on 50 nights per year, it is necessary to consider increased impacts.

In terms of residential amenity, this issue was raised by some of the objectors but mainly in relation to vehicle lights using the access road. The applicant contended that quarry lighting was well screened from houses and that should there be a requirement for additional planting and bunding around the quarry and haul road, this would be reviewed. Whilst the issue has not been raised by Environmental Health, the fact that there are no specific existing conditions on lighting and that the applicant is offering to consider enhanced screening, suggests that it would be reasonable to add an additional condition to the S42 consents for night-time working. This could seek further lighting details for the quarry and mitigation in the form of suitable screening for both the quarry and access road. Similarly, the requirements of the Ecology Officer can also be addressed by the same additional conditions.

Taking all of the above material issues into account and, subject to appropriate conditions, it is, therefore, considered that the protection of residential amenity objectives contained within Policies PMD2, ED12, HD3 and 33 would be complied with by the development.

### Other matters

There were a number of other issues raised within representations which have been considered and which have been responded to by the agent. Some have commented that the noise from vehicles using the access road will be intrusive during night-time hours due to the bumpy condition of the road. LDP Policy ED12 requires the traffic routes to and from the quarry to be suitable in terms of their design, construction and relationship with sensitive properties such as houses. However, the condition of the road is already covered by a condition imposed on the access consent, requiring it to be completed to the Council's specification. Should there be any complaints regarding noise from vehicles during the 50-day night-time operation period, which can be attributed to the condition of the access road, this can be investigated under the access consent condition.

Another issue raised was the road safety risks of additional traffic using the access road at its junction with the A703. Local Development Plan Policies PMD2 and ED12 require safe access to and within developments. The applicant has claimed there would be no additional traffic using the access as the asphalt plant meets an existing

demand and it is not anticipated that allowance for night-time working would increase that demand or number of vehicles. The SBC Roads Planning Service agree, noting that a low number of vehicles would be generated every night shift, largely outwith peak period and, thus, would have no negative impact on the public road network. Given they made this comment on the basis of a night time extension of 1800 hours to 0700 the next morning and 75 nights in a year, the reduction to 1800 hours to 0100 on 50 nights in a year will have even less impact on the road network. It is, therefore, considered that road safety impacts will be acceptable in terms of Policies PMD2 and ED12.

There have also been concerns and objections submitted in relation to impacts on flooding, some commenting that a Flood Risk Assessment is necessary. As the applications are simply to amend working hours for the asphalt plant, it is not considered justifiable to pursue such issues under the remit of the S42 Applications. Flood risk can be reported and investigated under the terms of the existing quarry and extension consents and conditions. The same would apply to concerns over impacts on private water supplies and the general concerns over breaches of existing conditions by the quarry operator, including currently imposed operating times. The applicant has now confirmed that those times are being adhered to.

## **CONCLUSION**

In conclusion, the principle of the development cannot be re-examined as the original permission and extension consents were implemented within the original commencement timescales. The proposal to allow night-time operation of, and vehicular access to/from the asphalt plant, has now been demonstrated to have no unacceptable adverse impacts on nearby housing. Given the information submitted in the Noise Impact Assessment, the reduction in night-time hours and days per annum sought, the intention to monitor noise levels and the additional planting/bunding offered between the quarry, access road and neighbouring houses, the proposed amendment is now considered acceptable. Subject to appropriate conditions and to all previous conditions and pursuant agreements reached, the proposals are considered to be in compliance with Local Development Plan Policies PMD2, ED12, HD3 and NPF4 Policies 23 and 33.

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

### **22/01205/FUL**

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

1. a) The hours of operations for all working, with the exception of the asphalt plant and measures required in an emergency situation, servicing, maintenance and testing of plant, shall be limited to the hours of 0700 hours and 2000 hours Mondays to Fridays and 0700 hours to 1200 hours on both Saturdays and Sundays. In addition, no operations shall be permitted on 25th and 26th December and 1st and 2nd January.
- b) In addition to the hours of operation stipulated in part a), the asphalt plant shall be permitted to operate between the hours of 2000 hours and 0100 hours Mondays to Fridays on up to 50 occasions per calendar year.
- c) Notwithstanding the terms of part (b) above, the asphalt plant operator may make a written request to the Planning Authority to increase its quota from 50 night-time operations in any calendar year (as specified within part (b) above). The Planning Authority will then decide, in writing, whether to increase the annual quota to number of occasions it deems appropriate.

Reason: In the interests of amenity.

2. a) Minerals shall only be dispatched from the site between 0700 hours and 1800 hours on Mondays to Fridays and 0700 hours and 1200 hours on Saturdays, with no movements on Sundays.  
b) Notwithstanding the terms of part (a) above, the dispatch of asphalt shall be permitted between the hours of 1800 hours and 0100 hours Mondays to Fridays on the occasions the asphalt plant is permitted to operate outwith the usual hours of operation stipulated within Condition 1(a).  
Reason: In the interests of amenity.

3. With the exception of the Conditions hereby amended as above, the development shall be implemented in accordance with the schedule of conditions approved under applications 97/00640/MIN and 01/00669/FUL and in accordance with all agreements/approvals under the terms of those conditions.  
Reason: To ensure the development is implemented and operated in accordance with all measures within the approved schedule of conditions under the original quarry planning consent and quarry extension planning consent, to ensure compliance the Development Plan and relevant planning policy guidance.

4. Notwithstanding the terms of any conditions under previous consents at the site, no night-time working of the asphalt plant to commence until a scheme of site lighting together with bund and planting screening of the site and access road is submitted to, and approved in writing by, the Planning Authority. The lighting and screening then to be implemented and operated in accordance with the approved scheme.  
Reason: To safeguard residential and ecological receptors in the vicinity of the site.

5. Notwithstanding the terms of any conditions under previous consents at the site, no night-time working of the asphalt plant to commence until a Noise Monitoring Plan for the night-time operation of the asphalt plant and associated vehicles is submitted to, and approved in writing by, the Planning Authority. The Plan then to be implemented and operated in accordance with the approved details.  
Reason: To safeguard residential receptors in the vicinity of the site.

## **22/01206/FUL**

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

1. a) The hours of operations for all working, with the exception of the asphalt plant and measures required in an emergency situation, servicing, maintenance and testing of plant, shall be limited to the hours of 0700 hours and 2000 hours Mondays to Fridays and 0700 hours to 1200 hours on both Saturdays and Sundays. In addition, no operations shall be permitted on 25th and 26th December and 1st and 2nd January.  
b) In addition to the hours of operation stipulated in part a), the asphalt plant shall be permitted to operate between the hours of 2000 hours and 0100 hours Mondays to Fridays on up to 50 occasions per calendar year.  
c) Notwithstanding the terms of part (b) above, the asphalt plant operator may make a written request to the Planning Authority to increase its quota from 50 night-time operations in any calendar year (as specified within part (b) above). The Planning Authority will then decide, in writing, whether to increase the annual quota to number of occasions it deems appropriate.  
Reason: In the interests of amenity.

2. a) Minerals shall only be dispatched from the site between 0700 hours and 1800 hours on Mondays to Fridays and 0700 hours and 1200 hours on Saturdays, with no movements on Sundays.  
 b) Notwithstanding the terms of part (a) above, the dispatch of asphalt shall be permitted between the hours of 1800 hours and 0100 hours Mondays to Fridays on the occasions the asphalt plant is permitted to operate outwith the usual hours of operation stipulated within Condition 1(a).  
 Reason: In the interests of amenity.
  
3. With the exception of the Conditions hereby amended as above, the development shall be implemented in accordance with the schedule of conditions approved under applications 01/00669/FUL and 09/00468/MIN and in accordance with all agreements/approvals under the terms of those conditions.  
 Reason: To ensure the development is implemented and operated in accordance with all measures within the approved schedule of conditions under the original quarry planning consent and quarry extension planning consent, to ensure compliance the Development Plan and relevant planning policy guidance.
  
4. Notwithstanding the terms of any conditions under previous consents at the site, no night-time working of the asphalt plant to commence until a scheme of site lighting together with bund and planting screening of the site and access road is submitted to, and approved in writing by, the Planning Authority. The lighting and screening then to be implemented and operated in accordance with the approved scheme.  
 Reason: To safeguard residential and ecological receptors in the vicinity of the site.
  
5. Notwithstanding the terms of any conditions under previous consents at the site, no night-time working of the asphalt plant to commence until a Noise Monitoring Plan for the night-time operation of the asphalt plant and associated vehicles is submitted to, and approved in writing by, the Planning Authority. The Plan then to be implemented and operated in accordance with the approved details.  
 Reason: To safeguard residential receptors in the vicinity of the site.

**DRAWING NUMBERS**

Location Plan 2022-07-14-C23-001  
 Location Plan 2022-07-15-C23-001

**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.

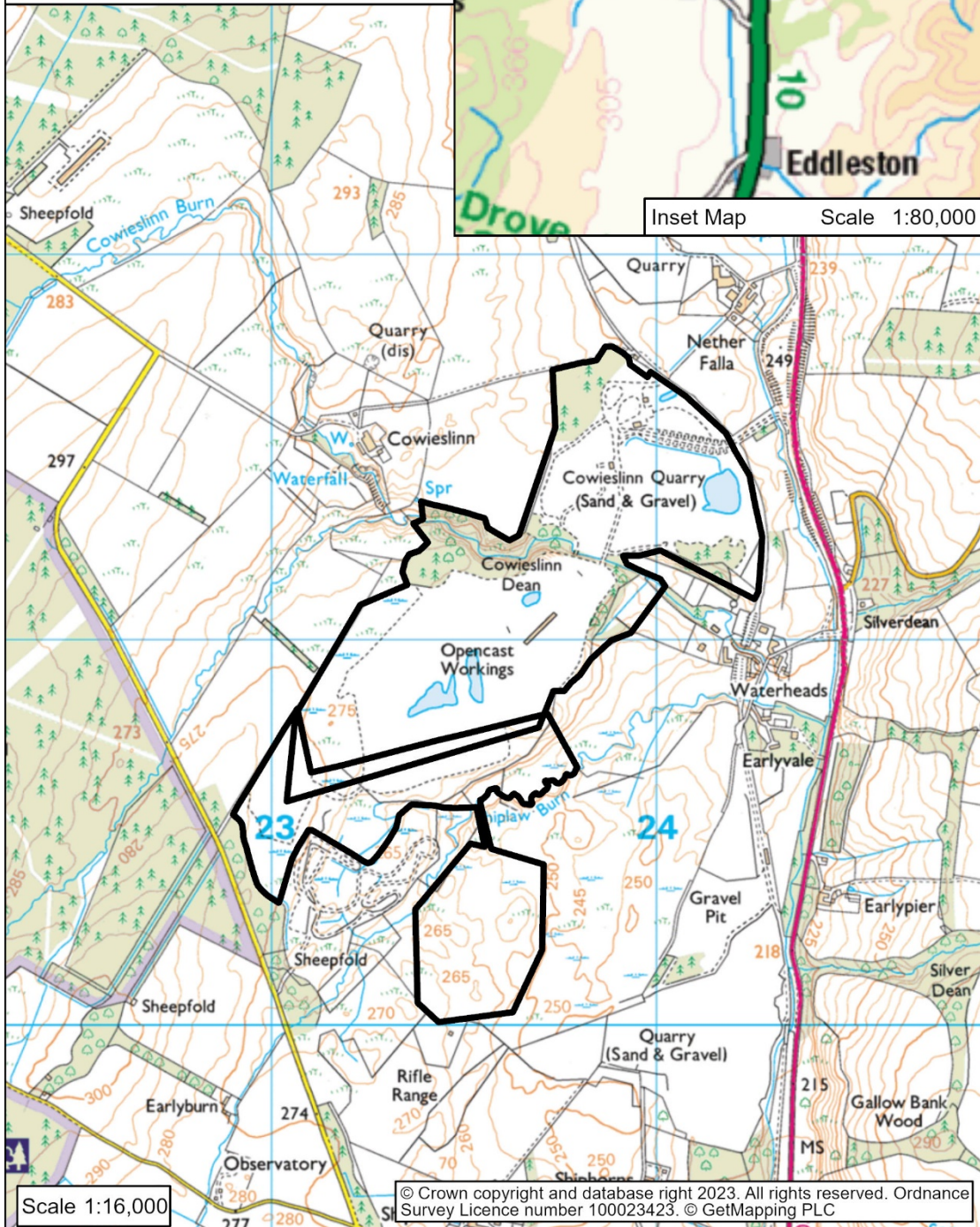
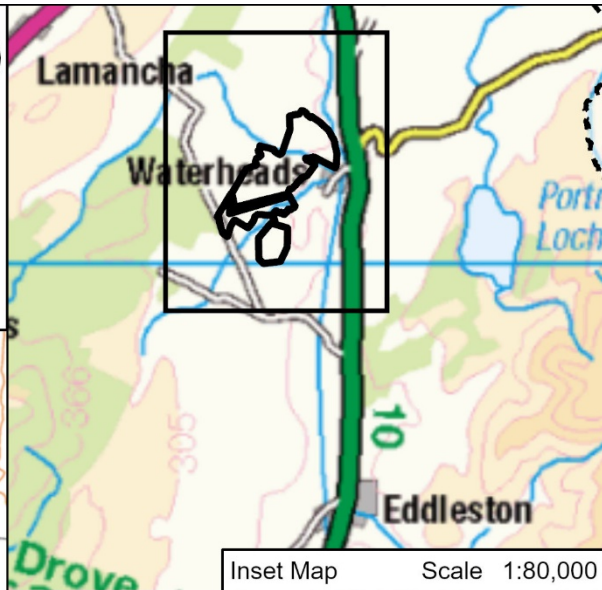
**Author(s)**

Name	Designation
Craig Miller	Principal Planning Officer



22/01205/FUL  
& 22/01206/FUL

Cowieslinn Quarry  
Eddleston



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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

27<sup>th</sup> March 2023

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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

- 3.1.1 Reference: 21/00152/FUL  
Proposal: New quarry for Sand and Gravel Extraction  
Site: Land West of Slipperfield House Slipperfield Loch,  
West Linton  
Appellant: Mr Hayden Thomas

Reasons for Refusal: 1. The proposal is contrary to Policies PMD2, ED12 and EP5 of the Scottish Borders Local Development Plan 2016 in that the development lies outwith an Area of Search, within an Area of Moderate Constraint and would cause significant adverse landscape and visual amenity impacts both to the detriment of important local landscape character and the Pentland Hills Special Landscape Area. The local landscape character and topography are recognised to be a fine example of "kettle and drum" glacial geomorphology, the proposals removing the

intimate topographical relief pattern and creating a large concave landform out of character with the existing landform. The site also includes part of the expanded Pentland Hills Special Landscape Area, comprising farmland foreground as part of the integral setting of the hills, the proposals interrupting that setting and view of the hills by introducing an industrial and incongruous development, detrimentally impacting on the wildness character of the hills and recreational path usage around the site, in contravention of the role and purpose of the farmland inclusion in the designation. These impacts have neither been sufficiently mitigated nor outweighed by a clearly demonstrated need for the quarry and public benefit. 2. The proposal is contrary to Policy 4 of SESPlan 2013 in that the site lies outwith an area of search and within an Area of Moderate Constraint where no existing extraction sites exist. The proposals are not considered to be small scale and the applicants have failed to demonstrate the particular operational, community or environmental benefits of the proposed development. 3. The proposal is contrary to Policies ED12 and EP8 of the Scottish Borders Local Development Plan 2016 in that the development will cause significant adverse impacts on, and unacceptable disturbance to, appreciation of the setting of the Roman Road which passes the north-west boundary of the site either on or adjoining the line of the current Core Path. The proposal will cause unacceptable conflict between appreciation of the heritage route and a working quarry immediately alongside it, with associated visual discordance, noise and dust. The impacts have neither been sufficiently mitigated nor outweighed by a clearly demonstrated need for the quarry and public benefit.

Reasons for Appeal: The evidence shows that the Proposed Development is in accordance with the Development Plan, either because the impacts are not unacceptable; or, if the impacts are initially deemed unacceptable, there are "public interest" (Policy ED12) or "social or economic benefits of national or local importance" (Policy EP5) to justify a grant of planning permission. The existing and emerging Scottish Government policies, as well as other material considerations, also support a grant of planning permission. The Proposed Development is in the public interest and delivers social or economic benefits of national or local importance. SPP and the draft NPF4 refer to the "important" and "essential" contribution minerals make to the economy. The Proposed Development would address a substantial deficit in the minerals landbank in the market area. The mineral deposit within the Proposed Development area is a good quality sand and gravel. There is an established market demand for these products within the Scottish Borders and adjoining regions. The Proposed Development will support continued employment at the Appellant's existing business at Broxburn. The Proposed Development will support local supply, which avoids unsustainable imports by minimising the distance of travel from source to point of consumption. The Council's reasons for refusal are not based on the correct interpretation of the development plan policies and are not supported by the evidence. [Please see the DPEA Website for the Appeal Documents](#)

Method of Appeal: Written Representations & Site Visit

Reporter's Decision: Sustained

Summary of Decision: The Reporter, David Buylla, states that Policy ED12 of the Local Development Plan is compatible with Policy 33 of the NPF4. He concludes that the site's location outside an identified area of search and within an area of moderate constraint is not a policy impediment to this proposal. The reporter states that that maintaining a landbank of at



least 10 years is a policy expectation for LDPs and that the presence or absence of such a landbank will be a material consideration in any assessment of the likely positive and negative consequences of the proposal in the planning balance. However, the existence of a 10 year land bank is not, in itself, a policy test within the development plan that can be used in the assessment of an individual development proposal. The Reporter finds that it has not been demonstrated that there is a land bank of sand and gravel either within Scottish Borders or the wider Edinburgh and south east Scotland region that is sufficient to provide at least 10 years supply. This does not trigger a presumption in favour of granting permission to this proposal, but provides some weight in favour of approval when assessing the positive and negative implications of permitting the proposal. The proposal would cause some localised significant adverse landscape and visual effects, but no significant effects on the SLA as a whole, due to the site's location at the very edge of that designation in a location where human influence is readily apparent and the quality and character of the landscape is noticeably different to that found across the majority of the designated area. The proposal would deliver a public interest benefit in terms of addressing a locally unmet demand for sand and gravel and through the additional employment and spin-off benefits it would provide. Even if one adopted a pessimistic valuation of those benefits, he has no doubt that they would outweigh the minimal harm that would be caused to the underlying reasons for designating the SLA. Consequently, he finds no conflict with Policy ED12 c). The reporter is satisfied that the social and economic benefits of the proposal would outweigh the adverse effects and therefore the proposal would not conflict with Policy EP5. The proposal also accords with Policy 4 of the NPF4. The reporter therefore concluded that the proposed development accords overall with the relevant provisions of the development plan and that there are no material considerations which would justify refusing to grant planning permission, subject to 34 conditions and 4 advisory notes.

[Please see the DPEA Website for the full Appeal Decision Notice](#)

### 3.2 Enforcements

Nil

### 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 17<sup>th</sup> March 2023. This relates to sites at:

- |                             |  |
|-----------------------------|--|
| • 1 Hall Street, Galashiels | • The Old Cow Shed, Lennel, Coldstream |
|-----------------------------|--|

## 5 REVIEW REQUESTS RECEIVED

5.1 Reference: 22/01357/FUL

Proposal: Erection of dwellinghouse and associated work  
Site: Land South of Ebbastrand, Coldingham Sands,  
Coldingham  
Appellant: Mr Rob Cameron

Reasons for Refusal: 1. The proposed development is contrary to Local Development Plan 2016 policy HD2 (Housing in the Countryside) and EP14 (Coastline) in that the site is not well related to the Coldingham Sands building group and the building group has no further capacity for expansion within the current plan period. The development would result in unacceptable harm to Coldingham Sands' sense of place and would cause unacceptable cumulative impact to the character of the building group and the undeveloped coast. 2. The proposed erection of a dwellinghouse at this location would be contrary to Local Development Plan 2016 policy PMD2 (Quality Standards) criterion (Q) in that the additional traffic generated by the development would have an adverse impact on road safety. The section of road between St Veda's House and the application site is considered incapable of accommodating such further traffic. In particular, the lack of forward visibility at a blind corner outside St Veda's House results in vehicles meeting on a narrow section of road with the need for one vehicle to reverse to the detriment of road and pedestrian safety. 3. The proposed development is considered contrary to Local Development Plan 2016 policies PMD2 criterion (L), EP1 (International Nature Conservation Sites and Protected Species), EP3 (Local Biodiversity) and EP5 (Special Landscape Areas) in that it has not been demonstrated that the development can be satisfactorily accommodated within the site without unacceptable harm to the Berwickshire Coast Special Landscape Area, internationally designated sites, and to the local environment. It has not been demonstrated that the risk of coastal erosion and land slippage can be avoided or mitigated in a manner without unacceptable detrimental impacts to these interests.

5.2 Reference: 22/01421/FUL  
Proposal: Formation of access and boundary fence  
(retrospective)  
Site: The Millers House Scotsmill Kailzie, Peebles  
Appellant: Mr And Mrs Peter Nowell

Reason for Refusal: The development would be contrary to policy PMD2 of the Local Development Plan 2016 in that it would fail to ensure there is no adverse impact on road safety, including but not limited to the site access. This conflict with the development plan is not overridden by other material considerations.

5.3 Reference: 22/01612/FUL  
Proposal: Alteration and extension to dwellinghouse  
Site: Ratchill Farmhouse, Broughton  
Appellant: Mrs Jane Prady

Reason for Refusal: The development would be contrary to policy PMD2 of the Local Development Plan 2016 in that the following criteria require that developments: h) create a sense of place based on a clear understanding of the context and are designed in sympathy with Scottish Borders architectural style; i) are of a scale, massing and height appropriate to the existing building; j) are finished externally in materials which complement the existing building; k) respect the character of the surrounding area and neighbouring built form. The proposed development is unsympathetic to the building which it would extend in terms of form,

scale, height, massing and materials and would not complement that building. No overriding case for the development as proposed has been substantiated. This conflict with the development plan is not overridden by other material considerations.

- 5.4 Reference: 22/01811/FUL  
 Proposal: Modification of condition No.1 of planning permission 15/01355/FUL to allow the holiday chalet to be occupied as dwellinghouse  
 Site: Land at Disused Railway Line Rachan, Broughton  
 Appellant: Mr I Maxwell

Reason for Refusal: The development would be contrary to policies PMD1 and HD2 of the Local Development Plan 2016 and supplementary planning guidance on New Housing in the Borders Countryside in that no information has been submitted to demonstrate that the proposal is incapable of being operated as a viable holiday accommodation business. Granting permission would result in unsustainable development in a rural location. The resultant dwellinghouse would be isolated and physically segregated from the dispersed Rachan building group. As a result, the development would represent sporadic and unjustified housing development in the countryside. No overriding case for the development as proposed has been substantiated. This conflict with the development plan is not overridden by other material considerations.

- 5.5 Reference: 22/01982/FUL  
 Proposal: Installation of photo voltaic array to roof  
 Site: Scott House, Douglas Square, Newcastleton  
 Appellant: Mr Alistair Hodgson

Reason for Refusal: The proposed development is contrary to Policies PMD2, ED9 and EP9 of the Local Development Plan (2016) and Policies 7 and 11 of the National Planning Framework 4 in that the pv panels would fail to preserve and enhance the character and appearance of Newcastleton Conservation Area. There are no other material considerations that are sufficient to overcome the adverse visual impact resulting from the proposed development.

## 6 REVIEWS DETERMINED

Nil

## 7 REVIEWS OUTSTANDING

- 7.1 There remained 11 reviews previously reported on which decisions were still awaited when this report was prepared on 17<sup>th</sup> March 2023. This relates to sites at:

• Land North East of Runningburn Farm, Stichill	• Land at Silo Bins Edington Mill Chirnside, Edington Mill Road, Chirnside
• Land South West of Castleside Cottage, Selkirk	• Land South West of Corstane Farmhouse, Broughton
• Land North and East of Clay Dub, Duns Road, Greenlaw	• 17 George Street, Eyemouth

• Dove Cottage Gate Lodge Press Castle, Coldingham, Eyemouth	• Ravelaw Farm, Duns
• Land South West of West Loch Farmhouse, Peebles	• 100 Abbotseat, Kelso
• Land West of Greenburn Cottage, Auchencrow	•

**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 One S36 PLI previously reported on which a decision was still awaited when this report was prepared on 17<sup>th</sup> March 2023. This relates to a site at:

• Land West of Castleweary (Faw Side Community Wind Farm), Fawside, Hawick	•
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**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.

Contact us at Place, Scottish Borders Council, Council Headquarters, Newtown St Boswells, Melrose, TD6 0SA. Tel. No. 01835 825431 Fax No. 01835 825071 Email: PLACetransrequest@scotborders.gov.uk