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## **PLANNING APPEALS & REVIEWS**

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### **Briefing Note by Chief Planning Officer**

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## **PLANNING AND BUILDING STANDARDS COMMITTEE**

**27<sup>th</sup> June 2016**

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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

### **3 APPEAL DECISIONS RECEIVED**

- 3.1 Planning Applications

- 3.1.1 Reference: 13/00789/FUL  
Proposal: Wind farm development comprising of 9 No wind turbines and associated infrastructure/buildings/access (further revised scheme - tip heights of Turbines 1, 2 and 4 reduced to 110m - all others to remain at 125m)  
Site: Land North East and North West of Farmhouse Braidlie (Windy Edge), Hawick  
Appellant: Windy Edge Wind Farm Ltd

Reasons for Refusal: 1. The proposed development would be contrary to Policies G1 and D4 of the Scottish Borders 2011 Local Plan, in that the development would unacceptably harm the Borders landscape due to: (i) overwhelmingly adverse impacts on landscape character arising from placement of turbines and infrastructure on a sensitive and distinct landscape with grandeur, historical, remoteness and wilderness qualities, which can be observed and experienced from a range of public paths and recreational access areas; (ii) the introduction of an array of large commercial turbines into a locality which is significantly remote from main

settlements and road networks and where no logical reference can be made to any other similar man-made interventions (including noticeable electrical infrastructure) or settlement, which is characterised by simplistic landforms with which the development does not harmonise; thereby the development would appear as an incongruous and anachronistic new item; and (iii) the introduction of a medium-sized commercial wind farm in an area which is presently free from wind farm development and which provides a spatial separation between areas occupied by wind farms in Borders. 2. The development conflicts with Policy D4 of the Consolidated Scottish Borders 2011 Local Plan, in that by virtue of its adverse impact on: (i) the ability of National Air Traffic Services to safely manage en route non-military air traffic due to impacts on the Great Dun Fell radar serving Prestwick Airport; it would be incompatible with national objectives relating to protection of public safety at a UK level and the obligations set out in international treaties.

Grounds of Appeal: The proposed development accords with the Development Plan and can also draw support from other material considerations. The Appellant has two main Grounds of Appeal that relate directly to the issues set out within the Reasons for Refusal, which relate to Landscape impact of the proposed development on the Borders landscape and Aviation: impact on the ability of NATS to manage effects of the proposed development on Great Dun Fell radar. The Appellant states that the Appeal and the evidence submitted in support of it demonstrates that the landscape impacts of the proposed development will be acceptable and the Aviation impacts are capable of being mitigated and a solution is currently available. The Appellant and NATS are in the course of concluding a contract which will enable an agreed technical solution to be implemented.

Method of Appeal: Written Representations & Site Visits

Reporter's Decision: Sustained

Summary of Decision: The Reporter, Dan Jackman, 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 refusal to grant planning permission. He considers that the proposal would not impact on the setting of Hermitage Castle and Chapel. He therefore allowed the appeal and granted planning permission subject to 27 conditions and 3 advisory notes.

### 3.2 Enforcements

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> June 2016. This relates to sites at:

<ul style="list-style-type: none"> <li>Land South East of Halmyre Mains Farmhouse (Hag Law), Romanno Bridge</li> </ul>	<ul style="list-style-type: none"> <li>Land North of Upper Stewarton, (Kilrubie Wind Farm Development), Eddleston, Peebles</li> </ul>
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## 5 REVIEW REQUESTS RECEIVED

- 5.1 Reference: 15/00890/PPP  
Proposal: Erection of dwellinghouse and upgrade access track  
Site: Redundant Water Treatment Works, North East of Broughton Place Cottage, Broughton  
Appellant: Mr Stewart Kane

Reason for Refusal: The development conflicts with Policies G1 and BE4 of the Scottish Borders Consolidated Local Plan 2011, and with adopted Supplementary Planning Guidance from 2011, in that due to: - the poor relationship of the chosen paint colour on the shopfront with the colours and tones of surrounding materials in conservation area buildings and structures; and - the prominence of the shopfront in the conservation area and street scene due to its position at the end (focal point) of the High Street; the inappropriate colour stands out as an incongruous and eye-catching item, harming both the character and the appearance of the conservation area, to the detriment of public amenity.

- 5.2 Reference: 15/01521/PPP  
Proposal: Erection of three dwellinghouses  
Site: Land North of Bonjedward Garage, Jedburgh  
Appellant: Lothian Estates

Reasons for Refusal: 1. The proposal is contrary to Policy D2: Housing in the Countryside of the Scottish Borders Consolidated Local Plan Adopted 2011, Policy HD2: Housing in the Countryside of the Proposed Local Development Plan 2013 and Supplementary Planning Guidance on New Housing in the Borders Countryside 2008 in that the site is not within the recognised building group at Bonjedward and it does not relate well to this group and would therefore not be an appropriate extension to the existing pattern of development. The development would result in sporadic development within the countryside harming the character and appearance of the area. 2. The proposal is contrary to Policy H2 of the Scottish Borders Consolidated Local Plan Adopted 2011 and policy HD3 of the Proposed Local Development Plan 2013 relating to the protection of residential amenity in that siting residential housing adjacent to industrial buildings and three main public roads would have a significant adverse impact on the residential amenity of occupiers of the proposed houses.

- 5.3 Reference: 16/00114/FUL  
Proposal: Erection of cattle court incorporating storage areas and staff facilities and erection of animal feed silo  
Site: Field No 0328 Kirkburn, Cardrona  
Appellant: Cleek Poultry Ltd

Reasons for Refusal: 1. The application is contrary to Policies G1, EP2 and D1 of the Scottish Borders Consolidated Local Plan 2011 and Supplementary Planning Policies relating to Special Landscape Area 2- Tweed Valley in that the proposed building and silo will be prominent in height, elevation and visibility within the landscape and will have a significant detrimental impact on the character and quality of the designated landscape. 2. The application is contrary to Policies G1 and D1 of the Scottish Borders Consolidated Local Plan 2011 in that the submitted Business Plan does not adequately demonstrate that there is an overriding justification for the building and silo of the scale and design proposed that would justify an exceptional permission for them in this rural location and

the building does not appear to be designed for the purpose intended. The development would appear, therefore, as unwarranted development in the open countryside. 3. The application is contrary to Policy BE2 of the Scottish Borders Consolidated Local Plan 2011 in that it has not been adequately demonstrated that the building and silo would not have an adverse impact on the setting of the archaeological site of Our Lady's Church and Churchyard adjoining the application site.

- 5.4 Reference: 16/00136/FUL  
Proposal: Change of use from storage barn, alterations and extension to form dwellinghouse  
Site: Land and Storage Barn East of Flemington Farmhouse, West Flemington, Eyemouth  
Appellant: Mr And Mrs J Cook

Reason for Refusal: The proposed development is contrary to Policy D2 of the Consolidated Local Plan 2011 in that the building has no architectural or historic merit which would justify its retention by means of securing a non-rural agricultural use. In addition the level of intervention proposed to the fabric of the structure exceeds what would be regarded as a conversion of a non-residential building to dwellinghouse.

## 6 REVIEWS DETERMINED

- 6.1 Reference: 15/00890/PPP  
Proposal: Erection of dwellinghouse and upgrade access track  
Site: Redundant Water Treatment Works, North East of Broughton Place Cottage, Broughton  
Appellant: Mr Stewart Kane

Reasons for Refusal: 1. The proposal is contrary to Policy D2 - Housing in the Countryside and Supplementary Planning Guidance on New Housing in the Borders Countryside and Policy HD2 - Housing in the Countryside of the proposed Local development Plan in that the site for the new house is not within the recognisable building group at Broughton Place and it does not relate well to this group. 2. The proposal would be contrary to Policies D2 and G8 of the Scottish Borders Consolidated Local Plan 2011 and Policies HD2 and PMD4 of the Proposed Local Development Plan in that the stated need for the dwellinghouse would not justify the proposed development in this specific location. 3. The proposed dwellinghouse would be contrary to Policy D2 of the Scottish Borders Consolidated Local Plan 2011 and Policy HD2 of the Proposed Local development Plan in that satisfactory access and other road requirements cannot be met.

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Upheld

- 6.2 Reference: 15/01498/FUL  
Proposal: Change of use from Class 4 (Office) to Class 2 (Beauty Therapy Salon)  
Site: Block 2 Unit 6 Cherry Court, Cavalry Park, Peebles  
Appellant: Ms K McFadzean

Reason for Refusal: The proposed change of use of the premises to Beauty Therapy Salon would be contrary to Adopted Local Plan Policy ED1 in that it is not a Class 4, Class 5 or Class 6 use, and the site (Cavalry

Park) is safeguarded for employment uses in the Adopted Local Plan, having more particularly been identified as a Strategic Employment Site; a designation which requires that all other uses be resisted. Further, the Beauty Therapy Salon would not constitute a complementary commercial activity or enhance the quality of the business park as an employment location, and as such does not comply with the Policy ED1 of the emerging Local Development Plan.

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Overturned

6.3 Reference: 16/00041/FUL  
 Proposal: Removal of Condition 3 of planning permission 04/02011/FUL pertaining to occupancy of the dwellinghouse  
 Site: Craigie Knowe, Blainslie Road, Earlston  
 Appellant: Aileen Cockburn

Reason for Refusal: The establishment of a new residential property in an isolated rural location in the absence of any restrictions upon its occupancy for the purposes of ensuring that it would only ever be used to serve a specific business' identified operational requirements, would be directly contrary to the Council's rural housing policy; and specifically, Policy D2 of the Adopted Scottish Borders Consolidated Local Plan 2011 and the guidance of the approved Supplementary Guidance Note on New Housing in the Borders Countryside. Further, it is not considered that there are any material considerations - including the Applicant's supporting case and the advice and guidance of the SPP and Circular 4/1998 - that outweigh the need to determine this application in accordance with the Council's adopted Housing in the Countryside Policy. Accordingly the application is only reasonably refused.

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Overturned (Amendment to wording of planning condition)

## 7 REVIEWS OUTSTANDING

7.1 There remained 3 reviews previously reported on which decisions were still awaited when this report was prepared on 17<sup>th</sup> June 2016. This relates to sites at:

<ul style="list-style-type: none"> <li>Land South of Camphouse Farmhouse, Camptown, Jedburgh</li> </ul>	<ul style="list-style-type: none"> <li>5 East High Street, Lauder</li> </ul>
<ul style="list-style-type: none"> <li>Land South of Primary School, West End, Denholm</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>

## 8 SECTION 36 PUBLIC LOCAL INQUIRIES RECEIVED

Nil

## 9 SECTION 36 PUBLIC LOCAL INQUIRIES DETERMINED

**10 SECTION 36 PUBLIC LOCAL INQUIRIES OUTSTANDING**

10.1 There remained 3 S36 PLIs previously reported on which decisions were still awaited when this report was prepared on 17<sup>th</sup> June 2016. This relates to sites at:

• Land North of Nether Monynut Cottage (Aikengall IIa), Cockburnspath	• Cloich Forest Wind Farm, Land West of Whitelaw Burn, Eddleston
• (Whitelaw Brae Wind Farm), Land South East of Glenbreck House, Tweedsmuir	•

**Approved by**

**Ian Aikman**  
**Chief Planning Officer**

**Signature .....**

**Author(s)**

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**Background Papers:** None.  
**Previous Minute Reference:** None.

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

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