
PLANNING APPEALS & REVIEWS

Briefing Note by Chief Planning Officer

PLANNING AND BUILDING STANDARDS COMMITTEE

6th March 2017

1 PURPOSE

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

2 APPEALS RECEIVED

2.1 Planning Applications

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

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

Grounds of Appeal: 1. The Section 75 occupancy restriction should be removed to allow the continued operation of the farm as a single, viable farming unit. 2. Such restrictions are no longer appropriate to farm dwellings and are not to be used and the legal agreement does not comply with the tests set out in Scottish Government Circular 3-2012. 3. Circumstances, at the farm, have materially changed since planning permission was issued in 2001. 4. Specific circumstances explained in various application and appeal documents explain why the removal of the legal agreement is required to allow the continued operation of the farm. 5. The Local Development Plan and Supplementary Guidance reasons for refusal apply to new build housing in the countryside and not existing housing. This appeal does not refer to, nor will it require, new build housing. As such, the reason for refusal should be dismissed.

Method of Appeal: Written Representations

2.2 Enforcements

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

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

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

Method of Appeal: Written Representations

2.2.2 Reference: 16/00105/UNDEV
Proposal: Erection of fence
Site: 1 Borthwick View, Roberton, Hawick
Appellant: Gillian Murphy-McHugh

Reason for Notice: Without planning permission, erected a fence
exceeding one metre in height where it fronts a road and extends beyond
the line of the wall of the principal elevation nearest a road.

Grounds of Appeal: The Appellants neighbour erected the fence and she
decided to temporarily mask it but putting boards on her side of the posts.
The enforcement order gives two options 1) apply for planning permission
or 2) remove the extra height and return it to how it was. The Appellant
feels that it makes no sense to take option 1 until she knows whether or
not her neighbour has been granted retrospective planning permission. If
her neighbour removed his fence then inevitably her side will be destroyed
also, however if he retains the fence, then both sides should remain in
which case an additional application fee should not be relevant as it is one
and the same thought she will pay the additional fee if deemed necessary.

Method of Appeal: Written Representations

3 APPEAL DECISIONS RECEIVED

3.1 Planning Applications

Nil

3.2 Enforcements

Nil

4 APPEALS OUTSTANDING

4.1 There remained one appeal previously reported on which a decision was still awaited when this report was prepared on 24th February 2017. This relates to a site at:

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| • Land North West of Whitmuir Hall,
Selkirk | • |
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5 REVIEW REQUESTS RECEIVED

5.1 Reference: 16/01422/FUL
Proposal: Erection of cattle building with welfare accommodation
Site: Field No 0328 Kirkburn, Cardrona
Appellant: Cleek Poultry Ltd

Reasons for Refusal: 1. The application is contrary to Policies PMD2, EP5 and ED7 of the Scottish Borders Local Development Plan 2016 and Supplementary Planning Policies relating to Special Landscape Area 2- Tweed Valley in that the proposed building will be prominent in height, elevation and visibility within the landscape and will have a significant detrimental impact on the character and quality of the designated landscape. 2. The application is contrary to Policies PMD2 and ED7 of the Scottish Borders Local Development Plan 2016 in that it has not been adequately demonstrated that there is an overriding justification for the proposed building that would justify an exceptional permission for it in this rural location and, therefore, the development would appear as unwarranted development in the open countryside. The proposed building is not of a design or scale that appears suited either to the proposed use for which it is intended or the size of the holding on which it would be situated, which further undermines the case for justification in this location. 3. The application is contrary to Policy EP8 of the Scottish Borders Local Development Plan 2016 in that it has not been adequately demonstrated that the building would not have an adverse impact on the setting of the archaeological site of Our Lady's Church and Churchyard adjoining the application site. 4. The application is contrary to Policy ED7 of the Scottish Borders Local Development Plan 2016 in that it has not been adequately demonstrated that any traffic generated by the proposal can access the site without detriment to road safety.

6 REVIEWS DETERMINED

Nil

7 REVIEWS OUTSTANDING

7.1 There remained one review previously reported on which a decision was still awaited when this report was prepared on 24th February 2017. This relates to a site at:

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| • Land East of Keleden, Ednam | • |
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8 SECTION 36 PUBLIC LOCAL INQUIRIES RECEIVED

- 8.1 Reference: 16/00141/S36
Proposal: Variation of condition 2 to extend operational life of wind farm by additional 5 years
Site: Fallago Rig 1, Longformacus
Appellant: Amec Foster Wheeler Environment & Infrastructure UK Ltd

Reasons for Objection: It would be inappropriate to extend the permission for the existing turbines on the basis of the decision to object to application 16/00145/S36 for the additional 12 turbines.

- 8.2 Reference: 16/00145/S36
Proposal: Erection of 12 additional turbines
Site: Fallago Rig 2, Longformacus
Appellant: Amec Foster Wheeler Environment & Infrastructure UK Ltd

Reasons for Objection: The proposed development would be contrary to Policy ED9 of the Scottish Borders Local Development Plan in that: a) it would result in unacceptable cumulative visual impacts b) it would be detrimental to the landscape character of the area, resulting in the proposed turbines extending out with the natural confines of the landscape bowl the existing windfarm sits within c) the acceptability of noise impacts on residential receptors were not proven d) the wider economic benefits of the development were not proven, and e) there would be unacceptable adverse impacts on recreational receptors on the Southern Upland Way.

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 24th February 2017. This relates to a site at:

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|---|--|
| <ul style="list-style-type: none">(Whitelaw Brae Wind Farm), Land South East of Glenbreck House, Tweedsmuir | <ul style="list-style-type: none"> |
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Approved by

Ian Aikman
Chief Planning Officer

Signature

Author(s)

Name	Designation and Contact Number
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Background Papers: None.

Previous Minute Reference: None.

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