

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Application for Planning Permission

Reference : 16/00114/FUL

To : Cleek Poultry Ltd The Tractor Shed Kirkburn Cardrona Peebles

With reference to your application validated on **2nd February 2016** for planning permission under the Town and Country Planning (Scotland) Act 1997 for the following development :-

Proposal : Erection of cattle court incorporating storage areas and staff facilities and erection of animal feed silo

at: Field No 0328 Kirkburn Cardrona Scottish Borders

The Scottish Borders Council hereby **refuse** planning permission for the **reason(s) stated on the attached schedule**.

**Dated 28th March 2016
Regulatory Services
Council Headquarters
Newtown St Boswells
MELROSE
TD6 0SA**

Signed



.....
Chief Planning Officer

APPLICATION REFERENCE : 16/00114/FUL

Schedule of Plans and Drawings Refused:

Plan Ref	Plan Type	Plan Status
196 02 B	Planning Layout	Refused

REASON 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.

FOR THE INFORMATION OF THE APPLICANT

If the applicant is aggrieved by the decision of the Planning Authority to refuse planning permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under Section 43A of the Town and Country Planning (Scotland) Act 1997 within three months from the date of this notice. The notice of review should be addressed to Corporate Administration, Council Headquarters, Newtown St Boswells, Melrose TD6 0SA.

If permission to develop land is refused or granted subject to conditions, whether by the Planning Authority or by the Scottish Ministers, and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner may serve on the Planning Authority a purchase notice requiring the purchase of his interest in the land in accordance with the provisions of Part 5 of the Town and Country Planning (Scotland) Act 1997.

SCOTTISH BORDERS COUNCIL

**APPLICATION TO BE DETERMINED UNDER POWERS DELEGATED TO
CHIEF PLANNING OFFICER**

PART III REPORT (INCORPORATING REPORT OF HANDLING)

REF : 16/00114/FUL

APPLICANT : Cleek Poultry Ltd

AGENT :

DEVELOPMENT : Erection of cattle court incorporating storage areas and staff facilities and
erection of animal feed silo

LOCATION: Field No 0328 Kirkburn
Cardrona
Scottish Borders

TYPE : FUL Application

REASON FOR DELAY:

DRAWING NUMBERS:

Plan Ref	Plan Type	Plan Status
196 02 B	Planning Layout	Refused

NUMBER OF REPRESENTATIONS: 0

SUMMARY OF REPRESENTATIONS:

Roads Planning:

The previous application (15/00947/FUL) was lacking information relating to vehicle movements that this proposal would generate.

The current application includes a business plan which details the operations of the proposed business. Whilst the proposal is unlikely to generate significant increase, the access to the site requires to be upgraded.

Should this application be supported, then I must insist that the access is upgraded as per my comments below prior to work commencing on the development. A detailed plan should be submitted for approval prior to works commencing on the development showing the following upgrading works;

- o The first 6m of the access to be at a gradient of no steeper than 1 in 15, with the access track no steeper than 1 in 8 thereafter.
- o The access road must be a minimum of 6m wide for a minimum 10m length, with 6m radii at the bellmouth.
- o The first 6m of the access to be surfaced to my specification i.e. 40mm of 14mm size close graded bituminous surface course to BS 4987 laid on 60mm of 20mm size dense binder course (basecourse) to the same BS laid on 350mm of 100mm broken stone bottoming blinded with sub-base, type 1.
- o Measures to be put in place to prevent the flow of water onto the public road.
- o Visibility splays of 2.4 metres by 120 metres in either direction onto the public road. These splays must be retained in perpetuity thereafter.

It should be noted that access requirements were conditioned as part of a previous application for holiday lodges, 12/00902/FUL, by the same applicant, which has yet to be implemented. A detailed drawing of the junction upgrades was submitted to the Council and subsequently approved. A separate planning application for the access upgrade was also approved (15/01206/FUL). Should either of these applications be implemented and the access is upgraded, then there would be no requirement for further upgrades required as a result of this proposal.

Environmental Health:

Amenity and Pollution

Assessment of Application

Noise

This is an Application to erect a cattle court and animal feed silo.

Feed silos have the potential to cause noise nuisance.

Cattle courts can cause pollution, insect and odour problems

Recommendation

Delete as appropriate - Agree with application in principle, subject to conditions

Conditions

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

Reason To protect the residential amenity of nearby properties.

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

Reason To protect the residential amenity of nearby properties.

Waste and contaminated water arising from the use of the cattle court shall be stored, handled and disposed of in such a manner as not to cause Statutory Nuisance or pollution.

Reason To protect the residential amenity of nearby properties and to protect the environment.

Archaeology Officer:

Thank you for requesting an archaeology consultation. I have previously provided consultations on earlier proposals for this site. I have raised concerns that the setting of the formerly Scheduled, and still regionally significant, Our Lady's Church and churchyard, will be compromised by development in this location. I requested that the applicants demonstrate that the setting of the church and churchyard will not be compromised per Policy BE2 and the replacement policy EP8. I note that the previous applications were refused in part because of a lack of information provided by the applicants to allow a determination that development would not adversely impact the setting of the churchyard. I also note that this information has not been supplied in this application and I am similarly unable to make a judgement. As such I recommend refusal of the application as currently submitted, but I would refer you to my earlier comments and recommendations. If further information is supplied I would be happy to revisit this application.

Landscape Architect:

Implications of the Proposal for the Landscape including any Mitigation

Due to the sloping nature of the field I am concerned that the cattle shed and silo will be highly visible from the north side of the valley and more locally from the B7062 immediately to the north of the field. No attempt has been made to cut the building into the slope.

The attractive juxtaposition of valley side pastoral farmland with mixed and coniferous forestry and woodland could potentially be undermined by the introduction of an industrial scale shed that will require substantial earth moving to achieve the required amount of level ground. I suggest that the existing trees along the north boundary may not provide adequate screening for the buildings that will be located well up the hillside and I am concerned they will be seen from much of the surrounding elevated land to the north west, north and north east.

As part of an extensive development of the field we would normally expect a Landscape and Visual Impact Assessment (LVIA) with visualisations to be undertaken to test the scheme.

Local Plan Policy EP2 requires developers to comply with Structure Plan policy N11 which states that 'In assessing proposals for development in AGLVs (replaced by SLAs in 2012), the Council will seek to safeguard landscape quality and will have particular regard to the landscape impact of the proposed development.'

Conclusion

The submitted information was limited, however I have a concern that this proposal will have a serious negative visual impact on this part of the Tweed valley and would be visually intrusive from much of the surrounding area

I therefore, on landscape and visual grounds, cannot support this application.

Economic Development:

I have reviewed the above application in respect of the business plan for a cattle store unit. I believe there are a number of fundamental issues with the business plan and a number of operational issues with the design of the unit.

1. The proposed building is more akin to an industrial unit as opposed to a cattle shed; 2 points in this respect are the lack of appropriate ventilation which may create a welfare situation for the stock and secondly the roller shutter door into the cattle area would in probability become inoperable due to the cattle manure in the building.
2. The size of the building appears to be excessive for the stock numbers proposed, looking at the stock numbers and the recommended stocking rates for cattle buildings then the cattle shed could probably hold almost twice as many cattle as the proposed number. The submitted plan indicates that a number of cattle would be sold off grass and only 25 would be housed, indicating an excess capacity within the cattle shed. The silage and probably the straw could be housed outside and thereby reduce the size of building.
3. The feed silo has a capacity of circa 600 cubic metres; the business plan indicates a feed usage of 20.8 tonnes which would require approx. 30 m³ and in respect of good practise this wouldn't be bought in as one lot but probably every 1 to 2 months and in effect a only a fraction of the silo would be required for feed storage. The silo is considerably bigger than it needs to be.
4. The 40 acres of grassland are a key element to the model, however there is no copy of the lease or for how long. The business plan puts this proposal forward as a 20 year project, so the lease would have to reflect this to some degree.
5. The business plan contains details for marketing of the end product, however this aspect is not particularly robust (restaurants are unlikely to buy whole carcasses they will buy specific cuts). A local food van attending regional events such as agricultural shows is unlikely to have an even demand of 2 beasts per month throughout the year (typically they are seasonal). Is there a letter of intent from the food van owner that they will take 2 beasts a month throughout the year?
6. A number of the financial and production assumptions are optimistic and in practice would be different to those submitted e.g. straw usage of 17.5 tonnes would probably be higher particularly feeding silage to the cattle.

Peebles and District Community Council: Response awaited.

PLANNING CONSIDERATIONS AND POLICIES:

Scottish Borders Consolidated Local Plan 2011

Policy G1 Quality Standards for New Development
Policy BE2 Archaeological Sites and Ancient Monuments
Policy EP2 Areas of Great Landscape Value
Policy D1 Business, Tourism and Leisure Development in the Countryside

"Special Landscape Area 2 - Tweed Valley" - Supplementary Planning Policies

Recommendation by - Craig Miller (Lead Planning Officer) on 28th March 2016

This application is the third to seek permission for a cattle court and feed silo on this part of the agricultural holding at Kirkburn, Cardrona. As many issues remain the same and the proposal is little changed in respect of impacts on landscape or archaeology, I would refer you to the full report prepared for Application Reference 15/00947/FUL and the reasons given for refusal with regard to landscape and archaeological impacts. The Landscape and Archaeology Officers have reaffirmed their opposition to this latest proposal which does not effect any reductions in height, scale or location of the shed and silo from those previously refused, nor provides any of the previously requested information to enable further landscape or archaeological assessments to be undertaken. Cladding of the silo to create a traditional "tower" appearance does nothing to limit the impact of this excessive 12m high structure on the designated landscape quality of the area. Given the continued opposition from the consultees, the decision on this application should be no different from the previous two in relation to landscape and archaeology.

The main change with the application is that it has been submitted with a Business Plan in support, identifying the purpose of the building and silo, based upon leasing 40 acres of land from Laverlaw to the south, rearing and fattening 32 cattle per year and providing meat for a local burger van and local restaurants. The building is meant for wintering cattle, storing hay and silage. The silo will contain cereal and water.

Compared to the last two decisions, it is useful to have received a justification for the silo and building this time based upon a cattle business using 40 acres of leased land. Previously, it was not considered that the building could have been justified on the basis of the very limited size of the owned landholding. Nevertheless, the Business Plan has been carefully assessed by Business Gateway who conclude that the building and silo are excessive for their purpose and the building not suited due to lack of appropriate ventilation and the operability of the single roller shutter door. They describe it as "akin to an industrial unit". Despite ventilated Yorkshire boarding being shown at upper level on the building, Business Gateway are of the opinion that this is insufficient. They also question some of the marketing and productivity assumptions. On the basis of the submitted Business Plan and the concerns of Business Gateway, the revised application cannot overcome the previous reasons for refusal based upon lack of adequate justification or suitability of the building and silo for the intended purposes.

The Business Plan has, however, allowed the Roads Planning Service to accept the proposals provided the access is improved either, in itself as a condition on any consent granted, or as per the implementation of earlier consents relating to the holiday chalet development or access itself.

For the reasons mentioned above, the revised proposals do not address the landscape and archaeological reasons for refusal on previous decisions and the Business Plan does not adequately demonstrate just why the building and silo have to be of the scale and design intended. For these reasons, the proposal continues to be in breach of the relevant Local Plan Policies G1, BE2, EP2 and D1.

REASON FOR DECISION :

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.

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.

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.

Recommendation: Refused

- 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.

“Photographs taken in connection with the determination of the application and any other associated documentation form part of the Report of Handling”.

APPENDIX II

**SCOTTISH BORDERS COUNCIL
LOCAL REVIEW BODY DECISION NOTICE**

**APPEAL UNDER SECTION 43A (8) OF THE TOWN AND COUNTRY PLANNING
(SCOTLAND) ACT 1997**

**THE TOWN AND COUNTRY PLANNING (SCHEMES OF DELEGATION AND
LOCAL REVIEW PROCEDURE) (SCOTLAND) REGULATIONS 2013**

Local Review Reference: 16/00017/RREF

Planning Application Reference: 16/00114/FUL

**Development Proposal: Erection of cattle court incorporating storage areas and
staff facilities and erection of animal feed silo**

Location: Field No 0328 Kirkburn Cardrona

Applicant: Cleek Poultry Ltd

DECISION

The Local Review Body (LRB) upholds the decision of the appointed officer and agrees to refuse planning permission for the reasons set out in this decision notice on the following grounds:

1. The application is contrary to Policies PMD2, EP5 and ED7 of the Scottish Borders Local Development Plan 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 PMD2 and ED7 of the Scottish Borders Local Development Plan 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 EP8 of the Scottish Borders Local Development Plan 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.

DEVELOPMENT PROPOSAL

The application relates to a proposal for full Planning Permission for the erection of a cattle court incorporating storage areas and staff facilities and erection of an animal feed silo. The application drawings consisted of the following drawings:

Plan Type	Plan Reference No.
Elevations	196 02 B

PRELIMINARY MATTERS

The Local Review Body considered at its meeting on 15th August 2016 that the Review had been competently made under section 43A (8) of the Town & Country Planning (Scotland) Act 1997.

After examining the review documentation at that meeting, which included: a) Notice of Review; b) Decision Notice; c) Officer's Report; d) Previous Application referred to in report; e) Consultations; and f) List of policies, the LRB concluded that it had sufficient information to determine the review and proceeded to consider the case.

REASONING

The determining issues in this Review were:

- (1) whether the proposal would be in keeping with the Development Plan, and
- (2) whether there were any material considerations which would justify departure from the Development Plan.

The Development Plan comprises: SESplan 2013 and the adopted Scottish Borders Local Development Plan (LDP) 2016. The LRB considered that the most relevant of the listed policies of the LDP 2016 were:

Local Development Plan policies:

- Policy PMD2 Quality Standards
- Policy EP5 Special Landscape Areas
- Policy ED7 Business, Tourism, and Leisure Developments in the Countryside
- Policy EP8 Archaeology

Other material policy and guidance included

- SPG Special Landscape Areas
- SPG Archaeology

The Local Review Body noted that the applicant seeks full Planning Permission for a site that forms part of an 8 acre smallholding at Kirkburn, Cardrona, on the back road to Peebles. This cattle court/hay shed application occupies a triangular area of land which rises to the south and above the holiday chalets site, stretching to the public road to Laverlaw to the rear.

The building amalgamates previous hay shed and cattle court proposals into one building, it being erected adjoining a new 6m access road to the south of the chalet site and adjoining the corner of Our Lady's Church and graveyard remains.

The Local Review Body further noted that the site lies within the Tweed Valley Special Landscape Area.

Members noted that the cattle court was meant to accommodate 32 cattle and provide employment for 1 man. They considered that this was not adequately justified by the business plan, and considered that this size of cattle court would provide a larger number of animals. Members also discussed the lack of evidence in relation to the proposal's provision of meat to a burger van as the end use of the enterprise.

Members were further concerned that there was no evidence in relation to the leasing of additional grazing land for the cattle or the business relationship with the burger van.

Members concluded that the business plan overall was lacking in necessary detail and therefore could not be justified under policy.

Members discussed the importance of the Special Landscape Area of the Tweed Valley, and were concerned that there would be a negative impact on it from the scale of the proposals of both the silo and the cattle court. They concluded that the scale and mass of the proposals would have a negative impact on the character and quality of both the landscape and the adjacent archaeological areas.

Members further expressed concern regarding the relationship of this proposal to the approved proposal for chalets in an adjacent part of the field.

Members expressed concern on the lack of an overall business/masterplan plan for the area which would allow consideration of proposals in a meaningful context.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was contrary to the Development Plan and that there were no other material considerations that would justify departure from the Development Plan.

Notice Under Section 21 of the Town & Country Planning (Schemes of Delegation and Local Review procedure) (Scotland) Regulations 2008.

1. If the applicant is aggrieved by the decision of the planning authority to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.
2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable

of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.

Signed.....Councillor R Smith
Chairman of the Local Review Body

Date ...22 August 2016
