

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

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

Application for Planning Permission

Reference : 16/00495/FUL

To : Cleek Poultry Ltd The Tractor Shed Kirkburn Cardrona Peebles

With reference to your application validated on **10th May 2016** for planning permission under the Town and Country Planning (Scotland) Act 1997 for the following development :-

Proposal : Extension to form animal flotation unit

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 29th June 2016
Regulatory Services
Council Headquarters
Newtown St Boswells
MELROSE
TD6 0SA**

Signed



.....
Chief Planning Officer

APPLICATION REFERENCE : 16/00495/FUL**Schedule of Plans and Drawings Refused:**

Plan Ref	Plan Type	Plan Status
19640	Elevations	Refused
19641A	Site Plan	Refused

REASON 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 justified by 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 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.

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 OSA.

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 : 16/00495/FUL

APPLICANT : Cleek Poultry Ltd

AGENT :

DEVELOPMENT : Extension to form animal flotation unit

LOCATION: Field No 0328 Kirkburn
Cardrona
Scottish Borders

TYPE : FUL Application

REASON FOR DELAY:

DRAWING NUMBERS:

Plan Ref	Plan Type	Plan Status
19640	Elevations	Refused
19641A	Site Plan	Refused

NUMBER OF REPRESENTATIONS: 0

SUMMARY OF REPRESENTATIONS:

Roads Planning:

The previous application (15/00563/FUL), which was subsequently refused permission, for a similar proposal on this site requested additional information regarding traffic movements.

The current submission does not include any information on the number, type and frequency of vehicular movements associated with this proposal. As a result, I am unable to make an informed decision of the impact this proposal will have on the junction with the public road and the section of private road leading to the site.

Until I receive this additional information, I must recommend refusal of this application.

Environmental Health:

Amenity and Pollution

Assessment of Application

Noise

Water and Drainage

This Application proposes to erect a facility for treating animals.

This Application proposes to use a private drainage system.

This can impact of public health.

Recommendation

Agree with application in principle, subject to Conditions.

Conditions

No development should commence until the applicant has provided evidence that arrangements are in place to ensure that the private drainage system will be maintained in a serviceable condition

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

Informative

Private Drainage System

Private drainage systems often cause public health problems when no clear responsibility or access rights exists for maintaining the system in a working condition.

Problems can also arise when new properties connect into an existing system and the rights and duties have not been set down in law.

To discharge the Condition relating to the private drainage arrangements, the Applicant should produce documentary evidence that the maintenance duties on each dwelling served by the system have been clearly established by way of a binding legal agreement. Access rights should also be specified.

Landscape Architect:

My comments of 20th July 2015 in relation to previous application - Ref No 15/00563/FUL remain relevant and apply to this revised application.

These were :

"The submission provides nothing in the way of topographical information and given that there are no cross sections showing how the proposal related to existing site levels, I am concerned that the sheds may be visible from the north side of the valley and more locally from the B7062 immediately to the north of the field. I suggest that the existing trees along the north boundary may not provide adequate screening for these sheds and it may be that they will be seen from much of the surrounding elevated land to the north west, north and north east.

No Landscape and Visual Impact Assessment (LVIA) has been undertaken to test the scheme to test the visual effect on the integrity of the SLA and visual impact on the receptors on the adjacent road.

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.'

The submitted information was limited and I have a concern that the proposal will be highly visible and will have a serious negative visual impact on this part of the Tweed valley.

I would expect to see a realistic photomontage presentation submitted as part of a LVIA to establish how visible this proposed development would be from a number of sensitive receptors both in the immediate vicinity and across the valley.

Without a simple landscape and visual impact assessment that clearly shows the effects on this part of the Tweed valley SLA, I cannot make an informed judgement about this proposal and I therefore do not support this application."

Archaeology Officer:

Thank you for requesting an archaeology consultation. There are no archaeological implications for this proposal. The western half of the red-line area was archaeologically monitored in 2005 during a

top-soil strip. No features or finds were identified. The eastern half has been impacted by track creation. As such, there is a very low chance for archaeological discovery within the proposed development area.

Economic Development:

There appears to be no business case supporting documents with this application so Economic Development cannot support this application without full sight of this information. The drawing refers to the use of the flotation unit for toning muscle on animals reared for slaughter - therefore, please can the applicant be requested to, and confirm that, the unit will be included as a part of an agricultural business and submit a business plan, including cash flow projections, in order for it to be evaluated.

Economic development would also have concerns about the proximity of the flotation unit to an existing consent for holiday lodges, as we do not consider that they would be compatible if both are developed

Peebles and District Community Council:

PLANNING CONSIDERATIONS AND POLICIES:

Scottish Borders Local Development Plan 2016

Policy PMD2 Quality Standards

Policy EP5 Special Landscape Areas

Policy EP8 Archaeology

Policy ED7 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 22nd June 2016

The application is a resubmission of 15/00563/FUL which was refused. However, the application is only for one of the two buildings previously refused under that reference number - the building to the rear of the existing buildings at upper yard level, housing the animal flotation unit. It is identical in height and size, albeit with the monopitched roof sloping down to the north as opposed to previously sloping down to the south. The extract from the previous Handling Report relating to landscape impact still applies with this application, the background being important to the understanding of the issues of landscape impact, as follows:

"The site forms part of an 8 acre smallholding at Kirkburn, Cardrona, on the back road to Peebles. This planning application is one of six which have been submitted for various buildings and structures on the land to the south and west of the holiday chalets site. Together with a seventh proposal in the form of an AGN, four of the applications all relate to the same site and are competing proposals, only one of which could actually be implemented. This application is for two new buildings erected at higher yard level above and behind the existing range of buildings and recently consented cold store.

The first building will be erected on top of the previously consented cold store and over a proposed excavated cold store extension, one described as being for poultry, the other for red meat. Above these areas, a new storage shed is proposed measuring 10m by 14m, 6m to the eaves and 7.3m to the ridge both as measured from the upper yard. The second building will be to the rear of the existing buildings and will be erected at upper yard level, measuring 6m by 24m, 4m to the eaves and 5.5m to the ridge. They will be clad in larchlap boarding with a charcoal grey fibre roof, the larger building possessing two roller shutter doors to the side gable and two pedestrian doors to the rear. Two further roller shutter doors will serve the cold stores. The interior of the larger building is described as for tractors/implements/mobile food van parking. Staff quarters are shown at one end of the building at mezzanine level consisting of a rest room, toilet and kitchenette. The smaller building is proposed to house an animal flotation tank with roller shutter door and pedestrian door.

The site also lies within the Tweed Valley Special Landscape Area No. 2 - a recent local landscape designation which requires extra care and attention to be paid to development that could adversely impact

on the character of the landscape. Management recommendations were set out in the Supplementary Planning Guidance accompanying the designation, the most pertinent being "...to better integrate existing development into the landscape". This was arising out of pressure for development on hills and hillsides across the designated area.

Such considerations were uppermost when the adjoining holiday chalets application was considered at Committee. As a result of concerns over visual impacts on rising land, revisions to the scheme were required to reduce impacts on the recently designated landscape. This involved removal of upper chalets and the loop road as well as a series of cross sections to demonstrate that the development would not be seen from the A72 on the Horsbrugh Straight above the existing tree canopy line.

In processing the initial AGN application for Mushroom growing sheds, concern was expressed that those sheds were as tall as the Hub House within the holiday development, yet apparently on higher ground by several metres. The tree top heights on the sections submitted with the holiday chalets application indicated screening up to about 188m AOD which was sufficient to screen the Hub House. It was not felt that the proposed sheds would be screened to the same extent by the existing trees, the Landscape Officer believing that they will be highly visible above them. The same loop road was also proposed as part of the Mushroom sheds application which would also be visible above the tree canopy.

The Landscape Officer concluded that in the absence of any Landscape and Visual Impact Assessment to prove otherwise, the development would have a detrimental impact on the Special Landscape Area. The applicant was invited to respond to these concerns with supporting information which could include cross sections, photomontages, topographical and floor level information. They were also invited to consider the precise siting of the sheds and the roof height and design. It was clearly stated, however, that any additional information submitted may still confirm the concerns over landscape impact, especially if significant excavation required to lower floor levels remains prominent in itself.

A revised plan was submitted for the mushroom shed application accompanied by a topographical detailed survey and proposals to reduce the impacts of those buildings by cutting in the floor level as well as reducing the heights of those buildings from 7.3m down to 4.8m. The accompanying letter believed that they were a better design solution than the initial proposal. Tree heights were demonstrated, in the highest case, to be higher than the ridge height now proposed. However, of the tree heights actually shown, the general top of the tree line is still appreciably below the ridges of the two buildings. The most recent application on the same site for rabbit breeding sheds goes further and lowers the floor levels even more whilst still keeping the new 4.8m ridge height. These reductions and design solutions are still being considered, noting that it is possible that the ridge heights of those buildings could be as little as 0.5-1.5m above the average tree line height. The applicant has been written to with further requests to pull the floor level of the mushroom sheds down to that of the rabbit sheds - amongst other issues still to be addressed.

This background also includes recent consideration of the application for a cattle court building on the site, which was neither cut into the site nor lower in height, being more than 2.5m above the heights of the revised mushroom/rabbit sheds, without taking into account any cut into the site. Even if such cut was proposed for the cattle shed application, the height of the building would still result in projection above the average tree height by at least 3-4.5m which would have a major landscape impact, exacerbated by the bulk of the building across its 44m length. There was clear advice from the Landscape Officer that such an impact would be unacceptable, given the level of projection of building above the tree line when viewed from the A72. There was also likely to be local impacts from the B7062 next to the site.

Those landscape impacts were exacerbated by the circuitous access track, water holding tank and solar array which would all be wholly visible above the tree canopy from the A72, increasing the development of an elevated field. The solar panels would face away from view so there would be no reflective impact. However, the slope of the ground means that the elevated rear of the structures would be presented to public view to the north, rising up the hill to the Laverlaw Road and introducing an intrusive element into the hill slope. The effects would be contrary to the purposes of designating the Special Landscape Area in the first instance.

An associated application for hay sheds and a feed silo simply proposed buildings of much greater ridge heights in similar positions to the cattle court/mushroom/rabbit sheds. The impacts would be even more immense on the hillside above the tree canopy, topped by a towering silo structure which would even be sited on higher land still. There would be no amount of ground regrading that would make these proposals

anything other than significantly prominent in a designated landscape. That application was also considered unacceptable on grounds of landscape impact, within a designated landscape area.

The application for the storage building and animal flotation tank building cause the same issues of landscape impact. Whilst it is accepted that at least they would have the appearance of being more visually related to the existing buildings in terms of location to the rear of existing buildings, the level of projection above the ridge of the existing buildings would still be excessive, ranging from 3.7m for the flotation tank building to 5.6m for the storage shed building. It is acknowledged that the line of tree cover north of the public road is a little higher at this end of the land holding and the existing buildings are screened by those trees - but only just. It is considered that there is not a further 3.7-5.6m vertical height screening above the tree tops to enable such large buildings set at higher level to be effectively screened, either from the A72 or from the public road adjoining the site. Whilst there may be a second topographical survey plan which could have covered this end of the site, this has not been submitted with the application and it would be highly unlikely, in any case, that there would be any demonstration of adequate existing screening given the height differentials between the existing building ridges and those proposed - especially the storage building ridge. It certainly appears that the existing contours would be similar to those being proposed for the rabbit/mushroom sheds. without the cutting into ground levels as proposed for those buildings. Excavation in this location would also cause difficulties with the upper yard, access and impacts on the rear of the existing buildings. It is concluded that the impacts on the landscape would be significant with this proposal, affecting the character and quality of the designated landscape and particularly noticeable from the A72. This is the conclusion of the Landscape Officer."

Although there have been several other decisions on planning applications since the above was written, none have changed the position in relation to landscape impact. Nor have the new LDP Policies altered the Council's position on landscape impact in a Special Landscape area. Whilst the previous associated storage building would have been the most prominent which has now been dropped from the proposals, the previous application was still refused on the basis of the landscape impact of the animal flotation building too, it being considered that 3.7m of height extension above the current building ridge lines was not acceptable and would lead to unacceptable landscape prominence. The switch in ridge position would not be sufficient to reduce the impacts to acceptable levels. The Council Landscape Architect continues to oppose the application for these reasons.

The previous application was also refused on road safety grounds due to lack of information . The previous Handling Report stated the following:

"Roads Planning also consider there to be a lack of information in terms of the number of vehicle movements this proposal (and the others) will bring. They have requested a Transport Statement to be submitted which details the type, number and size of vehicle trips which will be generated by this proposal along with the frequency of trips. The statement must also include anticipated traffic movements for all other proposed development served by this access.

Given the uncertainty over the scale of the buildings and their suitability for the purposes intended, it is understandable that there are Roads concerns over the ability of the access to accommodate the development without further information being submitted. In the absence of such information, it has not been adequately demonstrated that the access is capable of safely accommodating the traffic generated by the proposed development. This would be contrary to Policy D1 of the Consolidated Local Plan."

These concerns still exist, even with the fact that the application is only for the flotation unit.

Economic Development have commented on the lack of a Business Plan again with this application, despite the application only being for the flotation unit. The comments in the previous Handling Report remain pertinent to the resubmitted application, albeit Policies PMD2 and ED7 have replaced Policies G1 and D1, as follows:

"Policy D1 looks for uses which are related to the ground on which they are located, for purposes which are generated by the land and any particular activity carried out on the land. It is known that the landholding is only 8 acres, of which 3 have been earmarked for the consented chalet development and some of the remainder are occupied already by buildings and the yard area. The stated purpose of the buildings and their scale raise issues over need and justification, as with the other proposals and in the absence of a co-ordinated Business Plan. It is also questioned whether such a modest holding, already with a range of

buildings (including a consented cold storage building and tractor shed) can justify such large additional accommodation which appears duplication. In the absence of a Business Plan, there is no demonstration of the required need for such buildings on this small holding.

It is concluded that the application is contrary to Policies G1 and D1 of the Scottish Borders Consolidated Local Plan 2011 in that it has not been adequately demonstrated that there is an overriding justification for the proposed buildings that would justify an exceptional permission in this rural location and therefore the development would appear as unwarranted development in the open countryside. The proposed buildings are not of a design or scale that appear suited either to the proposed use for which they are intended or the size of the holding on which they would be situated, which further undermines the case for justification in this location."

There were a series of issues also raised by Environmental Health covering private water and private drainage issues which could all be covered by appropriate conditions. The Archaeology Officer is not concerned at these proposals, given the previous development of the steading buildings and the lack of any significant findings.

REASON FOR DECISION :

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 justified by 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 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.

Recommendation: Refused

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 justified by 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 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.

**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: 16/00024/RREF

Planning Application Reference: 16/00495/FUL

Development Proposal: Extension to form animal flotation unit

Location: Field no 0328, Kirkburn, Cardrona

Applicant: Cleek Poultry Ltd

DECISION

The Local Review Body (LRB) upholds the decision of the appointed officer and refuses 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 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 justified by 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 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.

DEVELOPMENT PROPOSAL

The application relates to an extension to form an animal flotation unit at Kirkburn, Cardrona. The application drawings consisted of the following drawings:

Plan Type	Plan Reference No.
Elevations	196 40
Site Plan	196 41A

PRELIMINARY MATTERS

The Local Review Body considered at its meeting on 19th September 2016 that the Review had been 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 including Decision Notice; b) Officer's Report; c) Papers referred to in the report; d) Consultations and e) List of policies, the LRB concluded that it had sufficient information to determine the review and proceeded to consider the case. In coming to its conclusion the LRB considered the request from the applicants for a site inspection, further written submissions and one or more hearing session.

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 Strategic Development Plan 2013 and the Scottish Borders Local Development Plan 2016. The LRB considered that the most relevant of the listed policies were:

- Local Plan policies : PMD2, EP5 and ED7

The LRB noted that the applicant sought planning consent for an animal flotation unit within his 8acre smallholding at Kirkburn, Cardrona on the B7062 to Peebles. The site is a part of a larger north facing field which slopes downwards from the south towards the B7062. The flotation unit measures 24m (l) x 6m (w) x 5.5m (h) in charcoal grey corrugated sheeting.

Members noted that the application was a resubmission of a previous application which now omitted a storage building which was located on the eastern part of the site. Members noted that the proposed flotation unit was positioned in the same location as previous on elevated land on the southern side of an existing building at upper yard level. It is identical in height and size, albeit with the monopitched roof sloping down to the north as opposed to previously sloping down to the south.

The Review Body noted that the site lies wholly within the Tweed Valley Special Landscape Area (SLA) which recognises the special character of the valley. Members discussed the importance of the SLA of the Tweed Valley, and were concerned that there would be a negative impact on it from the scale and height of the proposals. The Review Body concluded that the scale and height of the proposal would have a negative impact on the character and quality of the landscape.

It was noted the Council's Landscape Architect had requested a Landscape and Visual Assessment to check the impact of the proposal on the surrounding landscape and the SLA. It was also noted that Roads Planning had requested further info regarding traffic generation and Economic Development had requested a business plan. This information had not been produced and the LRB therefore considered there was no material before them that would either demonstrate that an exceptional consent should be granted for economic reasons, nor that that the development could proceed without unacceptable detriment to road safety.

The LRB also had concerns as to how compatible this proposal would be, without a conflict of uses, with other approved and proposed uses within the smallholding given the limited size of the site.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the proposal was contrary to the Development Plan and that there were no other material considerations that would justify departure from the Development Plan. Consequently the decision of the appointed officer was upheld.

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.....29 September 2016

