

PLANNING AND BUILDING STANDARDS COMMITTEE

24th April 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: 16/00865/FUL
Proposal: Part change of use of dwellinghouse and garden ground to wedding venue and erection of marquees
Site: Hartree House, Kilbucho
Appellant: Mr & Mrs Michael Goddard

Reasons for Refusal: Appeal against imposition of conditions 1, 6 and 7 which state:

Condition 1. The part change of use to a wedding venue hereby approved shall be for a limited period of two years from the date on the consent. Reason: To enable the Local Planning Authority to review the matter at the end of a limited period. Condition 6. Maximum of 15 events per calendar year. Reason: To protect the residential amenity of local residents. Condition 7. No more than two events within one calendar month without the prior approval of the planning authority. Reason: To protect the residential amenity of local residents.

Grounds of Appeal: The proposed use of the appeal site as a wedding venue is consistent with Policy ED7 of the adopted local development plan. No basis can be found within the local development plan to support a time-limited consent which would outweigh Scottish Government policy. There is no evidence to suggest that the policy guidance of Circular 4/1998 or SPP (2014) were taken into account in the Council decision. The Council's decision to modify the proposal as applied for is contrary to three overarching principles of the Circular viz: (i) It is rarely necessary to issue a temporary permission for development. (ii) Effect on amenity never justifies a temporary consent. (iii) A condition which modifies a proposal in a material way cannot be imposed. The appellant submits that Conditions 1, 7 and 8 are unnecessary and unreasonable, having regard to: government policy; the logistics of wedding planning; council decisions

on similar proposals; and alternative business models. Similarly, the wording of Condition 7 is imprecise, and potentially unenforceable due to its lack of precision. The proposal has been ongoing for almost 3 years, during which time business activities have been suspended awaiting a final decision. During this time the appellants have not challenged conflicting Council advice, which has impacted considerably on business commitments. Other similar proposals have been dealt with differently and much more sympathetically by the Council. The appellants can only conclude that events up to and including consideration at the Planning and Building Standards Committee were not decided on planning merits, but rather were unduly influenced by local opposition which was not based on rational planning reasons. In Summary, Conditions 1, 6 and 7 place an unjustifiable and disproportionate burden on the appellant such to take away the substance of the permission and fail to satisfy the tests of necessity, reasonableness and precision set out in Circular 4 of 1998.

Method of Appeal: Written Representations

2.2 Enforcements

2.2.1 Reference: 16/00105/UNDEV
Proposal: Boundary fence and summerhouse erected in front garden
Site: 1 Borthwick View, Roberton, Hawick
Appellant: Mr and Mrs Ramsay

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: 1. The line of the fence is incorrectly sighted. 2. The lack of privacy due to No. 2 occupants, due to height of fence. 3. The fence is of variable height, sometimes as low as 1.5m. 4. No. 2 neighbour has constructed onto the fence she complains of. 5. No. 2 is responsible for sighting of fence within one metre of walled boundary to road, (so as to clock exit/entrance sight line to our house). 6. The summerhouse is a moveable item, like a vehicle, and is not situated in any one spot permanently.

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 6 appeals previously reported on which decisions were still awaited when this report was prepared on 13th April 2017. This relates to sites at:

| | |
|---|---|
| • Land North West of Whitmuir Hall, Selkirk | • Broadmeadows Farm, Hutton |
| • Office, 80 High Street, Innerleithen | • 1 Borthwick View, Robertson, Hawick (Murphy-McHugh) |
| • 12 Merse View, Paxton | • 1 Borthwick View, Robertson, Hawick (Ramsay – 16/00146) |

5 REVIEW REQUESTS RECEIVED

- 5.1 Reference: 16/01174/PPP
 Proposal: Erection of vehicle body repair workshop and associated parking
 Site: Land North West of Dunrig Spylaw Farm, Lamancha, West Linton
 Appellant: GS Chapman Vehicle Body Repairs

Reasons for Refusal: 1. The proposal does not comply in principle with Adopted Local Development Plan Policy ED7 in that the proposal would more reasonably be accommodated within the Development Boundary of a settlement rather than in this particular location. Further, the Applicant has not demonstrated any overriding economic and/or operational need for this particular countryside location. 2. Taking account of the greenfield nature of the site and lack of existing screening available within the surrounding area, the proposal does not comply with Adopted Local Development Plan Policies ED7 and PMD2 in that the operation of the business, including the storage of general vehicles at the site, would be unsympathetic to the rural character of the site and surrounding area, and would have an unacceptably detrimental landscape and visual impact upon the appearance of the site and its environs.

- 5.2 Reference: 17/00011/FUL
 Proposal: Erection of detached garage with first floor studio, alterations and extension to dwellinghouse
 Site: Danderhall Cottage, St Boswells, Melrose
 Appellant: Ms Evelyn Brown and Mr John Kirk

Review against non-determination of Application.

- 5.3 Reference: 17/00027/FUL
 Proposal: Erection of agricultural storage building with welfare accommodation
 Site: Land West of Former William Cree Memorial Church Kirkburn, Cardrona, Peebles
 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 Guidance relating to Special Landscape Area 2 - Tweed Valley 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 with adverse and cumulative visual impacts on the local

environment. The proposed building is not of a design or scale that appears suited to the size of the holding on which it would be situated, which further undermines the case for justification in this location. 2. 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.

- 5.4 Reference: 17/00028/FUL
Proposal: Erection of agricultural storage building with welfare accommodation
Site: Land West of Former William Cree Memorial Church Kirkburn, Cardrona, Peebles
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 Guidance relating to Special Landscape Area 2 - Tweed Valley 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 with adverse and cumulative visual impacts on the local environment. The proposed building is not of a design or scale that appears suited to the size of the holding on which it would be situated, which further undermines the case for justification in this location. 2. 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

- 6.1 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.

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Upheld

6.2 Reference: 16/01425/PPP
Proposal: Erection of dwellinghouse
Site: Land East of Keleden, Ednam
Appellant: Mr & Mrs Brian Soar

Reason for Refusal: The proposals would be contrary to Policy PMD4 of the Scottish Borders Local Development Plan 2016 in that the erection of a dwellinghouse on this site would result in development outwith the development boundary of the village as defined on the settlement profile map for Ednam, leading to unjustified encroachment into the open countryside and coalescence with the Cliftonhill building group. The proposed dwelling is not a job generating development in the countryside that has economic justification under Policy ED7 or HD2; it is not an affordable housing development that can be justified in terms of Policy HD1; a shortfall in the provision of an effective 5 year land supply has not been identified and it is not a development that would offer significant community benefits that would outweigh the need to protect the development boundary.

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Upheld

6.3 Reference: 16/01536/PPP
Proposal: Erection of dwellinghouse
Site: Land East of Highland Brae, Lilliesleaf
Appellant: Miss Kerrie Johnston

Reason for Refusal: The proposed development would be contrary to policy HD2 of the Scottish Borders Local Development Plan (2016), and contrary to the guidance within the adopted New Housing in the Borders Countryside Guidance Note (2008), in that the proposed development would not relate sympathetically to an existing building group and the supporting letter accompanying the application is not considered sufficient justification for what would be a development in open countryside.

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Overturned
(Subject to condition and a S75 agreement)

7 REVIEWS OUTSTANDING

7.1 There remained 4 reviews previously reported on which decisions were still awaited when this report was prepared on 13th April 2017. This relates to sites at:

| | |
|---|---|
| • Field No 0328 Kirkburn, Cardrona (16/01464/FUL) | • Field No 0328 Kirkburn, Cardrona (16/01506/FUL) |
| • Field No 0328 Kirkburn, Cardrona (16/01507/FUL) | • Field No 0328 Kirkburn, Cardrona (16/01513/FUL) |

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 3 S36 PLI’s previously reported on which decisions were still awaited when this report was prepared on 13th April 2017. This relates to sites at:

| | |
|---|-------------------------------|
| • (Whitelaw Brae Wind Farm), Land South East of Glenbreck House, Tweedsmuir | • Fallago Rig 1, Longformacus |
| • Fallago Rig 2, Longformacus | • |

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.

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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