

PLANNING AND BUILDING STANDARDS COMMITTEE

8th January 2018

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: 17/00015/PPP
Proposal: Residential development with associated supporting infrastructure and public open space
Site: Land East of Knapdale 54 Edinburgh Road, Peebles
Appellant: S Carmichael Properties Ltd

Reasons for Refusal: 1. The application is contrary to Policy PMD4 of the Scottish Borders Local Development Plan 2016 in that the site lies outwith the defined settlement boundary of Peebles and insufficient reasons have been given as to why an exceptional approval would be justified in this case. 2. The application is contrary to Policies PMD2, PMD4, EP5 and EP10 of the Scottish Borders Local Development Plan 2016 in that the development would create significant adverse landscape and visual impacts, within a Designed Landscape and Special Landscape Area on a prominent and sensitive edge of the town settlement boundary. 3. The application is contrary to Policies PMD2 and IS6 of the Scottish Borders Local Development Plan 2016 in that it has not been demonstrated that the development could be accessed without significant detriment to road safety on the A703 and at the junction with the proposed access road.

Grounds of Appeal: 1. The proposed development can be reasonably assessed against the terms and provisions of Policy PMD4 of the Scottish Borders Local Development Plan (LDP) as it is of such a scale that it would have no demonstrable or adverse impact upon the longer term development and expansion of the settlement of Peebles. 2. The appellant's landscape architect has prepared a report which demonstrates that the proposed development site will give rise to no significant landscape impacts. The Council have failed to provide sufficient justification which could reasonably support the second reason for refusal. 3. There has been no known record of any significant accidents associated with the use of the current site access road configuration. Whilst the

proposed junction improvements may not being the site access junction fully up to the Council's relevant standard, they will bring a measured improvement to both the standard and functioning of the junction and therefore the proposed development can be reasonably justified against Policies PMD2 and IS6 of the LDP.

2.1.2 Reference:	17/00226/FUL
Proposal:	Erection of a windfarm comprising of 7 wind turbines 126.5m high to tip, associated infrastructure, ancillary buildings and temporary borrow pits
Site:	Land North West of Gilston Farm, Heriot
Appellant:	Gilston Hill Windfarm Ltd

Reasons for Refusal: The proposal is contrary to Adopted Scottish Borders Council Local Development Plan Policy ED9 in that it would have relevant unacceptable significant adverse impacts or effects that cannot be satisfactorily mitigated, and which are not outweighed by the wider economic, environmental and other benefits that would otherwise be derived from its siting and operation at the site. In particular:

- The scale, form and location of the development proposed would represent a significant, detrimental change to the existing landscape character and visual amenity of the immediate locality and the wider area, and would also result in unacceptable cumulative landscape and visual impacts through its contribution to views within which it would be visible alongside surrounding wind farm schemes; and
- It would present a hazard to aviation safety both as an obstacle to aircraft and in its potential to disrupt radar operations at Kincardine and Edinburgh Airport.

Informatives – 1. It has not been demonstrated that the proposals would not have unacceptable impacts upon a Protected Species, specifically badgers, whose setts are liable to be impacted by the operation of one of the borrow-pits. 2. It has not been demonstrated that the proposals would not have unacceptable impacts upon Priority Species, specifically butterflies, whose habitat may be impacted by the development. 3. It has not been demonstrated that the proposals would not have any unacceptable impacts upon a private water supply.

Grounds of Appeal: Landscape - The proposed development would be accommodated in an area where a cluster of wind farm development is established, which will be advantageous given that the landscape will not incur new visual effects in areas that are otherwise remote (by 10km) from existing development. Aviation - Appropriate mitigation measures have been agreed with NATS and a suspensive condition has been agreed between the Appellant and NATS as an appropriate means to mitigate the impacts on the operation of NATS' infrastructure. Edinburgh Airport however maintain their objection but have not provided any evidence to support its objection. It is not accepted that there is likely to be any such impact on the Airport's PSR. Planning Policy and Energy – The proposed development is consistent with relevant policies in particular ED9. In terms of the landscape and visual effects arising, the wider economic and environmental and other benefits of the proposed development, such as its contribution to the UK renewable energy targets, net economic benefits both locally and nationally and local recreational and heritage enhancements outweigh any harm that would arise from the proposal.

2.2 Enforcements

Nil

3 APPEAL DECISIONS RECEIVED

3.1 Planning Applications

3.1.1 Reference: 17/00765/FUL
Proposal: Change of Use from Class 1 (Retail) to Class 2 (Financial, Professional and Other Services)
Site: Units 9 and 10, 6 - 8 Douglas Bridge, Galashiels
Appellant: Westminster Job Centre

Reason for Refusal: The change of use from Class 1 (Shop) to Class 2 (Financial, Professional and Other Services) would be contrary to Policies ED3 and ED4 of the Scottish Borders Local Development Plan 2016 in that the use of the premises by a Job Centre would result in the loss of prime retail floor space in a prominent location within the Core Activity Area, which forms part of a principal shopping street and key approach to the town centre.

Grounds of Appeal: The reason for refusal cites that the proposed development is contrary to Policies ED3 and ED4 of the adopted Local Development Plan; however, these policies do not directly deal with the reasoning set out within the reason for refusal. Both the Applicant and the Planning Officer find the proposed development to be in accordance with these policies. The reason for refusal fails to recognise the matters set out on Page 42 of the Local Development Plan, that when read with Policy ED4, would result in Class 2 uses being found in accordance with the Policy should those policy matters be satisfied by the proposed development. The Applicant has provided policy justification to SBC to address the six policy matters on page 42.

Method of Appeal: Written Representations & Site Visit

Reporter's Decision: Sustained

Summary of Decision: The Reporter, Lorna McCallum, allows the appeal subject to one condition. The reporter concluded that overall the development accords with the relevant provisions of the development plan and that there were no material considerations which would justify refusal of planning permission. The reporter noted that the appellants would be willing to accept a conditional permission restricting the use to only that which is proposed. This would prevent the premises from being reused without the need for permission by another Class 2 use which may contribute lower levels of footfall. To ensure continued compliance with Policies ED3 and ED4 the reporter considered it appropriate to grant permission subject to the condition suggested by the Council.

3.2 Enforcements

Nil

4 APPEALS OUTSTANDING

- 4.1 There remained 5 appeals previously reported on which decisions were still awaited when this report was prepared on 22nd December 2017. This relates to sites at:

• Land North of Howpark Farmhouse, Grantshouse	• Poultry Farm, Marchmont Road, Greenlaw
• Land North East of 3 The Old Creamery, Dolphinton	• Land South West of Easter Happlew Farmhouse, Peebles
• Hutton Hall Barns, Hutton	•

5 REVIEW REQUESTS RECEIVED

- 5.1 Reference: 17/01039/FUL
 Proposal: Erection of temple
 Site: Land South West of Kirkburn Parish Church, Cardrona
 Appellant: Cleek Poultry Ltd

Reasons for Refusal: 1. The application is contrary to Policies ED7 of Scottish Borders Local Development Plan 2016 in that it has not been demonstrated that the proposal meets any of the acceptable land uses listed in Policy ED7 and no overriding justification for the proposed building has been provided 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 and use are not of a scale or purpose that appear related to the nature or size of the holding on which the building would be situated, which further undermines the case for justification in this location. 2. The application is contrary to Policies PMD2, ED7 and EP5 of Scottish Borders Local Development Plan 2016 and Supplementary Planning Guidance on Local Landscape Designations in that the scale and design of the proposal would be prominent in the landscape and would result in an unacceptable adverse visual impact on the designated area. The proposed development would detract from the character and quality of the Tweed Valley Special Landscape Area and it has not been adequately demonstrated that the adverse landscape impact would be outweighed by social or economic benefits of national or local importance. 3. The application is contrary to Policies PMD2 and ED7 of the Scottish Borders Local Development Plan 2016 in that the proposed temple would result in an unacceptable adverse impact on road safety. The proposed building would increase traffic levels on the existing minor public road and it has not been adequately demonstrated that any traffic generated by the proposal can access the site in manner which does not detrimentally impact on road safety. 4. The application is contrary to Policy EP8 of the Scottish Borders Local Development Plan 2016 in that the siting, scale and design of the proposed development would have an unacceptable adverse impact on the setting of the Our Lady's Church. It has not been adequately demonstrated that the proposal can be accommodated on the site in a manner which does not adversely affect the heritage value of a nationally important archaeological site. 5. The application is contrary to Policy EP7 of the Scottish Borders Local Development Plan 2016 in that the siting, scale and design of the proposed development would have an unacceptable adverse impact on the setting of the William Cree Memorial Church. It has not been adequately demonstrated that the proposal can be accommodated on the site in a manner which protects the setting of the category C listed building.

6 REVIEWS DETERMINED

- 6.1 Reference: 17/00926/PPP
Proposal: Erection of dwellinghouse
Site: Land Adjacent Deanfoot Cottage, Deanfoot Road,
West Linton
Appellant: Mr & Mrs Peter Gardiner

Reason for Refusal: The development would be contrary to Policy HD2 of the Local Development Plan 2016 and New Housing in the Borders Countryside Guidance 2008 in that it would amount to sporadic residential development in a countryside location, and no overriding case for a dwellinghouse has been substantiated

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Upheld

- 6.2 Reference: 17/00973/FUL
Proposal: Change of use of agricultural land to form storage yard and siting of 7 No storage containers
Site: Land North East of Greenbraehead Farmhouse,
Hawick
Appellant: Bayhill Farming Ltd

Reason for Refusal: The proposal is contrary to Scottish Borders Council Local Development Plan Policy ED7 in that there is no overriding economic and/or operational need for the proposal to be sited in this particular countryside location; the proposal would more reasonably be accommodated within the Development Boundary of a settlement and the siting and operation of a commercial storage facility would be highly unsympathetic to the rural character of the surrounding area.

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Overturned (Subject to conditions)

- 6.3 Reference: 17/01139/FUL
Proposal: Change of use from Class 1 (retail) to allow mixed use Class 2 (podiatry clinic) and Class 1 (ancillary retail)
Site: 40-41 The Square, Kelso
Appellant: Mr Robert McCrick

Reason for Refusal: The proposed change of use from Class 1 (Shop) to Class 2 (Financial, Professional and Other Services) would be contrary to Policy ED4 of the Local Development Plan 2016 in that the use of the premises as a podiatry clinic would result in the loss of prime retail floorspace in a prominent location and introduce a non-retail/food and drink use within the Core Activity Area in Kelso, which forms part of the principal shopping area in the town centre. It has not been adequately demonstrated that the proposed change of use to Class 2 would maintain the vitality and viability of Kelso town centre. Material considerations, including the vacancy of the unit, have been accounted for but do not outweigh the conflict with Policy ED4.

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Overturned (Subject to conditions)

7 REVIEWS OUTSTANDING

7.1 There remained 1 review previously reported on which a decision was still awaited when this report was prepared on 22nd December 2017. This relates to a site at:

<ul style="list-style-type: none">Land North East of and Incorporating J Rutherford Workshop, Rhymers Mill, Mill Road, Earlston	<ul style="list-style-type: none">
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8 SECTION 36 PUBLIC LOCAL INQUIRIES RECEIVED

Nil

9 SECTION 36 PUBLIC LOCAL INQUIRIES DETERMINED

9.1 Reference: 15/00020/S36
Proposal: Erection of wind farm comprising of 14 wind turbines and associated infrastructure
Site: (Whitelaw Brae Wind Farm), Land South East of Glenbreck House, Tweedsmuir
Appellant: Whitelaw Brae Wind Farm Ltd

Reasons for Objection: Reason for Objection 1 - Impact on Landscape Character - The proposed development would be contrary to Policies G1, EP2 and D4 of the Scottish Borders Local Plan 2011 and Policy 10 of the South-East Scotland Strategic Development Plan (SESplan 2013 in that, taking into consideration the following factors, it would unacceptably harm the Borders landscape- - Significant impacts on the perception, setting and qualities of identified wild land (Area 2 Talla Hart Fell, to the south and east of the site in an area with high fragility to change. - Significant impacts on the designated Tweedsmuir Uplands Special Landscape Area and contrary to the management recommendations seeking to maintain wildness and limit impacts of tall developments, both in relation to the higher summits/wild land to the south and to the more localised intimate landscapes centred around the reservoirs to the east and north-east. Reason for Objection 2 - Adverse Visual and Amenity Impacts - The proposed development would be contrary to Policies G1, D4, BE2 and H2 of the Scottish Borders Local Plan 2011, Policy EP8 of the Local Development Plan 2013 and Policy 10 of the South-East Scotland Strategic Development Plan (SESplan 2013 in that, taking into consideration the following factors, the development would give rise to unacceptable visual and amenity effects- - Low containment within the 5km range and consequent significant visual impacts from sensitive receptors including public roads (such as the main tourist route of the A701 and the Fruid minor road, a right of way, hill summits and dwellinghouses. In respect of the identified residential receptors, the developer has failed to demonstrate that the impacts would not be overbearing and significantly adverse. - Significant cumulative and scale impacts on sensitive receptors and on a unique landscape character type and capacity to the

east of the A701 corridor, inappropriately extending the existing Clyde/Clyde Extension/Glenkerie cluster into previously undeveloped land, bridging a strong visual boundary between landscape character types and setting precedent for further inappropriate incursion. - Significant detrimental impacts to two archaeological sites of national significance, Asset HA5 and the Scheduled Hawkshaw Castle.

Reporter's Decision: Sustained

Summary of Decision: The Reporters, David Buylla and Claire Milne, concluded that the proposal's adverse effects are outweighed by its positive contribution to very clear Scottish Government aspirations for increased renewable energy generation and reductions in greenhouse gas emissions. A limited degree of further justification for the proposal is provided by its likely net economic benefits, its contribution to native woodland creation, and its status as development that would contribute to sustainable development. Ministers granted planning permission subject to the applicant completing and registering a proposed unilateral undertaking and conditions.

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 22nd December 2017. This relates to sites at:

• Fallago Rig 1, Longformacus	• Fallago Rig 2, Longformacus
• Birneyknowe Wind Farm, Land North, South, East & West of Birnieknowe Cottage, Hawick	•

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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