
PLANNING APPEALS & REVIEWS

Briefing Note by Chief Planning Officer

PLANNING AND BUILDING STANDARDS COMMITTEE

5th February 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: 17/00010/FUL
Proposal: Construction of wind farm comprising 7 No turbines up to 149.9m high to tip, 5 No turbines up to 130m high to tip and associated infrastructure
Site: Land South West of Lurgiescleuch (Pines Burn), Hawick
Appellant: Energiekontor UK Ltd

Reasons for Refusal: 1. The proposal is contrary to Policy ED9 of the adopted Scottish Borders Local Development Plan in that it would have unacceptable significant adverse impacts that cannot be mitigated and that are not outweighed by the wider economic, environmental and other benefits that would be derived from its operation. In particular: The scale, form and location of the development would represent a significant and harmful change to the existing landscape character and visual amenity of the immediate locality and the wider area; and The development would give rise to an unacceptable and dominating impact upon the residential properties at Langburnshiels. 2. The proposal is contrary to Policies ED9 and EP8 of the adopted Scottish Borders Local Development Plan in that the development would give rise to significant and unacceptable impacts upon the setting and appreciation of known archaeological assets, including the Scheduled Monuments of Penchrise Pen fort and earthwork, as well as to other designated and undesignated sites of archaeological importance in the area. The wind farm would also introduce large-scale industrial structures on the fringes of an historic landscape.

Grounds of Appeal: Due to the topographic landscape from surrounding hills visibility of the scheme from surrounding areas is limited. There would be no significant cumulative effects from the proposal with operational and consented baseline schemes. The proposed development is consistent in principle with the vision and aims of the LDP. The evidence

available confirms that the proposal accords with the development plan, and policies ED8 and 9 which are the principal relevant policies in this case. In terms of policy ED9, there are some significant adverse effects arising but these are not considered to be unacceptable in terms of relevant landscape and visual and cultural heritage effects arising, the wider economic and environmental and other benefits of the proposal, such as its contribution to the UK renewable energy targets, net economic benefits both locally and nationally and local recreational and heritage enhancements outweigh the "potential damage" that would arise from the proposal.

2.2 Enforcements

- 2.2.1 Reference: 17/00006/UNDEV
Proposal: Painting of exterior of building within conservation area and listed building
Site: 13 St Ella's Place, Eyemouth
Appellant: Mrs Evy Young

Reason for Notice: It appears to the Council that the above breach of planning control has occurred within the last four years. The land affected at 13 St Ella's Place, Eyemouth sits within the Eyemouth Conservation Area and is also a C Listed Building. Planning permission and listed building consent are required for the change in colour and any external works to the appearance of the building. The external render surfaces of the building have been painted an alternative and unauthorised colour and the window bandings have also been painted out. A retrospective planning and listed building application was submitted but was refused. No subsequent appeal has been lodged and no attempts have been made to regularise the unauthorised works.

Grounds of Appeal: The appellant was away when the walls were painted and didn't realise how bright it was until after the painter had finished. It was too expensive to have it re-done immediately and she was told it would tone down to a gentler colour and it is going in that direction now. The appellant is planning to cut windows into the front and back wall in January, the walls will then need to be repainted. Due to the winter weather and spray from the big waves hitting the house it is not possible to paint the walls during winter. The appellant is looking for an extension of 6 months to be able to do the repainting in the summer.

Method of Appeal: Written Representations

- 2.2.2 Reference: 17/00089/UNUSE
Proposal: Erection of scaffolding structure and metal panel fence structure
Site: Land North West of Kirkburn Church, Peebles
Appellant: Mr Andrew Cleghorn

Reason for Notice: It appears to the Planning Authority that the amenity of part of the district is adversely affected by the detrimental visual effect of Land North West of Kirkburn Church, Peebles and on the street scene of that part of Kirkburn, Peebles in the approximate position shown in red on the attached plan. A scaffolding structure and metal panel fence structure have been erected on the land without the benefit of either deemed or express planning permission, and it is considered that these structures adversely affect the amenity of the area.

Grounds of Appeal: Mr Cleghorn has consent for a tourism related development on the ground in question and it is a condition of that consent that an archaeological investigation takes place prior to implementation of the works. In order to establish the tourism development Mr Cleghorn would like to commence with screen planting in the area in question and it is proposed to do the investigation prior to planting. The scaffold in question is a temporary structure which will be moved along the boundary in question during the course of the archaeologist's dig, thereby giving them shelter and cover during the proceedings. Mr Cleghorn did not realise the scaffold required planning consent and since a visit from SBC, has applied for consent for the scaffold. The boundary fence was moved by his neighbour who tried to claim a portion of Mr Cleghorn's ground. Until the matter is resolved Mr Cleghorn has been forced to erect the temporary fence to keep cattle within his small holding and also to ensure that health and safety measures are in place to prevent the public from accessing his small holding and in particular the aforementioned scaffold. Both structures have a meaningful shelf life – the scaffold for 18 months and the fence for as long as it takes to resolve the boundary dispute.

Method of Appeal: Written Representations

3 APPEAL DECISIONS RECEIVED

3.1 Planning Applications

- 3.1.1 Reference: 17/00087/FUL
Proposal: Erection of Class 6 storage and distribution buildings, associated Class 5 use and erection of ancillary dwellinghouse and associated development and landscaping works
Site: Land North East of 3 The Old Creamery, Dolphinton
Appellant: Mr Alastair Brown

Reasons for Refusal: 1. The proposed business premises for a mixed Class 5 and Class 6 business operation does not comply in principle with adopted Local Development Plan Policies PMD4, HD2 or ED7 in that the applicant has not demonstrated any overriding economic and/or operational need for it to be located in this particular countryside location and therefore the proposed development would represent unjustified, sporadic and prominent development in the open countryside. 2. The proposed dwellinghouse would not meet any direct operational requirement of an agricultural, horticultural, forestry or other enterprise which is itself appropriate to the countryside, and therefore does not comply in principle with adopted Local Development Plan Policies PMD4 and HD2. 3. The proposed development would result in the unjustified and permanent loss of carbon-rich soils, contrary to Policy ED10 of the adopted Local Development Plan.

Grounds of Appeal: There is clear policy support through policies PMD4, HD2 and ED7 for the proposed development given the unique set of circumstances. The design of the proposed development and associated soft landscape works, including the creation of screening landform, will ensure it integrates into the countryside at the proposed location. There is not a range and choice of employment sites available which are highly

accessible to communities throughout the area in proximity to the site of the appeal. This is confirmed by the Economic Development response to the application.

Method of Appeal: Written Representations & Site Visit

Reporter's Decision: Dismissed

Summary of Decision: The Reporter, Chhaya Patel, does not believe that enough alternative sites were considered and that the appellant should also be considering leasing land instead of just land available to buy. The reporter has assessed that there is no need for a dwellinghouse on the site as workers could work in shifts, security cameras and fencing could be installed and an areas could be allocated within the industrial or storage buildings for an office space and temporary sleeping accommodation. The reporter has considered all matters but concluded that the appeal conflicts overall with the local development plan, in particular policies ED7 and HD2 and could not be justified as an exceptional approval under policy PMD4. The reporter concluded that the proposed development does not accord overall with the relevant provisions of the development plan and that there are no material considerations which would still justify granting planning permission. Therefore, the reporter dismissed the appeal and refused planning permission.

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 26th January 2018. This relates to sites at:

• Land North of Howpark Farmhouse, Grantshouse	• Poultry Farm, Marchmont Road, Greenlaw
• Land South West of Easter Haprew Farmhouse, Peebles	• Hutton Hall Barns, Hutton
• Land East of Knapdale 54 Edinburgh Road, Peebles	• Land North West of Gilston Farm, Heriot

5 REVIEW REQUESTS RECEIVED

5.1 Reference: 17/01007/FUL
Proposal: Variation of planning condition 9 of planning consent 10/00172/FUL relating to occupancy of building
Site: The Pavilion, Coldingham, Eyemouth
Appellant: Mr David Lee

Reason for Refusal: The proposed variation of Condition 9 of planning permission 10/00172/FUL would be contrary to Policy ED7 of the Scottish Borders Local Development Plan 2016 in that it would enable the use of the building for purposes which would not constitute direct tourism purposes, which would result in the loss of a tourism development that has

the potential to generate year-round economic benefit to the surrounding area. Other material considerations do not justify a departure from the Development Plan in this case.

- 5.2 Reference: 17/01008/FUL
Proposal: Erection of replacement dwelling house
Site: Derelict Dwelling Land West of Glenkinnon Lodge,
Peelburnfoot, Clovenfords
Appellant: Mr Adam Elder

Reasons for Refusal: 1. The proposed development is contrary to policy EP13 (Trees, Woodland and Hedgerows) of the Scottish Borders Local Development Plan (2016), and contrary to adopted supplementary guidance on Trees and Development in that the development will result in significant removal of trees subject to Tree Preservation Order which provide a positive landscape contribution. Furthermore, the proposed development would lead to increased pressure to remove further trees in the future. 2. The proposed development is contrary to policy HD2 of the Scottish Borders Local Development Plan (2016), in that the proposed development would not sympathetically relate to the existing building group in terms of siting, scale, form or design. The existence of a building on site is inadequate justification for the proposed development.

- 5.3 Reference: 17/01230/FUL
Proposal: Erection of boundary fence and formation of parking area (retrospective)
Site: 1 Eildon Terrace, Newtown St Boswells
Appellant: Mr Greg Blacklock

Reason for Refusal: The proposed fence along the boundary with Bowden Road is contrary to Policy PMD2 of the Scottish Borders Local Development Plan 2016 in that it represents an overbearing structure in relation to the adjacent footpath and is a prominent and incongruous form of development in the wider streetscene that is harmful to the visual amenities of the area.

- 5.4 Reference: 17/01406/FUL
Proposal: Erection of dwellinghouse with attached garage
Site: Land North West of Alderbank, Macbiehill, West Linton
Appellant: Mr And Mrs D Gold

Reason for Refusal: The proposed development does not relate well to the existing building group due to its location in undeveloped ground, in an elevated position and being remote from the existing building group. This would have an adverse effect on the character and setting of the building group. The proposal is contrary to policy HD2, council guidance on "New housing in the Borders countryside" and "Placemaking and design".

6 REVIEWS DETERMINED

- 6.1 Reference: 17/01007/FUL
Proposal: Variation of planning condition 9 of planning consent 10/00172/FUL relating to occupancy of building
Site: The Pavilion, Coldingham, Eyemouth
Appellant: Mr David Lee

Reason for Refusal: The proposed variation of Condition 9 of planning permission 10/00172/FUL would be contrary to Policy ED7 of the Scottish Borders Local Development Plan 2016 in that it would enable the use of the building for purposes which would not constitute direct tourism purposes, which would result in the loss of a tourism development that has the potential to generate year-round economic benefit to the surrounding area. Other material considerations do not justify a departure from the Development Plan in this case.

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Upheld

7 REVIEWS OUTSTANDING

7.1 There remained 2 reviews previously reported on which decisions were still awaited when this report was prepared on 26th January 2018. This relates to sites 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">Land South West of Kirkburn Parish Church, Cardrona
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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 26th January 2018. This relates to sites at:

<ul style="list-style-type: none">Fallago Rig 1, Longformacus	<ul style="list-style-type: none">Fallago Rig 2, Longformacus
<ul style="list-style-type: none">Birneyknowe Wind Farm, Land North, South, East & West of Birnieknowe Cottage, Hawick	<ul style="list-style-type: none">

Approved by

**Ian Aikman
Chief Planning Officer**

Signature

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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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