



26.06.18

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To whom this may concern,

Thank you for your email dated 25th May 2018 providing us with a copy of the representation made by Ms Angela McLean in respect of planning application 16/01371/FUL.

There are numerous areas of the representation which we would seek to clarify / respond to as they are in our opinion misleading.

Unfortunately it should also be noted and taken into consideration that there appears to be a degree of personal conflict between the McLean's & Mr Houston who have both made representations to this application. Mr Houston has a financial interest within the development and it would appear that the MacLean's have taken it upon themselves to cause Mr Houston as much trouble as possible.

This disagreement stems from numerous applications for unconnected large intensive agricultural applications made by the McLean's. These have all been disputed by Mr Houston due to their close proximity to his dwelling which is also directly opposite the current application.

17/00623/FUL - Erection of poultry building and associated works
16/01430/FUL - Erection of poultry building and associated works
15/01173/FUL - Erection of poultry building and associated works
10/00036/FUL - Erection of poultry unit for free range hens and associated infrastructure
08/01746/FUL - Erection of mobile poultry unit and extension of access road

All of the above applications have generated significant local backlash with Mr Houston quite publicly objecting to each application. It is therefore quite easy to understand where the dispute has arisen.

With regards this application Mr Houston and the owners of the surrounding residential properties are understandably extremely concerned by the proposals to house pigs within the existing grain store due to it's close proximity to their homes.

Environmental Health / SEPA

The implication that the grain store will be used to house livestock is fundamentally flawed through the inability to provide adequate drainage. Standard Farming Installation Rules (SFIR) 2.6.2 states;

Unless otherwise stated in this Permit, individual source emissions of roof water and drainage from yards shall be treated either by means of a swale, constructed wetland, soak away, settling pond, or sediment trap constructed and maintained in accordance with the SFIR.

The attached plan within the appendix demonstrates that there is no space for a swale, be it above ground or below ground. The runoff from the swale would typically be directed to a river or a stream. However the grain store is landlocked and there is no Scottish Water drainage system to connect to therefore rendering the proposal extremely unlikely.

The alleged possible conversion of the existing grain store to form a livestock facility would create a significant nuisance to Merlewood (an existing property that has been established for over 15 years) and to date no livestock has ever been kept in the grain store. As such we feel that it is unreasonable for Environmental Health to conclude that a threat of conversion of the existing grain store next to an existing established residential dwelling is conclusive grounds to object to this proposed development.

Environmental Health confirm they do have legislative powers to regulate matters relating to nuisance such as noise, odours, dust etc, and that they are able to use these powers to minimise nuisance. Both the SBC Planning Committee and Environmental Health previously approved the development of Merlewood (approx. 15m from the existing grain store). There is therefore an expectation that Environmental Health would apply the legislative powers that they clearly state they have to minimise the impact of a conversion of the existing grain store to a livestock facility and as such render the grounds on which they object to the proposed development meaningless.



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For clarity I have attached an extract from the Prevention of Environmental Pollution From Agricultural Activity which highlights that the statutory nuisance provisions under Part III of the Environmental Protection Act 1990 give local authorities power to act on complaints arising from agricultural activities. Using these powers, an abatement notice may be served requiring a decrease of the nuisance or prohibiting or restricting its reoccurrence.

Therefore, the argument which has been made by the Environmental Health Officer relating to loss of amenity is contradictory. This essentially means that should livestock be kept in the farm building; the occupier of the residential property would be within his rights to expect that he is offered protection under the Environmental Protection Act 1990. Thus preventing livestock farming activity as they will have suffered a significant loss of amenity.

This also raises the question that should the current occupier of the property suffer from loss of amenity, they could take action against SBC as you indicate that such an avenue would be open to potential purchasers of the proposed development?

SEPA require a noise management plan to be drawn up to protect neighbours, therefore if acceptable to present neighbours then why not new neighbours? If this was a reality there would be a noise management plan in place for protection of existing residents amenity - why as this not been provided.

Merlewood Planning

Within approved planning application 02/00552/FUL for the erection of a dwelling house the officer details;

To the east lies a building retained by the current farmer of Hutton Castle Barns farm as a grain store: buildings which have been leased to the applicant for use in conjunction with his agricultural contracting business and a courtyard range retained by the former farmer of Hutton Castle Barns.

As can be seen from the above extract the building is quite clearly a grain store at time of application and was constructed as such.

In 2002 the MacLean's claim that the building may potentially be used for the housing of livestock and acknowledge that farming of this nature will have a significant effect upon any residential property.

One representation has been received together with additional information provided by the landowner. Mr C MacLean: He is concerned about the accuracy of the submitted drawings and the relationship of the proposed site to his farm building. He has emphasised that that building might have potential as a building for cattle and has also highlighted the 1990 refusal for a dwelling to the east of the steading where proximity of the agricultural buildings, potential problems of noise, dust, smell and unsociable hours and the possible restriction of agricultural activity by residential development were highlighted as grounds for dismissing the appeal.

One therefore must question the MacLean's assertion that live stock will be housed within the building, nothing has happened within the last 16 years – will anything happen within the next 16 years? Or is this simply a convenient quirk of legislation that allows a farmer to conduct a personal feud with a neighbour through the planning process. I will touch upon the environmental impacts later within the response.

Within the assessment of application, the officer touches upon one key factor that was dismissed by the Environmental Health Team. This was despite there being no change in legislation (Environmental Protection Act 1990) following the approved application. During the process of the current application there were numerous alternative proposals provided to the planning officer, moving the buildings further away from the grain store than the previously approved Merlewood.

In terms of future intensive livestock activity there are already non farm dwellings within the prescribed distance of the grain store building.

It would therefore appear that the planning policy can be interpreted to suit a specific agenda?

The assessment also makes reference to the applicant's occupation within farming and cites this as a reason to approve the application as he would be sympathetic to any disruption. One could therefore argue that anyone moving to the area would surely be aware of the surroundings and would therefore acknowledge they were not moving into a leafy new build commuter suburb but into a rural environment.

Further to that the officer would also be aware that there was no Section 75 attached to the approval and tying it to an agricultural business. Allowing Mr Davidson to sell Merlewood the day it was completed to a non-farmer should he decide.

The officer also clearly indicates that the redundant agricultural buildings in question have clear potential for conversion.



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The group comprises of existing cottages, the two farm houses, the redundant farm buildings which have obvious potential for conversion to residential use.

Within the MacLeans representation they state that they are considering using the site as a haulage yard for HGV's, however they also state that the scheme will have an adverse impact on the existing road infrastructure and will be unsafe. It is either safe or it isn't, surely HGV's have more of an impact on safety than 15 family sized cars?

This simply returns to the point which is becoming quite evident within our response - this will never happen and they appear to be conducting a dispute through the planning process. Given cars come and go from the yard using the proposed entrance there is essentially no change.

Email correspondence

The emails provided appear to have been 'doctored', if one examines the email headers contained within the appendices they all vary. These headers are always presented in a standard format however within the attached emails they all differ - this does not just happen. You will also notice that the emails within appendix 2 have the date / time removed - why?

Moving on from the discrepancies with the email headers, the emails to SEPA are all to the departments and none from the departments - surely there would have been a response? If so why hasn't it been included?

Therefore one does question the content of the emails given the discrepancies with the email headers and the lack of return correspondence from SEPA.

Within Appendix 1 the email correspondence to Lucy Hoad indicates in July 2016 that pigs would be stored within the building by the end of 2016, however within the summary the MacLeans state ;

Quite simply, nothing has changed since 5th February 2018

Returning to our section on planning, the MacLeans have been asserting that livestock would be housed within the building for 16 years but yet 'nothing has changed'. It would be fair to assume that nothing will change and this is a convenient way to exact a degree of retribution against Mr Houston for objecting to their numerous attempts to industrialise the locale.

Conclusion

Put simply the notion of a conversion to residential properties has been accepted as a good thing however the question mark surrounding the potential use of the grain store for livestock remains. Given the building would imminently be used for livestock for the last 16 years, one must ask themselves given the obstacles illustrated above will this ever happen? Or is this simply being used as a vehicle to conduct a personal dispute with an interested party?

It is quite clear that there is no local support for livestock in the area as can be evidenced through the correspondence within the numerous applications made by the MacLean's for intensive livestock buildings within the locale.

Environmental Health would have to protect the amenity of the MacLean's neighbours who live closer to the grain store than the proposed development. If it would be deemed acceptable for these existing dwellings then why not for a proposed dwelling - it would be no worse than the existing condition?

It must be emphasised that there will be no conflict between the access to the MacLean yard and the new development area. There will be a new entrance to the development from the public road and a wall will be built between the development and MacLean property.

During the process of the current application there were numerous proposals provided to the planning officer, moving the buildings further away from the grain store than the previously approved Merlewood.

Therefore in conclusion this statement should not be read as an objection to a building housing livestock! Alternatively, it's purpose is to demonstrate that through numerous site constraints this will never happen - removing the only issue preventing a planning approval

As previously discussed we would look to deal with the regulatory requirements through conditions attached to the approval.



26.06.18_DECISION NOTICE 02/00552/FUL

SCOTTISH BORDERS COUNCIL BERWICKSHIRE AREA COMMITTEE 28 MAY 2002 APPLICATION FOR PLANNING PERMISSION ITEM: REFERENCE NUMBER: 02/00552/FUL

OFFICER: Mr A Maclean LOCAL MEMBER: Councillor C J Home Robertson PROPOSAL: Erection of dwellinghouse and garage SITE: Land adjacent Farm Steading Hutton Castle Barns Hutton APPLICANT: Mr & Mrs G Davidson AGENT: Fleming Homes Ltd SITE AND APPLICATION DESCRIPTION: This is a full planning application for the erection of a dwellinghouse on land adjacent to the former farm steading of Hutton Castle Barns farm. The proposed site, which extends to some 0.4ha, occupies an unused paddock to the west of the farm steading group. Its western boundary is marked by a few remaining mature trees which appear to have formed the edge of a former access to Hutton Castle. The north side of the site is well defined and contained by woodland. To the east lies a building retained by the current farmer of Hutton Castle Barns farm as a grain store: buildings which have been leased to the applicant for use in conjunction with his agricultural contracting business and a courtyard range retained by the former farmer of Hutton Castle Barns. The proposed dwelling would be sited to the rear of the paddock, the land to the road frontage being retained by the owner with a view to its eventual incorporation with a re-development of the adjacent courtyard building. Access to the proposed site would be along the western edge. The proposal is for a 'T' shaped cottage using relatively narrow plan base and 45 degree roof pitches. The main aspect of the house looks westwards. The plan shows a 3 bedroom dwelling with 2 main public rooms and kitchen, utility and study areas. PLANNING HISTORY: As members will be aware there is a lengthy history to the applicant's interest in obtaining consent for a dwelling at Hutton Castle Barns. An agricultural contracting background was submitted with previous applications seeking consent for a dwelling down Hutton Castle Drive. The following is the application history at that location. 1994 - Outline - refusal of application for house - contrary to Policy 8. 1997 - Outline - refusal of house on similar grounds. Unsuccessful on appeal. April 1999 Outline - refused by Berwickshire Area Committee. This was the first application lodged by Mr Davidson and claimed employment need justification. April 2001 a further full planning application was refused. July 2001 - full planning application for a house and workshop refused. Appeal dismissed. In 1990 an application was sought for the erection of a dwelling on the former steading hardstanding to the east of the main range of traditional buildings. That application was refused because of potential conflict with farm traffic to the grain store building at the rear of the steading. DEVELOPMENT PLAN POLICIES: Finalised Structure Plan 2001-2011 POLICY H5 - New Housing in the Countryside - Building Groups Proposals for new housing in the countryside outwith defined settlements but associated with existing building groups will normally be supported where they are in accordance with the provisions of the policy guidance 'New Housing in the Borders Countryside'. Favourable consideration is more likely where development proposals: (i) are readily accessible to the strategic public transport network, (ii) employ energy efficient and/or innovative design principles, (iii) incorporate employment-generating uses appropriate to a countryside setting. Berwickshire Local Plan 1994 Policy 7, 63 & 81 of the Berwickshire Local Plan apply which state: Policy 7 Outwith the settlements identified in policies 2, 3 and 6, new housing development will be encouraged within or adjacent to the preferred building groups listed below. In addition, limited development may also be permitted within or adjacent to other building groups. All development should meet the following criteria: 1. No adverse effect on the viability of a farming unit or conflict with the operations of a working farm; 2. Satisfactory access and other road requirements; 3. Satisfactory public or private water supply and drainage facilities; 4. No adverse effect on countryside amenity, landscape or nature conservation; 5. No adverse impact on ancient monuments, archaeological sites or on gardens or designed landscapes in the Inventory of Gardens and Designed Landscapes in Scotland; 6. Appropriate siting, design and materials in accordance with Policies 63 and 64. 7. The safeguarding of known mineral resources from sterilisation unless this is acceptable following an assessment of the environmental implications. Preferred Building Groups Abbey St Bathans; Auchencrow; Chirnside Station; Cove; Cranshaws; Cumledge Mill, Preston; Edrom; Fogo; Hoprig, Cockburnspath; Horndean; Houndslow; Houndwood; Hume; Ladykirk; Polwarth; Spottiswoode. Policy 63 The Regional Council will ensure that any



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new building in the countryside is of sympathetic design and materials. Particular attention will also be paid to the location and landscape setting of any development. Skyline locations and ribbon development will not normally be permitted. Policy 81 Within Areas of Great Landscape Value, and within Heritage Areas in the longer term, the Regional Council, in considering development proposals, will seek to safeguard the heritage significance of the area concerned. The heritage significance may relate to landscape quality or amenity, nature conservation, archaeology or cultural issues, or to a combination of these. The Regional Council proposes that: 1. Where conflict arises between development and conservation, precedence will generally be given to the protection of the particular aspect of heritage significance; 2. Landowners and farmers will be encouraged to balance the need for efficient land management with the need to conserve the essential elements of the landscape; 3. Large scale developments, including mineral workings, overhead power lines and industrial buildings, will not normally be permitted unless such development can be shown to be acceptable following an assessment of the environmental implications; 4. Any developments which are acceptable will be required to meet appropriate standards of siting, design, materials and landscape treatment. N.B. The particular case of development by telecommunications operators is subject to Policy 103A OTHER PLANNING CONSIDERATIONS: New Housing in the Borders Countryside Policy and Guidance Note 1993 as Amended April 2000. CONSULTATION RESPONSES: Scottish Borders Council Consultees Director of Technical & Environmental Standards: Reply awaited. Landscape Architect: Reply awaited. Other Consultees Scottish Water: A water supply is available but there is no public drainage. Scottish Environmental Protection Agency: Water and drainage options have been highlighted. Scottish Natural Heritage: Reply awaited. Hutton & Paxton Community Council: No objection, but queried the accuracy of the plans. There has been a previous refusal because of the relationship to agricultural buildings. A neighbour had objected. OTHER RESPONSES: One representation has been received together with additional information provided by the landowner. Mr C MacLean: He is concerned about the accuracy of the submitted drawings and the relationship of the proposed site to his farm building. He has emphasised that that building might have potential as a building for cattle and has also highlighted the 1990 refusal for a dwelling to the east of the steading where proximity of the agricultural buildings, potential problems of noise, dust, smell and unsociable hours and the possible restriction of agricultural activity by residential development were highlighted as grounds for dismissing the appeal. The landowner has disputed the objectors claim to own part of the application site but would be retaining a 4 metre strip adjacent to the working farm building to provide access for its maintenance. PLANNING ISSUES: There are four main determining issues relating to this application: The adequacy of the servicing arrangements The siting and design of the proposed dwelling. The relationship of a non farm dwelling to agricultural property. The relationship of the site to housing in the countryside policy. ASSESSMENT OF APPLICATION: A response from the Director of Transport & Environmental Standards is still awaited on this application. Any comments regarding access to the site will be reported at the meeting of the Area Committee. Water supply is available and drainage options have been identified by Scottish Environmental Protection Agency. The proposed dwelling is sited to the rear of the paddock area. It has a backdrop of established woodland and farm buildings. Existing trees along the western edge of the site also provide some screening and in consequence the site will not have a significant impact in the landscape. The site is well related to the existing farm sheds leased by the applicant for his contracting business. The general building layout respects the existing building orientation of the former steading while the narrow plan form and steep pitched roof provide a development compatible with Council Guidance on the New Housing in the Countryside. In 1990 an application for housing development on the east side of the steading range was refused and an appeal was subsequently dismissed. A primary concern with that application was the potential conflict with agricultural activity and in particular traffic going in and out of the adjacent grain store. Possible resumption of agricultural use of the former steading buildings too was an additional consideration as was future use of the grain store building for housing livestock. Although adjacent to the grain store building, the site now proposed has no direct linkage with that building and would not be affected by traffic movement. The applicant is a former farmer is also well aware of the nature of farming activities. In terms of future



intensive livestock activity there are already non farm dwellings within the prescribed distance of the grain store building. As regards the Housing in the Countryside Policy, there is clearly a building group at Hutton Castle Barns. This was recognised in the previous applications of which the Committee are well aware. The group comprises of existing cottages, the two farm houses, the redundant farm buildings which have obvious potential for conversion to residential use. The proposed site is well related to these being adjacent to the old steading buildings. It is a contained site being a small paddock with a few remaining boundary trees on the western edge of the plot and with the woodland to the north. This would fall within the terms of the amended policy on extended building groups. RECOMMENDATION BY HEAD OF DEVELOPMENT CONTROL: Subject to a satisfactory response from the Director of Transport and Environmental Standards, I would recommend that this application is approved subject to the following conditions. 1. The roofing materials to be agreed by the Planning Authority before the development is commenced. Reason: To safeguard the visual amenity of the area. 2. Sample panels of the external wall finish to be prepared on site for prior approval by the Planning Authority. Reason: To safeguard the visual amenity of the area. 3. A vehicle turning area and either a garage space and a parking space or two parking spaces to be provided within the site. Reason: In the interest of road safety 4. The vehicular access to the site and the service lay-by to be completed to the specification of the Planning Authority before the dwellinghouse is occupied. Reason: In the interests of road safety. 5. A landscape scheme to be submitted for the approval of the Planning Authority before the development is commenced. Reason: To enhance the visual amenities of the area.



26.06.18 _EXTRACT PREVENTION OF ENVIRONMENTAL POLLUTION FROM AGRICULTURAL ACTIVITY

of Good Farming Practice in relation to the whole farm or croft. Good Farming Practice comprises verifiable standards and a range of legislative requirements which are already in force. The legislative requirements include the following:

- 1 The Control of Pollution Act 1974
- 1 The Groundwater Regulations 1998
- 1 The Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003
- 1 The Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 2003

General Environmental Conditions

1.12 The General Environmental Conditions apply to all agri-environment scheme participants. The conditions include a requirement to follow the guidance approved by Scottish Ministers for the avoidance of pollution.

Nitrates Directive

1.13 While this Code deals with advice on the minimisation of pollution of water, air and soil, it also acts as the relevant Code of Practice for the purposes of the Nitrates Directive. The Directive requires areas to be designated as Nitrate Vulnerable Zones (NVZs) where nitrate levels in surface water or groundwater exceed, or are likely to exceed, 50mg/l or where waters are or could become eutrophic. Section 6A of this Code sets out the measures that should be adopted by farmers within NVZs, with the mandatory measures set out in red.

1.14 Further, more detailed, guidance on what farmers need to do to comply with the NVZ "Action Programme" measures has been issued to every farming business within NVZs. Any questions relating to these should be addressed to the local SEERAD Area Office (See Annex A for details of local offices). The guidance is also available via the website www.scotland.gov.uk.

Odour Nuisance

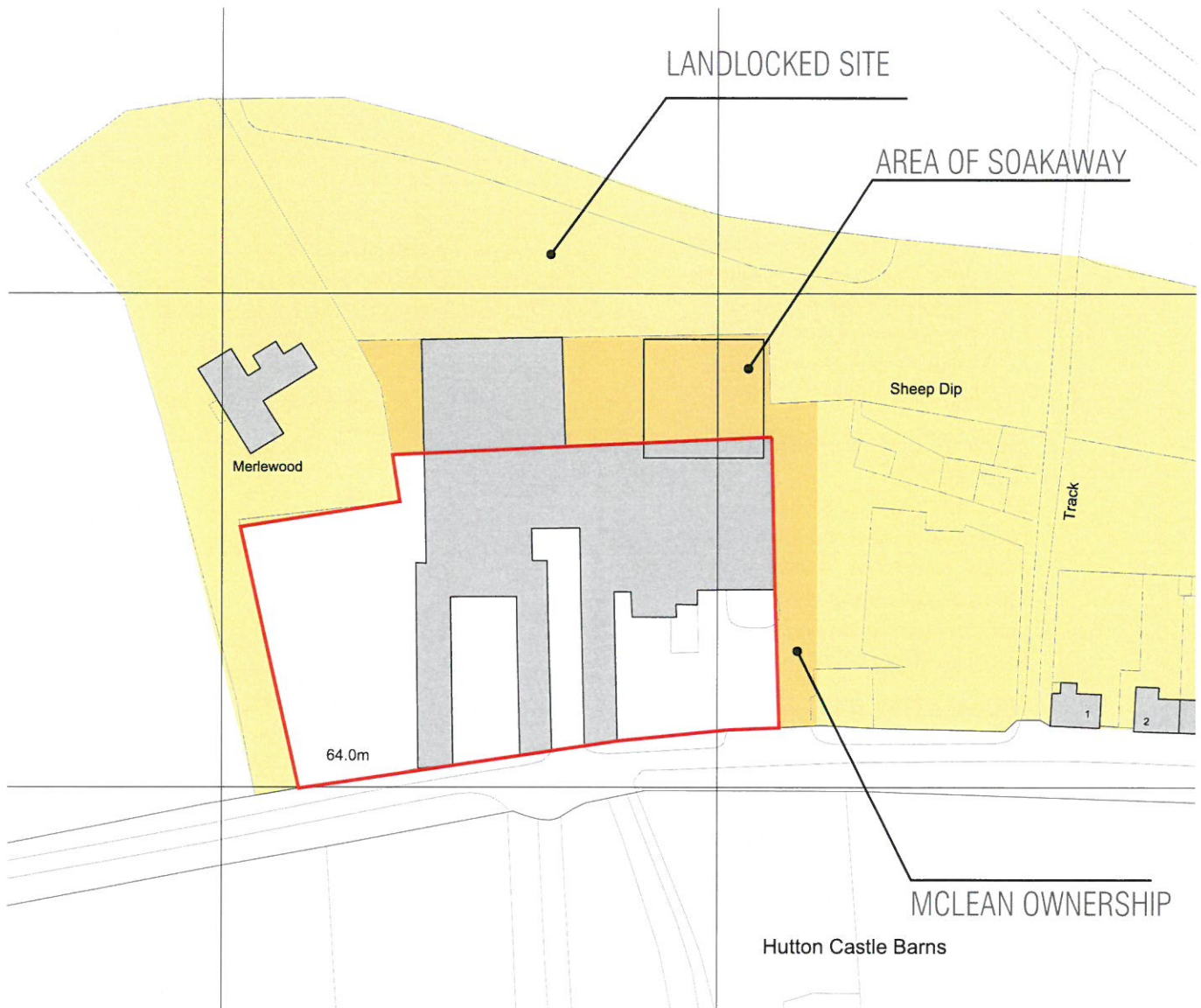
1.15 In addition to the pollution risk, some farming practices are likely to give rise to strong odours which can spoil the public enjoyment of the countryside. In recent years this has been a growing concern. Every effort should be made to avoid creating an odour nuisance. Local authorities have powers to determine whether an agricultural activity represents a statutory nuisance. Where they believe this to be the case, they can serve an abatement notice requiring the cessation of the nuisance (or prohibiting or restricting its reoccurrence).

General

1.16 This Code is based on the best information available at the time of writing.

Short Guide

1.17 A shortened version of the main points of this Code has been prepared for farmers to refer to in the workplace. It is entitled the PEPFAA "Dos and Don'ts Guide", and has been distributed without charge to all agricultural holdings in Scotland. Copies are also available via the website www.scotland.gov.uk.





26.06.18 _STANDARD FARMING INSTALLATION RULES EXTRACT

All waste streams emanating from the installation should be considered in the assessment including; carcasses, feed waste, fuel oil and lubricants, scrap metals and packaging.

Any opportunities for improvement identified during the assessment should be discussed with SEPA and a timescale for implementation agreed.

The PPC Regulations require the site of the installation to be restored to a satisfactory state before the permit can be surrendered (on closure of the installation). The presence of waste residues on the site at that time could prejudice the acceptance of the site as finally restored.

Carcass Management

The regulation of animal by-products is the primary responsibility of Animal Health and the Local Authorities. Notwithstanding to comply with BAT you should ensure that:

- Carcasses are disposed of in accordance with the Animal By-Products (Scotland) Regulations 2003.
- Carcasses being removed off-site are only given to appropriately licensed knackerman, rendering plant, hunt kennel, maggot farm or authorised incinerator. They should be removed frequently and be secured away from vermin, birds and insects.
- Carcasses disposed of on-site are only incinerated in an approved incinerator licensed under the Animal By-Products (Scotland) Regulations 2003.

Where can I get further information?

There is an example of a waste minimisation audit in Opportunities for Saving Money by Reducing Waste on Your Farm, Defra.

SEPA's website contains information on the Waste (Scotland) Regulations 2005 and the controls that apply to agricultural waste.

The Four Point Plan – SEPA, Scottish Executive, NFUS

The Prevention of Environmental Pollution from Agricultural Activity Code of Good Practice (PEPFAA code).

2.6 Individual Source Emissions to Air, Water or Land

2.6.1 Unless specified elsewhere in this Permit, there shall be no individual source emissions from the Permitted Installation to the water environment, air or land.

2.6.2 Unless otherwise stated in this Permit, individual source emissions of roof water and drainage from yards shall be treated either by means of a swale, constructed wetland, soak away, settling pond, or sediment trap constructed and maintained in accordance with the SFIR.

DISCRETIONARY PERMIT CONDITIONS (where an upgrade is required)

- Within 12 months of the date of the permit the operator shall carry out a systematic assessment of site drainage within the permitted installation. The purpose of this assessment shall be to identify methods of reducing the impact on the environment of site drainage. The assessment shall be recorded and a report of findings including estimated costs shall be submitted to SEPA within 4 weeks of the completion of the assessment.

(please note this condition may be under the heading "diffuse emissions" in Schedule 3 of the Permit)



HUTTON BARNs I PLANNING REPRESENTATION_APPENDIX

26.06.18 _EMAIL HEADER EXTRACTS

From: lhoad@scotborders.gov.uk
To: lhoad@scotborders.gov.uk
Subject: Hutton Hall Barns - Future use of North Yard and General Purpose Agricultural Building
Date: Thu, 17 Mar 2016 10:52:59 +0000

From: Angela MacLean
Sent: 11 July 2016 17:21
To: Hoad, Lucy
Subject: FW: Hutton Hall Barns - Future use of North Yard and General Purpose Agricultural Building

From: Angela MacLean
To: Nick Forsyth SEPA; Grimsditch, Kate
Cc: James MacLean
Subject: Re: Query - Use of Agricultural Building for Pigs

From: Angela MacLean
To: Nick Forsyth SEPA; Grimsditch, Kate
Cc: James MacLean
Subject: Query - Use of Agricultural Building for Pigs