

**PLANNING AND BUILDING STANDARDS COMMITTEE**

**3<sup>rd</sup> September 2018**

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**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: 17/01348/FUL  
Proposal: Erection of 2 No wind turbines 11.8m high to tip  
Site: Land South West of 6 Lamberton Holding,  
Lamberton  
Appellant: Mr William Mykura

Reason for Refusal: Appeal against imposition of conditions 5 and 6 which state:

Condition 5 - The turbine(s) hereby consented and any ancillary equipment or structures associated with them (including any foundations) shall be removed from the site, and the site restored to its former condition, within 25 years of the date of this planning permission unless a further planning permission is achieved that allows for the retention of the turbine(s) on the site beyond this period. Reason: In the interests of the amenity of the area so that the turbine(s) hereby consented will be removed to avoid any unnecessary environmental impact resulting from the retention of turbine on the site beyond 25 years. Condition 6 - When either or both of the wind turbines hereby consented cease(s) to be required for the purposes of electricity generation, the wind turbine(s) concerned, and any ancillary equipment or structures no longer required for the purposes of electricity generation, shall be dismantled and removed from the site, and the site, or that part of the site no longer in use for electricity generation, shall then be restored to its former condition within 12 months of the cessation of operation of the turbine(s) concerned. Reason: In the interests of the amenity of the area so that in the event of the turbines reaching the end of their operational life, these will be removed within a reasonable period of time to avoid any unnecessary environmental impact resulting from the retention of non-operational turbines on the site.

Grounds of Appeal: Condition 5 - The turbines may still be in full working condition in 25 years time. It is the remit of the owner to decide whether the turbines should be removed or retained. Furthermore, the reason given, 'to avoid unnecessary environmental impact' is not valid. Retention of working wind turbines beyond 25 years would not cause unnecessary environmental impact. In addition, the impact of removing working wind turbines would cause negative environmental impact in terms of carbon emissions and loss of renewable energy. Condition 6 - While the applicant accepts the condition to remove the wind turbines when no longer required, the wording of the condition to include 'structures' may be construed to require removal of the turbine foundations. Clarification that removal of the turbine foundations is not required, or removal of this planning condition entirely, is requested. The reason given, 'to avoid unnecessary environmental impact' is not valid if applied to the turbine foundations. Removal of the turbine concrete foundations would cause negative environmental impact in terms of carbon emissions.

## 2.2 Enforcements

Nil

## 2.3 Works to Trees

2.3.1 Reference: 18/00621/TPO  
Proposal: Works to trees  
Site: Land West of Glenkinnon Lodge Peelburnfoot,  
Clovenfords  
Appellant: Adam Elder

Reason for Refusal: Part Refusal - The application is not consistent with the previous woodland management recommendations. Minimal tree removal was proposed in the original surveys to ensure the existing tree cover was retained and that it makes a positive contribution to the landscape and amenity of the locality.

The report highlights 14 trees (13 Sycamore and 1 Ash). The BS5837 categories are 1 Sycamore (A Category), 8 Sycamore, 1 Ash (C Category) and 4 Sycamore (Category U). Of the 4 U categories they are all around the existing building structure on the site. The Sycamores and Ash contribute to the existing tree cover. While long term management of a woodland is supported, the complete removal of a single species in this instance is not. There are many silvicultural systems to allow continuous cover on a site while sensitive planting of alternative species could be undertaken to diversify species. The proposed planting could be undertaken over a phased period to allow successful establishment and age distribution.

There are presently no agreed plans for future development, and so there is no reason that the four Category U trees could not be retained within the woodland setting.

The woodland could be managed without the complete removal of single species.

Grounds of Appeal: This application was rejected, save for works to 4 trees on the woodland boundary as recommended for safety reasons alone. The remainder of the application concerned an area of self seeded sycamore trees which have populated an area open glade within the woodland, due to the woodland being unmanaged for fifty years. A significant number of the sycamores are of poor quality and low amenity value. The appellant understands that the existing tree cover should be maintained but this does not mean that there are no grounds for selective removal, thinning and maintenance of trees especially concerning a dominant species which is a recognised threat to the regeneration of other species.

### **3 APPEAL DECISIONS RECEIVED**

#### 3.1 Planning Applications

3.1.1 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.

Method of Appeal: Written Representations & Site Visits

Reporter's Decision: Sustained

Summary of Decision: The Reporter, Michael Mahony, found that the proposal would accord with Policies ED8 and ED9 of the current local development plan. It would have localised and limited impacts on landscape and visual amenity and on archaeological assets. Cumulative visual impacts would not be sufficient to reject the proposal. There would be impacts on the amenity of nearby residential properties, but not to an extent which would breach the test which has been applied by Scottish Ministers in a similar case. Evidence of significant adverse effects on tourism generally in this part of the Borders or specific tourism businesses is not persuasive. Nor has it been demonstrated that the viability of falcon breeding businesses would be threatened. Other potential impacts could be appropriately managed through planning conditions and other control regimes. The proposal would have some economic benefits. It is supported by national policies for wind energy. Finally, but importantly, the reporter stated that it would generate renewable energy and contribute to carbon emission reduction targets, thereby supporting the Scottish Government's objectives for renewable energy and a low carbon economy. The reporter therefore grants planning permission subject to 35 conditions and 4 advisory notes.

### 3.2 Enforcements

Nil

### 3.3 Works to Trees

Nil

## 4 APPEALS OUTSTANDING

4.1 There remained 3 appeals previously reported on which decisions were still awaited when this report was prepared on 23<sup>rd</sup> August 2018. This relates to sites at:

<ul style="list-style-type: none"><li>Land South West of Easter Happrew Farmhouse, Peebles</li></ul>	<ul style="list-style-type: none"><li>Hutton Hall Barns, Hutton</li></ul>
<ul style="list-style-type: none"><li>Land North West of Gilston Farm, Heriot</li></ul>	<ul style="list-style-type: none"><li></li></ul>

## 5 REVIEW REQUESTS RECEIVED

5.1 Reference: 18/00270/PPP  
Proposal: Erection of dwellinghouse with associated access road, parking area and combined entrance/layby  
Site: Land West of Langton Birches, Duns  
Appellant: Mrs Clare Fleming

Reasons for Refusal: 1. The proposed development of a single dwellinghouse at this site 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 Supplementary Planning Guidance Note (2008), in that the proposed development would not form part of or be well related to an existing building group, would not reflect the character of the building group and would lead to ribbon development along a public road. 2. The proposed development of a single dwelling at this site would be contrary to the access requirements of policies HD2 (Housing in the Countryside) and PMD2 (Quality Standards) of the Local Development Plan 2016, in that the development would result in an unacceptable access arrangement with the public road to the detriment of road safety.

- 5.2 Reference: 18/00764/FUL  
Proposal: Change of use from retail (Class 1) to mortgage shop (Class 2) and external re-decoration  
Site: 37 Bank Street, Galashiels  
Appellant: Robin Purdie

Reason for Refusal: The proposed development would not comply with Policy ED4 of the Local Development Plan 2016 in that it does not comprise a Class 1 (retail) or Class 3 (food and drink) use. It would also not comply with the types of uses encouraged by the Council's Town Centre Core Activity Area Pilot Study. The proposed development would potentially positively contribute to the town centre but, on balance, its contribution would not be sufficient to override its conflict with policy and potentially adverse effect on the town centre's core retail function.

## 6 REVIEWS DETERMINED

- 6.1 Reference: 16/01371/FUL  
Proposal: Change of use of agricultural buildings and alterations to form 12 No dwellinghouses  
Site: Agricultural Buildings, South East of Merlewood, Hutton Castle Barns, Hutton  
Appellant: Mr Geoffrey Bain

Reasons for Refusal: 1. The application is contrary to Policy PMD2 (Quality Standards) and HD3 (Residential Amenity) of the Scottish Borders Local Development Plan 2016 in that the proposed development would not be compatible with neighbouring uses, with a reasonable likelihood of unacceptable residential amenity impacts arising for the future occupants of the proposed dwelling units. 2. The application is contrary to the Supplementary Planning Guidance: New Housing in the Borders Countryside 2008 in that the proposed development would conflict with the operations of a working farm. 3. The application is contrary to Policy IS2 (Developer Contributions) of the Scottish Borders Local Development Plan 2016 and Supplementary Planning Guidance: Affordable Housing and Development Contributions in that the applicant has not committed to paying the necessary development contributions towards deficiencies in infrastructure and services which will be created or exacerbated as a result of the development. 4. The application is contrary to Policies EP1 (International Nature Conservation Sites), EP2 (National Nature Conservation Sites and Protected Species) and EP3 (Local Biodiversity) of the Scottish Borders Local Development Plan 2016 and the Supplementary Planning Guidance on Biodiversity 2005 in that the potential impact on protected species is unknown as the required ecological surveys have not been carried out. 5. The application is contrary to Policies PMD2 (Quality

Standards) in that the proposed parking and access arrangements would result in an adverse impact on road safety.

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Overturned (Subject to conditions, informatives and a Section 75 Legal Agreement)

- 6.2 Reference: 17/01362/FUL  
Proposal: Part change of use of paddock to form new access and drive to dwellinghouse, erection of gates and summerhouse and formation of new parking area and tennis courts  
Site: Southbank and Paddock South East of Southbank, Bowden, Melrose  
Appellant: Mrs Sarah Wilkinson

Reasons for Refusal: 1. The proposal would be contrary to policy PMD4 of the Local Development Plan 2016 in that the change of use of the paddock to domestic garden ground and the erection of the tennis court, fencing and summerhouse and the formation of the access and driveway would be outwith the village's Development Boundary, resulting in inappropriate encroachment into the open countryside. There is no justification for this development in terms of the exceptions listed within policy PMD4 and approving this proposal would set an undesirable precedent for similar developments outwith the village that would further erode the Development Boundary. 2. The proposal would be contrary to policies PMD2 and EP9 of the Local Development Plan 2016 as the development would be out of keeping with the rural character of the area and edge-of-village location. The proposal would be prominent in the landscape, with inappropriate boundary treatments that do not help to integrate the development into its surroundings and the wider environment, and would adversely affect the setting of the village, the character and appearance of this part of the Conservation Area and the visual amenities of the area.

Method of Review: Review of Papers

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

- 6.3 Reference: 17/01734/PPP  
Proposal: Erection of dwellinghouse  
Site: Land South West of 1 Hill Terrace, Stow  
Appellant: Susan Aitchison

Reason for Refusal: The access road serving the site is unsuitable for further traffic and is not capable of being improved to a standard that is adequate to support the additional traffic generated by the proposed development. The development would, therefore, be contrary to Policies PMD2 and PMD5 of the Local Development Plan 2016. This conflict would potentially lead to serious risk to road and pedestrian safety. There are no other material considerations that would outweigh this conflict with the development plan.

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Upheld

6.4 Reference: 18/00287/FUL  
Proposal: Erection of dwellinghouse  
Site: Land North West of Doonbye, Smith's Road, Darnick  
Appellant: Mr I Maxwell

Reasons for Refusal: 1. The proposed development would not comply with policies PMD2, PMD5 or IS7 of the Local Development Plan 2016 as no off-street parking would be provided and the resulting implications on Smith's Road would have potential adverse impacts on road and pedestrian safety. Other material considerations do not outweigh these conflicts with policy. 2. The proposed development would be contrary to policies PMD2, PMD5 and HD3 as it would constitute overdevelopment of the site in a manner that would have an adverse impact on the residential amenities of future occupants of the dwellinghouse and an intrusive and overbearing impact on neighbouring properties. Other material considerations do not outweigh these conflicts with policy.

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Upheld

## **7 REVIEWS OUTSTANDING**

7.1 There remained no reviews previously reported on which decisions were still awaited when this report was prepared on 23<sup>rd</sup> August 2018.

## **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 23<sup>rd</sup> August 2018. This relates to sites at:

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

### **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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