
PLANNING APPEALS & REVIEWS

Briefing Note by Chief Planning Officer

PLANNING AND BUILDING STANDARDS COMMITTEE

5th November 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: 18/00849/CLEU
Proposal: Certificate of Lawfulness for an Existing Use: Class 9 Residential
Site: Glenacre, Camptown, Jedburgh
Appellant: Mr Tom Watters

Reason for Refusal: The existing use has not been established for a period of at least 10 years therefore no lawful use has been established under the terms of Section 124 (3) of the Town and Country Planning (Scotland) Act 1997.

Grounds of Appeal: The property has not been used as a Guest House since 1st January 2014, thus the breach is immune from enforcement action. The 10 year period stated to be required by the Council in the decision to refuse a Certificate of Lawfulness is based upon an incorrect interpretation of the law, a point subsequently acknowledged by the Council. The introduction of additional reasons for refusing to grant a Certificate of Lawfulness subsequent to the decision being issued is considered to be unreasonable, including the requirement for the Appellant to demonstrate that bedrooms upstairs and downstairs have been used by the family rather than paying guests.

2.2 Enforcements

- 2.2.1 Reference: 17/00131/UNDEV
Proposal: Erection of Chalet in Field
Site: Land East of Keleden, Ednam
Appellant: Brian and Susan Soar

Reason for Notice: It appears to the Council that the above breach of planning control has occurred within the last 4 years. The Council received a complaint that the land in question was being used as garden ground and that it had been previously used as open grazing land. A subsequent planning application for a change of use of the land was submitted, however was refused on 4 April 2018. The refusal was not appealed to the LRB. The land continues to be used as garden ground with domestic structures erected thereon.

Grounds of Appeal: The gazebo mentioned has been removed. The appellants do not think they breached planning regulations as they were never informed that the land was agricultural when purchased in 2006. Even if they had known, they would still have assumed they could grow vegetables and keep animals on agricultural land. Since purchasing the land, they have built a new house called Oaklands and used the land as garden ground, growing vegetables, planting trees, a small apple orchard, propagating plants and keeping bees (15-20 hives), hanging washing out, walking the dog and keeping chickens. Mr Soar takes some bee hives out to help farmers pollenate crops and also produces honey which they sell to local shops. The shed (5 mts x 4.5 mts x 2.3 mts height) is used for bee keeping equipment, storing garden tools and making bee hives. According to the Rural Payments agency bee keeping is classed as agricultural so is tree growing, they have planted 394 in the last few years. They have planning permission in principal to build a new house on the site which they intend to move into and would like to ask for a garden extension of ground that belongs to them, from agricultural to garden ground.

Method of Appeal: Written Representations

2.3 Works to Trees

Nil

3 APPEAL DECISIONS RECEIVED

3.1 Planning Applications

3.1.1 **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.

Method of Appeal: Written Representations & Site Visits

Reporter's Decision: Sustained

Summary of Decision: The Reporter, Keith Bray, has allowed the appeal and varied the terms of the planning permission by substituting conditions five and six. The new conditions are:

Condition 5 -The two turbines hereby consented and any ancillary equipment or structures associated with them above ground level shall be removed from the site within 25 years of the date of this planning permission unless a further planning permission is achieved that allows for the retention of the turbines on the site beyond this period. Reason: Due to their expected 25 year design life, in the interests of the amenity of the area, the turbines should be removed to avoid any unnecessary environmental impact resulting from the retention of obsolete turbines on the site. Condition 6 - When either or both of the wind turbine(s) hereby consented cease(s) to be required for the purposes of electricity generation, the wind turbine(s) concerned, and any ancillary equipment or structures above ground level that is no longer required for the purposes of electricity generation, shall be dismantled and removed from the site within 12 months of the cessation of electricity generation from the turbine(s) concerned. Reason: In the event that the turbines reach the end of their operational life, these should be removed within a reasonable period of time to avoid any unnecessary environmental impact resulting from the retention of obsolete turbines on the site.

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 26th October 2018. This relates to sites at:

• Land South West of Easter Happrew Farmhouse, Peebles	• Hutton Hall Barns, Hutton
• Land North West of Gilston Farm, Heriot	•

5 REVIEW REQUESTS RECEIVED

5.1 Reference: 18/00580/FUL
Proposal: Alterations and extension to dwellinghouse and erection of detached garage/workshop
Site: Elsielea, 61 West High Street, Lauder
Appellant: Miss Fiona Duff

Condition Imposed: Condition 2: Drawing Number 005 - Proposed Garage/Workshop (dated 22.04.18) submitted with the application is not covered by this grant of planning consent. No development shall commence until amended drawings of the proposed garage/workshop are submitted to and approved in writing by the planning authority and thereafter no development shall take place except in strict accordance with the revised drawings unless otherwise agreed in writing by the planning authority. The mono-pitched roof over the proposed garage/workshop shall be reversed so that the tall blank elevation faces north and the lower eaves elevation faces south. Reason: To ensure a satisfactory form of development appropriate to the conservation area.

5.2 Reference: 18/00635/FUL
Proposal: Change of Use from Class 4 to include Class 11 (Leisure) and Class 3 (Cafe)
Site: Factory Plexus Facility, Tweedside Park, Tweedbank, Galashiels
Appellant: J S Crawford Properties (Borders) Ltd

Reasons for Refusal: 1. The proposed development will conflict with Policies PMD3 and ED1 of the Scottish Borders Council Local Development Plan 2016 and Supplementary Guidance - Central Borders Business Park Tweedbank 2017, in that it would comprise uses which do not fall within the permitted uses for this Strategic Business and Industrial Site and which would not contribute positively to the efficient functioning of the allocated site or its future as a business park 2. The proposed development conflicts with Policy EP13 of the Scottish Borders Local Development Plan 2016 and Supplementary Planning Guidance Trees and

Development 2008 in that it comprises car park alterations which potentially risk adversely affecting adjacent trees which are important to the amenity value of the business park and the application does not demonstrate that the trees will be adequately protected during construction of the car park alterations.

- 5.3 Reference: 18/00644/PPP
 Proposal: Erection of dwellinghouse (renewal of planning permission 15/00036/PPP)
 Site: Land North West of Chapel Cottage, Melrose
 Appellant: Mr, Mrs and Mr Archie, Helen & Hugh Shaw Stewart

Reason for Refusal: The proposed development is contrary in principle to Adopted Local Plan Policy HD2 and the advice of Supplementary Planning Guidance - New Housing in the Borders Countryside (December 2008) in that it lies out with the Development Boundary, and: (i) the site is not well-related to any existing rural building group (let alone to any building group capable of augmentation in accordance with the requirements of Policy HD2, Section A, 'Building Groups'); and (ii) the Applicant has not demonstrated that there is any operational need for a new dwellinghouse to be located at the site as a direct operational requirement of any agricultural, horticultural, forestry or other enterprise which is itself appropriate to the countryside.

- 5.4 Reference: 18/00686/FUL
 Proposal: Change of use of land (optional locations) to site 2
 No glamping units for holiday let
 Site: Land North West, East and South East of Flatt
 Farmhouse Newcastleton
 Appellant: Thomas And Pamela Atkinson

Reasons for Refusal: 1. The proposal is contrary to Adopted Local Development Plan Policies ED7 and PMD2 in that: (i) the Applicant has failed to demonstrate that there is not an existing building(s) or brownfield site(s) available that would more appropriately and sympathetically accommodate the proposal, thereby avoiding the need to develop isolated greenfield sites; and (ii) its siting and layout would not respect the amenity and character of the site and surrounding area; including neighbouring uses and neighbouring built form. Further, the Applicant has failed to provide adequate business justification to demonstrate that the proposal is capable of being developed and operated viably as holiday accommodation, including any justification of the specific sites proposed, and of the specific type of accommodation units proposed. 2. The proposed development is contrary to Adopted Local Plan Policy ED8 in that there is no justification for such an isolated countryside location for the proposed caravans; and in their siting, these would also not be of the highest quality or in keeping with their local environment, and would cause unacceptable environmental impacts, primarily by spreading a caravan development far and wide over a much larger area than is actually necessary or justified by the supporting business case.

- 5.5 Reference: 18/00745/FUL
 Proposal: Change of use of steading, alterations and extension to form dwellinghouse (revision to planning permission 17/00915/FUL)
 Site: Steading Buildings Billerwell Farm, Hawick
 Appellant: Mr & Mrs David & Claire McTaggart

Reasons for Refusal: 1. The proposal is contrary to criterion c. of Section C of Adopted Local Development Plan Policy HD2 in that it is not in keeping with the scale and architectural character of the existing building to be converted, even having regard to what has been approved, and can be progressed, under Planning Consent 17/00915/FUL. 2. The proposal is contrary to criteria i. and k. of Adopted Local Development Plan Policy Policy PMD2, in that it is not of a scale, massing or height that is appropriate to the existing building, and would not be compatible with, or respect, the character of the surrounding area or neighbouring built form, even having regard to what has been approved, and can be progressed, under Planning Consent 17/00915/FUL.

- 5.6 Reference: 18/00832/PPP
Proposal: Erection of two dwellinghouses
Site: Land North East of Stainie Brae, Lower Greenhill, Selkirk
Appellant: Mr Mike Orr

Reason for Refusal: The proposed development is contrary to Adopted Local Development Plan Policy HD2 and the advice of Supplementary Planning Guidance - New Housing in the Borders Countryside (December 2008), in that: (i) the development is not sympathetic to the character of the building group and would not contribute positively to the sense of place of the existing building group; and (ii) the Applicant has not demonstrated that there is any operational need for new dwellinghouses to be located at the site as a direct operational requirement of any agricultural, horticultural, forestry or other enterprise which is itself appropriate to the countryside.

- 5.7 Reference: 18/01039/FUL
Proposal: Replacement windows (revision to planning permission 18/00211/FUL)
Site: 41 North Hermitage Street, Newcastleton
Appellant: Mrs Laura Paterson

Reason for Refusal: The design of the replacement windows fails to comply with Policies PMD2 and EP9 of the Scottish Borders Council Local Development Plan 2016, and with the advice contained within the Replacement Windows and Doors SPG (2015), in that their appearance would result in an adverse visual impact on the character of the building and would be detrimental to the character and appearance of the Newcastleton Conservation Area.

6 REVIEWS DETERMINED

- 6.1 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.

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: 18/00398/FUL
 Proposal: Change of use from retail to tattoo studio (retrospective)
 Site: 52 Bank Street, Galashiels
 Appellant: Craig Oliver

Reason for Refusal: The proposed development does 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. The level of contribution of the proposed use to the town's core retail function will not be so significant as to justify its occupation by the proposed use and there is no evidence to suggest otherwise. The development would potentially detract from the vitality and viability of the town centre and no other material considerations would outweigh this potential harm.

Method of Review: Review of Papers

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

6.3 Reference: 18/00686/FUL
 Proposal: Change of use of land (optional locations) to site 2
 No glamping units for holiday let
 Site: Land North West, East and South East of Flatt Farmhouse Newcastleton
 Appellant: Thomas And Pamela Atkinson

Reasons for Refusal: 1. The proposal is contrary to Adopted Local Development Plan Policies ED7 and PMD2 in that: (i) the Applicant has failed to demonstrate that there is not an existing building(s) or brownfield site(s) available that would more appropriately and sympathetically accommodate the proposal, thereby avoiding the need to develop isolated greenfield sites; and (ii) its siting and layout would not respect the amenity and character of the site and surrounding area; including neighbouring uses and neighbouring built form. Further, the Applicant has failed to provide adequate business justification to demonstrate that the proposal is capable of being developed and operated viably as holiday accommodation, including any justification of the specific sites proposed, and of the specific type of accommodation units proposed. 2. The proposed development is contrary to Adopted Local Plan Policy ED8 in that there is no justification for such an isolated countryside location for the proposed caravans; and in their siting, these would also not be of the highest quality or in keeping with their local environment, and would cause unacceptable environmental impacts, primarily by spreading a caravan

development far and wide over a much larger area than is actually necessary or justified by the supporting business case.

Method of Review: Review of Papers

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

- 6.4 Reference: 18/00745/FUL
Proposal: Change of use of steading, alterations and extension to form dwellinghouse (revision to planning permission 17/00915/FUL)
Site: Steading Buildings Billerwell Farm, Hawick
Appellant: Mr & Mrs David & Claire McTaggart

Reasons for Refusal: 1. The proposal is contrary to criterion c. of Section C of Adopted Local Development Plan Policy HD2 in that it is not in keeping with the scale and architectural character of the existing building to be converted, even having regard to what has been approved, and can be progressed, under Planning Consent 17/00915/FUL. 2. The proposal is contrary to criteria i. and k. of Adopted Local Development Plan Policy Policy PMD2, in that it is not of a scale, massing or height that is appropriate to the existing building, and would not be compatible with, or respect, the character of the surrounding area or neighbouring built form, even having regard to what has been approved, and can be progressed, under Planning Consent 17/00915/FUL.

Method of Review: Review of Papers

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

- 6.5 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.

Method of Review: Review of Papers

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

- 6.6 Reference: 18/01039/FUL
Proposal: Replacement windows (revision to planning permission 18/00211/FUL)
Site: 41 North Hermitage Street, Newcastleton
Appellant: Mrs Laura Paterson

Reason for Refusal: The design of the replacement windows fails to comply with Policies PMD2 and EP9 of the Scottish Borders Council Local Development Plan 2016, and with the advice contained within the Replacement Windows and Doors SPG (2015), in that their appearance would result in an adverse visual impact on the character of the building and would be detrimental to the character and appearance of the Newcastleton Conservation Area.

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Upheld

7 REVIEWS OUTSTANDING

7.1 There remained one review previously reported on which a decision was still awaited when this report was prepared on 26th October 2018. This relates to a site at:

- | | |
|--|--|
| <ul style="list-style-type: none">Land North East of Ladywood
Lower Greenhill, Selkirk | <ul style="list-style-type: none"> |
|--|--|

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 October 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

Author(s)

Name	Designation and Contact Number
------	--------------------------------

Laura Wemyss	Administrative Assistant (Regulatory) 01835 824000 Ext 5409
--------------	---

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.

Contact us at Place, Scottish Borders Council, Council Headquarters, Newtown St Boswells, Melrose, TD6 0SA. Tel. No. 01835 825431 Fax No. 01835 825071
Email: PLACEtransrequest@scotborders.gov.uk