

**SCOTTISH BORDERS COUNCIL**

**PLANNING AND BUILDING STANDARDS COMMITTEE**

**4 MARCH 2019**

**APPLICATION FOR PLANNING PERMISSION**

<b>ITEM:</b>	<b>REFERENCE NUMBER:</b> 18/01377/FUL
<b>OFFICER:</b>	Ranald Dods
<b>WARD:</b>	Tweeddale West
<b>PROPOSAL:</b>	Erection of Class 6 storage and distribution buildings, associated Class 5 use and erection of ancillary dwellinghouse with associated development and landscaping works
<b>SITE:</b>	Land north east of 3 The Old Creamery, Dolphinton
<b>APPLICANT:</b>	Mr Alastair Brown
<b>AGENT:</b>	Ironside Farrar Ltd

**PLANNING PROCESSING AGREEMENT:** Expires 4 April 19

**CONSIDERATION BY PLANNING AND BUILDING STANDARDS COMMITTEE**

Planning application 18/01377/FUL has been referred to the Planning and Building Standards Committee for determination under Section 43A (6) of the Town and Country Planning (Scotland) Act 1997. Its referral is supported by five Members on the grounds that: "...because of the complex planning considerations involved in considering sites for economic development within the countryside". The application was presented to committee in February where Members agreed to continue the application to the next available meeting to account for a late submission by the applicant.

**SITE DESCRIPTION**

The site is an area of open agricultural land, less than 2ha in extent, the south western edge of which lies some 290m to the northwest of Dolphinton and to the immediate south of the A702. There is an agricultural access directly from the A702 at the site's northern extremity.

The site is readily visible from the A702. It is mostly level but with small natural rise toward the northeast of the site. There are some stands of trees to the east and west of the site and a couple of trees along the road boundary with the A702. The site is otherwise generally open in character, as is the surrounding area.

Along with a larger area of land to the south and west, the site lies within the provisional Local Biodiversity Site (pLBS) 'Ingraston Moss'. It is also within the near vicinity of the Pentland Hills Special Landscape Area (SLA), which lies on the northern side of the A702 and is linked by a shared ditch to the Dolphinton - West Linton Fens and Grassland Site of Special Scientific Interest (SSSI), which lies to the south. The site is within a carbon-rich soils area.

## PROPOSED DEVELOPMENT

The application is made for full planning permission to construct a new business premises for a mixed employment (class 5 and class 6) use. The proposed development would accommodate of the applicant's two existing businesses which currently operate from a site approximately 750m to the south west. A new single storey dwellinghouse with linked residential accommodation is also proposed.

The industrial element of the proposed development consists of: (i) a loading bay to accommodate the cement silo and water container; (ii) material storage sheds (iii) a garage and vehicle store to accommodate and maintain vehicles and equipment. There will be a small biomass boiler and fuel store at the rear and; (iv) an external area for the storage and manufacture of concrete blocks.

The proposed buildings, which will be standard portal frame sheds clad in profile steel sheet, will be attached to one another, forming a single range of buildings located within the centre of the site. Areas of hardstanding will surround the buildings. Storage and manufacture areas for concrete block production will be located to the south west of the buildings. The ridge of the loading bay will be the highest point of the structure at approximately 8m with the eaves of this part being about 3.5m. The other elements of the building will have a maximum eaves height of just over 5m and a ridge height of approximately 6.8m. The flue associated with the biomass boiler will be approximately 8.7m high. It should be noted that some drawings state dimensions which relate to the height of the materials store as previously proposed. The "Planning Supporting Statement" also includes visualisations of the proposal which show the previous proposals. Those incorrect heights and visualisations should be disregarded.

The proposed new house will be located immediately to the south east of the sheds and yard. It includes at its western end, what appears to be a two bedroomed "granny flat" – indeed the drawings state that that element would be for the applicant's elderly relatives - which could function as a self-contained residential unit. It has a distinct separate entrance and is separated from the other accommodation by a garage, although internal doors within the garage provide linkages to the rest of the house, which has three bedrooms. The house is orientated to give the principal rooms a view to the land outwith the site to the south. Windows on the northern side of the house are limited largely to those lighting circulation space and non-habitable rooms. Two windows facing north light habitable rooms. One is to a bedroom within the linked residential accommodation which overlooks the yard to the North West. The other window to a habitable room lights the kitchen in the main part of the house. It faces north and does not appear to have a direct line of sight to the yard and sheds. A room within the attic space will provide office accommodation.

Access to both the business premises and the house will be via a single newly formed junction on to the A702. The driveway to the house will be located off the access route to the business premises.

Landscaping is proposed for the site. This will include tree planting on land outwith the application site, which the applicant has advised will be secured as part of his purchase of the application site from the current land owner. The landscape works include the formation of a bund wall, of approximately 3m in height, to the North West and south west of the sheds and yard. The application form confirms that the applicant is not the sole owner of all the land to which the application relates and that the land is part of an agricultural holding. The appropriate notice has been served on the land owner.

The proposal has been assessed as falling below the parameters that would have required the formal submission of an Environmental Impact Assessment (EIA). No statutory consultees have requested that the proposal should be supported by an EIA.

## **PLANNING HISTORY**

There has been one previous application for the development of this site. In January 2017, application, reference 17/00087/FUL, was submitted for development of the same description as proposed in the current application. That application was considered by committee on 7 August 2017, when members determined to refuse permission for the following reasons:

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.

An appeal against that decision was submitted to the Scottish Government's Planning and Environmental Appeals Division (DPEA) in October 2017, appeal reference PPA-140-2063. The Reporter issued a decision on the appeal on 10 January 2018 and refused to grant planning permission on the grounds that the...*“development does not comply 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 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.”*

## **REPRESENTATION SUMMARY**

The application was advertised in the local press and neighbours were notified. 33 material representations were received. That number consists of 20 in support (including one from the applicant's son) and 13 in objection. Although the total number of representations is higher (49), many of those submitted contained either no comment beyond a simple expression of support or comments which were not material to the consideration of the application. The material grounds contained in the representations are summarised below. Copies of all representations can be viewed in full on *Public Access*.

### **Support comments**

- Lack of alternative sites
- Development will support business

- Road safety
- Minimal disturbance to residential amenity at new site
- Increase in residential amenity at properties adjacent to existing site

#### Objection comments

- Unsuitability of proposed site
- Other more suitable sites are available
- Greenfield not brownfield site
- Land not allocated for industrial use
- Contrary to policies PMD2, PMD4, ED7, ED10, HD2, EP1 and EP2
- Impact on SSSI and hydrology
- Industrial process not suited for a rural location
- Road safety
- Visual impact
- Insufficient economic justification
- Insufficient justification for the house
- Impact on wildlife
- Residential amenity
- Undesirable precedent

#### **APPLICANTS' SUPPORTING INFORMATION**

- Planning supporting statement
- Preliminary ecological assessment

In the late correspondence referred to above, the applicant states that an agreement had been reached on various matters between the applicant and planning officers during a meeting in November 2018. This meeting was amicable but officers were non-committal on the planning merits of the application, providing generic advice based on the information submitted at that time. A commitment was, however, given to consider any additional information submitted in support of the proposed development, specifically in relation to the identification of alternative sites and the submission updated letters from landowners who had been approached by the applicant. These letters are available for Members to view in full on-line via Public Access.

The applicant submitted an additional supporting document in response to the report which was due to be presented to Members in February. It sets out, from the applicant's point of view, a number of comments made within the Report which differ from his own opinion. The document is available for to view via Public Access and it is for Members to determine how much weight they wish to attach to it when determining the application. It does not, however, set out any matters which would lead to a change in recommendation.

#### **DEVELOPMENT PLAN POLICIES:**

##### **Local Development Plan 2016**

PMD1 - Sustainability

PMD2 - Quality standards

PMD4 - Development outwith development boundaries

ED2 - Employment uses outwith business and industrial land

ED7 - Business, tourism and leisure development in the countryside

HD2 - Housing in the countryside

HD3 - Residential amenity  
EP1 - International nature conservation sites and protected species  
EP2 - National nature conservation sites and protected species  
EP3 - Local biodiversity  
EP5 - Special landscape areas  
EP8 - Archaeology  
ED10 - Protection of prime quality agricultural land and carbon rich soils  
EP13 - Trees, woodlands and hedgerows  
EP15 - Development affecting the water environment  
EP16 - Air quality  
IS2 - Developer contributions  
IS6 - Road adoption standards  
IS7 - Parking provision and standards  
IS9 - Waste water treatment standards and sustainable urban drainage  
IS13 - Contaminated land

The site is not strategic, therefore the policies contained within SESplan are not considered.

#### **OTHER PLANNING CONSIDERATIONS:**

The following are material considerations:

SPG – Biodiversity 2005;  
SPG – Contaminated land inspection strategy 2001;  
SPG – Development contributions 2015;  
SPG – Landscape and development 2008;  
SPG – New housing in the Borders countryside 2008;  
SPG – Placemaking and design 2010;  
SPG – Trees and development 2008.

#### **CONSULTATION RESPONSES:**

The following were consulted on the application. Their comments are summarised below.

##### **Scottish Borders Council Consultees**

**Roads Planning Service:** The RPS does not object to the application. In principle RPS is supportive of the relocation of this business. The existing site is adjacent to residential dwellings and it would appear the existing business is outgrowing its current site. Relocating the business will remove the conflict between residential traffic and operational traffic associated with the business which requires the use of the public road for manoeuvring.

In terms of the principle of direct access to the A702 and site access requirements, the A702 is a Trunk Road and Transport Scotland as Trunk Road Authority has commented on this aspect of the proposal.

**Archaeology Officer:** There are no known archaeological assets within the development area. However, there is potential based on discovery in the wider area as well as underlying sub-soil deposits. In the wider area there have been discoveries of prehistoric and medieval objects, pits and buried soils that may be anthropogenic in origin. There is also a known Roman road near the site. The closest discoveries were made at the Sandy Hill sand and gravel workings approximately 200 metres to the west of the development area. Evidence of

prehistoric stone tool manufacture, a Bronze Age bracelet and medieval pottery were all identified, along with a pit and buried soils of unknown date or origin. The Roman road extending from Inveresk to Dolphinton is approximately 150 metres to the west of the development area, though evidence for its construction including quarry pits may be found closer.

In addition to these discoveries, the site lies on the edge of the Ingraston Moss which contains base peat deposits. Hutton Soils data also suggests there is a sand and gravel deposit within the site itself. Both types of sub-soils are known elsewhere as having archaeological sensitivity: peat deposits for their ability to preserve archaeological materials and sand and gravel for their historic uses for settlement and other activities due to good drainage. The nearby discoveries of pits and objects on a similar sand and gravel deposit indicates evidence of a complex sequence of prehistoric to historic activities taking place in the wider landscape including the development area. The combination of this with the peat, sand and gravel deposits within the site suggests that there is a moderate potential of the development site to contain previously unknown archaeological features, deposits or objects.

To assess this, I recommend that a 10% trial trench evaluation of the entire development site take place in advance of development. Further investigation and dissemination may be required depending on the results. Condition recommended.

**Economic Development:** No objection. Comments relate only to the proposed business relocation. Comments generally similar to those made when responding to 17/00087/FUL. This proposed relocation would allow both these businesses to operate from the one site, increasing efficiencies, reducing carbon footprint between sites and enabling longer working hours in the winter which would potentially enable the businesses to expand. Economic Development considers that the relocation should enable the turnover to increase significantly which will create new jobs. The 2 businesses employ a total of 5 staff and a successful relocation would immediately increase this by 2. The need to relocate is driven by the uncertainty around both the existing yard and the use of the quarry in the short term.

The applicant has explained that the growth potential for both businesses would be significant from a new location as the current yard is placing restrictions on their trading hours, due to residential concerns. A new site would allow the businesses to operate in line with the industry standard. He believes the relocation should be as close to their current site as is possible in order to maximise the growth. A move materially distant from the current site will mean that competitive pricing will be eroded. He also believes he has exhausted all alternative site prospects locally and includes a zoned site at West Linton, including those SBC have suggested and the site applied for is the only one that would meet the business's needs. He believes if this site or a suitable alternative site for relocation is not found in the next year, it is unlikely that either of the businesses will continue trading, losing 5 existing jobs and impacting those in the supply chain.

The type of operation is likely to cause fewer problems if it is in a rural location, away from residential properties. Due to the size of site needed, if within an existing industrial estate, would probably be extremely costly, as land values on a basic agricultural plot are much lower than a serviced zoned business site. On the prospect of the business expanding, Economic Development supports the application, as the alternative could possibly be the closure of the business if the current ground leases are terminated. It should be noted that the business is in a precarious position at present due to the current site's owner instructing them that they plan to sell the land by the end of 2019 for residential housing. [It should be

noted that this is no longer the case, as confirmed by the applicant in his email of 12 November 2018]

The previous application for this site was refused with concern about the visual impact of the development. Economic Development considers that the applicant has gone some way to try and integrate the development into the landscape through bunding and reducing the building heights. Economic Development considers that it is not always possible to establish a development in an already screened site, so some latitude should be made for the timescale needed for landscaping to be established. Ultimately, there were alternative sites suggested that may have been acceptable through having already established landscaping but were also outwith settlements and not zoned.

**Ecology Officer:** No objection, subject to suggested conditions. Potential impacts on designated sites, protected species and local biodiversity.

Designated Sites: Noted that SNH has removed its objection based on proposals in place to avoid potential impacts on the West Linton Fens and Grassland Site of Special Scientific Interest (SSSI) and that provided proposed mitigation and safeguards remain in place, no significant effects on the SSSI are considered likely.

#### Protected Species

There are no predicted impacts on protected species. Precautionary mitigation and enhancements are proposed for badgers. The site is considered to be of low value for breeding birds, however, precautionary mitigation for breeding birds is recommended.

#### Local biodiversity

Mitigation and enhancements are proposed in order to protect and enhance biodiversity. A loss of habitat of 2.09ha of semi-improved pasture is predicted, however the opportunity to enhance biodiversity across 45% of the site provides compensation, with a Site Biodiversity Action Plan proposed. Ecology Officer's response to previous application (dated 10 April 2017) indicates a preference for enhancing the wider wet grassland habitat. No impacts on site hydrology are predicted and mitigation is proposed.

**Archaeology Officer:** No objection, subject to a suggested condition. As stated in relation to the 2017 application, there are no known archaeological assets within the development area. However, there is potential based on discoveries in the wider area as well as underlying sub-soil deposits. In the wider area there have been discoveries of prehistoric and medieval objects, pits and buried soils that may be anthropogenic in origin. There is also a known Roman road near the site. The closest discoveries were made at the Sandy Hill sand and gravel workings approximately 200 metres to the west of the development area. Evidence of prehistoric stone tool manufacture, a Bronze Age bracelet and medieval pottery were all identified, along with a pit and buried soils of unknown date or origin. The Roman road extending from Inveresk to Dolphinton is approximately 150 metres to the west of the development area, though evidence for its construction including quarry pits may be found closer.

In addition to these discoveries, the site lies on the edge of the Ingraston Moss which contains base peat deposits. Hutton Soils data also suggests there is a sand and gravel deposit within the site itself. Both types of sub-soils are known elsewhere as having archaeological sensitivity: peat deposits for their ability to preserve archaeological materials and sand and gravel for their historic uses for settlement

and other activities due to good drainage. The nearby discoveries of pits and objects on a similar sand and gravel deposit indicates evidence of a complex sequence of prehistoric to historic activities taking place in the wider landscape including the development area. The combination of this with the peat, sand and gravel deposits within the site suggests that there is a moderate potential of the development site to contain previously unknown archaeological features, deposits or objects.

**Landscape Architect:** No objection, subject to suggested conditions. The key issue is the visual impact of the proposal on sensitive receptors in the surrounding area, including views to and from the Pentland Hills Special Landscape Area (SLA).

The site was the subject of the previous application in 2017 and mitigation measures were suggested. The proposed site plan for this application shows a scheme of planting that is largely unchanged from the amended scheme submitted in support of the previous application. The site plan adopts a more comprehensive scheme of planting, as suggested by the council's Landscape Architect that in time, should help to mitigate the visual impact of the industrial buildings on sensitive receptors on the adjacent A702 and within the Pentland Hills SLA. The height of the industrial buildings has been lowered by 4m which should help reduce the visual impact. Given that the planting scheme suggested previously by Mr Knight has been indicated on the submitted plan if a more robust screen planting along the SW boundary could be agreed or a condition of any approval, along with a fully detailed planting plan with a schedule including species, numbers, etc., together with establishment and longer term maintenance, as well as the building colour, site sections and control of lighting are all agreed by condition, the Landscape Architect does not object to this application.

### **Statutory Consultees**

**Transport Scotland:** Conditions recommended should planning permission be granted. Those relate to the formation of the access onto the A702 trunk road and drainage.

**Health and Safety Executive:** Does not intersect a pipeline or hazard zone.

**Community Council:** Supports the application. The community council is aware of the attempts the applicant has made to identify alternative suitable premises. There are no suitable sites in West Linton and no brownfield sites available. The community council is keen to retain business in the area. The buildings have been designed to reflect agricultural buildings in the area. The proposed banking and landscaping will reduce visual impact the development. The community council accepts the need for a house on security grounds. The community council considers the proposal complies with policies ED2, PMD2 and ED7.

**Scottish Natural Heritage:** No objection. SNH previously been consulted on the original planning application and had objected to the proposal (8 March 2017) due to lack of information on the potential effects on the nearby Dolphinton – West Linton Fens and Grassland Site of Special Scientific Interest (SSSI). A further consultation was made on that application which contained sufficient information about the construction and operation of the proposed development for SNH to withdraw its objection to that proposal.

The current application does not differ from the previous consultation in any way that would materially change the potential effects on the SSSI or their mitigation. Therefore as long as the same safeguards remain in place, per the Supplementary



Statement on Air Quality, Dust Management and Noise and Light Pollution (March 2017), as regulated by SEPA, then SNH maintains its no objection.

**SEPA:** No objection. The drainage proposals submitted in relation to the surface water run-off and wash water are acceptable in principle. If permission is granted, the developer should ensure that the proposed SUDS pond, silt traps and water collection tanks are suitably sized for the activities on site.

### **KEY PLANNING ISSUES:**

Is the proposal to locate and operate industrial business premises at this rural site appropriate, including in terms of landscape visual and environmental impact?

Is a residential property at this rural site appropriate in planning policy terms?

If not, whether there are material considerations that would justify a departure from the provisions of the development plan and material considerations.

### **ASSESSMENT OF APPLICATION:**

#### **Principle**

The site is outwith the settlement envelope of Dolphinton as defined by the Scottish Borders Local Development Plan 2016 (LDP). It is located on a greenfield site in a rural location, on land which is not allocated for industrial use. The principle of the development proposal conflicts with the terms of the LDP.

#### Planning policy - proposed business premises

LDP policies direct development to appropriate locations, primarily within development envelopes and, in the case of business development, to land allocated for that purpose. Any other proposal is required to justify the need for the location proposed.

Policy PMD4 states that where development envelopes are defined on proposals maps, they indicate the extent to which towns and villages should be allowed to expand during the Local Plan period. As such, proposals for new development outwith the specified boundaries and not on allocated sites should normally be refused.

The policy does, however, allow that an approval might be granted exceptionally, where strong reasons can be given that it is a job-generating development in the countryside that has an economic justification under policy ED7 or HD2 or that it is a development that it is considered would offer significant community benefits that outweigh the need to protect the development boundary. In either case, the development must also be able to meet the determining criteria of the specific policy.

Whilst it is acknowledged that approval would result in the benefit of the removal of the existing business operation from a residential area within the development boundary at Dolphinton, this would not be the '*significant community benefit*' that could justify the proposal being made the subject of an exceptional approval to policy PMD4. The potential benefit to the surrounding area of removing the existing business premises from the village is material but it does not address the primary purpose of the policy, which is to ensure that development outside specified

settlements is properly justified. The "*community benefit*" test for the purposes of this policy is whether the proposed use is one that delivers significant benefits to the community that it might not be possible to accommodate within a settlement. Examples given in the LDP for community uses are schools, community centres or a health centre. This proposal does not appear to meet the specified examples nor is a community benefit advanced.

A case needs to be made for the particular location of the development. Whilst a general case has been made to support the relocation of the business in this case, it has not been demonstrated that this is the only site to which the circumstances would apply. It is acknowledged that the applicant has submitted additional documentation in support of their assertion that no other suitable site exists on which the development could be located.

Policy ED7 aims to allow appropriate employment generating development in the countryside whilst protecting the environment and to ensure that business developments, amongst others, are appropriate for their location. In order to be supportive of business development in the countryside, the council should be satisfied that, amongst other things, there is an economic and/or operational need for the proposal to be located on sites in the proposed location and that the business could not be accommodated within an identified settlement.

The application site is an undeveloped field, some 700m outwith the defined boundary of Dolphinton. The land is not allocated for industrial use nor indeed for any other use. The business use described encompasses both Class 6 storage use and Class 5 industrial use, which have no requirement to be sited and operated in the countryside. Such premises would ordinarily be expected to be accommodated within a specified settlement envelope, preferably within an industrial estate, rather than undeveloped rural greenfield sites.

The applicant maintains that there is an economic and operational need for the specific proposed business premises to be sited on and operated from this particular site. He states that the premises would accommodate existing businesses which needs to continue operating from the Dolphinton area, to service an established customer-base. He also states that he requires good access to the A702; a larger purpose-built site capable of accommodating the businesses' expansion and; sufficient set-back from the nearest dwellings to conserve neighbours' residential amenity. Taking account of these considerations and the applicant's inability to secure such a site within the defined boundary of Dolphinton, the applicant contends that he had no option other than to identify a site outwith the development envelope.

The applicant advises that in addition to the above, the lack of other opportunities to obtain land within the surrounding area, has been a significant factor in identifying this site as the preferred location for the business and proposed dwelling. It is acknowledged that, since submitting the application, the applicant has undertaken a further search for sites, including sites from Leadburn to Peebles and Biggar. As before, he advises that he has encountered problems with respect to land owners being unwilling to sell land, for the intended development or with respect to difficulties relating to vehicular access and movements along the local road network. Ultimately however, his main concern has been that the businesses' established operations should not be removed too far from their existing base.

The council's Economic Development service is generally supportive of the applicant's proposals. They state in their consultation response that the business is in a precarious position due to the current site owner's future aspirations for the site. Since the application was submitted, the applicant has clarified the position on the

12<sup>th</sup> of November when he confirmed that he did not have to vacate the current site by the end of 2019. He does, however, maintain that the business has outgrown its current premises and is concerned that the position at the current site could alter at short notice.

Taking account of concerns with respect to the protection of residential amenity, arrangements for vehicular parking and movement and the potential that the land owner of the current site could alter his stance, it is clear that the applicant's ability to secure an appropriate alternative site within Dolphinton is extremely limited. The applicant therefore desires to find a new site outwith Dolphinton, although with there no longer being a need to vacate the present site by the end of 2019, that requirement is no longer pressing.

Whilst the applicant's desire for a new site is acknowledged, it is still necessary to assess the location of the chosen site and the likely impacts arising from that choice. The fact that the site is highly visible is likely to accentuate those impacts, bringing into question whether this is the most appropriate site for the development being proposed. The fact that landscaping and bunding is proposed will go some way to mitigate that visibility but a significant time period will be required for the trees to grow in order to provide sufficient screening. Until that planting is substantially mature, the site will remain prominent.

The applicant has, quite reasonably, identified a site within immediate proximity to the trunk road but this proximity in itself does not justify the selection of this precise site over any and all other potential sites. It is an argument that could be applied to a number of sites. Ahead of the identification of a greenfield site, it would have been necessary to have first identified suitable brownfield land within the vicinity, such as the quarry or a farm steading.

Details have been provided of a site search involving 29 alternative sites. Many of these do not identify specific sites so much as rural land (mostly farms) within the surrounding area that have been contacted by the applicant about the possibility of selling land. No details are provided as to whether or not enquiries were made about leasing land, other than at the Garvald Quarry site. The majority of the sites have been discounted on the basis that the land owners are unwilling or unable to sell, which is not a compelling justification for the application site. It may be simply that the land owners are unwilling to sell land to allow an industrial use in the vicinity of their remaining land holding. Many have been discounted as not being available for the proposed development or raising amenity concerns. Although the applicant sets these out as barriers to development, the proposals have not been tested through the submission of planning applications. Some of these sites have been the subject of pre-application discussions but only the application site appears to meet the applicant's demanding criteria. Members will note that the applicant has also discounted a number of sites in the Tweeddale area to which the council was willing to offer "in principle" support.

Amongst these sites identified as being unavailable is Garvald Quarry, where the applicant's block-manufacturing operation is currently accommodated on land leased from the quarry owners, Tarmac. The applicant is concerned that there is likely to be a short-term need for him to relocate away from the quarry ahead of the latter being reactivated. Included in the supporting information is an email from Tarmac, dated 1 June 2017. It confirms that the position remains as it has for some years now. Namely that there is no land available for sale at present. There may be other areas [within the quarry] available but until the quarry reopens, Tarmac would not commit to selling land. It appears only to identify a long-term concern to reactivate the quarry

and does not rule out the potential to extend in area or time, any lease of the same land to the applicant. The applicant's concern is that he wishes to own the land ahead of investing in any buildings, which appears to make this and presumably other sites unavailable. The applicant's concern to buy a site and centralise his operations would appear to be a significant driver and undue weight cannot be given to this where opportunities for more flexible operating arrangements have not been sufficiently explored within the supporting details.

The supporting case has not demonstrated that the applicant's needs could only be met at this particular site. The applicant does provide replies from land owners with respect to his interest in purchasing land but the information is general and the exact terms of any expressions of interest are not fully detailed.

In summary, although the applicant wishes to relocate in order to allow the business to grow, the supporting case for the choice of site appears is not sufficiently justified. There is little justification to support this application site over any other area of land within the wider area. Nor does the case override the LDP policies which aim to protect the countryside from unjustified and inappropriate development. The applicant has not demonstrated that there is an economic and/or operational need for the particular countryside location of the site and therefore the proposal is contrary to the requirements of policy ED7.

#### Planning Policy - proposed dwellinghouse

In planning policy terms, the application site is an isolated rural site, lying as it does outwith the settlement envelope of Dolphinton. It is remote from any existing building group, where small scale residential development might be considered acceptable. In order to comply with the requirements of policy HD2, amongst other things, any new dwellinghouse proposed for this site requires special justification and would normally be supported only if it were necessary as direct operational requirement of an agricultural, horticultural, forestry or other enterprise which is appropriate to the countryside. The policy does state that such development could include businesses that could cause disturbance or loss of amenity within an existing settlement. The current site is within the settlement of Dolphinton and, as noted by one of the supporters of the application, it operates without loss of amenity to residents.

As noted in the preceding section, the case for the business has not been adequately made. If Members accept that position, it follows that there would be no need for a house at the site. On this basis alone, the proposed dwellinghouse would fail to comply with the requirements of policy HD2. Even if the case for the business is accepted, it is legitimate to consider whether there is a need for a house.

The applicant advises that he may need to operate the cement supply business at unsociable hours and prepare cement for dispatching at relatively short-notice to meet quick-turn-around or emergency contracts. It is acknowledged that the business's workers might follow that pattern and that having a worker living within a relatively short distance to the site would undoubtedly be helpful to the operation. This does not, however, translate into an overriding need for there to be a worker residing on site on a permanent basis.

It does not appear operationally necessary that the same individual would be permanently required on site to prepare cement for distribution other than in direct response to a customer's specific order. It is not disputed that the business may operate on a 24-hour, 7-days-a-week basis but this in itself does not justify any operational need for a dwellinghouse on site. It may be that this need could be

addressed by alternative work patterns, such as shift work or flexible working hours. It is, therefore, not accepted that there is any operational requirement for any worker to reside on site to meet these short-term and emergency cement supply contracts.

The applicant also justifies the permanent presence on-site of a worker for security reasons. The applicant's current premises are directly opposite his house and there are other residential properties adjacent to it. Relocating the operation to a rural site with only one house, which has only one bedroom - within what appears to be linked residential accommodation – overlooking the proposed business operation and a kitchen which has a view of the access to the site, would seem to offer less opportunity for the site to be observed. Setting aside the lack of visibility of the site from the house, it would be reasonable to ask whether any security issue might be addressed in other ways. The applicant has advised that security fencing and the use of surveillance cameras will be utilised. Details of these will need to be the subject of conditions if permission is granted. It is not clear that the need for a house is any greater than for other business operators, for example, on an industrial estate where there would be equivalent needs and concerns to store valuable vehicles and equipment securely. It might be argued that a small scale "office" unit for a duty worker or watchman could fulfil the need, rather than a family home for the applicant himself. This point was raised by the Reporter in her decision notice of the appeal for the previous proposal.

Taking account of all of the above, the applicant has not demonstrated compliance with the requirements of section (F) - Economic Requirement - of policy HD2. There is no justifiable operational requirement for a residential property to be located outwith the settlement envelope for the purpose of supervising a cement supply business and a concrete block manufacturing and supply business. This would seem to reinforce the view that this is not the appropriate location to establish the business.

Even if it were accepted that the applicant has a justifiable operational need to be accommodated near his business premises, it would be appropriate to have considered locations where there was already an existing house, ahead of establishing a new site which could then only be served by a new house. It is a requirement of policy HD2 that new housing should be permitted only where no suitable existing house or other building capable of conversion to residential use is available.

If Members do accept the case for the house, it would be legitimate to require that the dwellinghouse should be constructed at the same time as - or after - the business premises buildings, in order to avoid the risk that a new dwellinghouse is built in the countryside and the business is not. It would also be appropriate to require by condition that the house should be retained within the same planning unit as the business premises and be occupied only by someone who works within or has retired from, the associated business premises. This would also ensure that the operation of the business premises would have no unacceptable impacts upon the amenity of the occupants of the residential property. In addition, a condition should be imposed to prevent the "granny flat" becoming disassociated with the main house, thereby preventing an additional residential unit being formed. If it were to become a separate residential unit, additional developer contributions would be required for education provision and affordable housing.

## **Protection of carbon rich soils**

Policy ED10 aims to protect carbon rich soils, specifically by requiring that development on carbon rich soils should be refused unless: the land is allocated for development within the local plan; the development meets an established need that cannot be met by any other site and/or; the development is small scale and directly related to a rural business.

The applicant advises that the specific on-site conditions are not favourable to the conservation of deep peat deposits. This includes a history of cyclical ploughing, sowing and ongoing improvement of the land for farming through field drainage and fertilizer applications. Further, he advises that construction would be a one-off event, unlikely to release any more carbon than the continuation of farming at the site. He maintains that the quality of carbon rich soils at the site is now liable to be sufficiently diminished that the proposal would not be liable to have any unacceptable impacts upon this resource. It is irrelevant whether or not soil stripped from the surface of the site will actually be removed from the site. The very act of developing the site as proposed will destroy or at the very least significantly degrade the carbon rich soil resource.

The applicant's evidence on this matter is not comprehensive and does not in itself reasonably allow policy ED10 to be set aside. The policy identifies circumstances when it would be appropriate to allow development to be accommodated, where it otherwise meets the policy's requirements. These largely mirror the considerations that are assessed under policies PMD4, ED7 and HD2, as detailed above.

Accordingly, in line with a recommendation that the development of this particular rural site for the proposal has not been substantiated and since there is no operational justification for a house on this land, it would follow that the proposal would also not comply with policy ED10, in that the impact on a designated area of carbon rich soils is unnecessary and unacceptable.

## **Design and layout**

It is accepted that a robust landscaping scheme and the selection of dark coloured cladding could provide sufficient landscape and visual mitigation of the appearance of the portal framed sheds. The landscaping will, however, take time to establish. Strong screening at lower levels from the proposed bunding and the proposed tree planting could also form an acceptable containment of any external yard areas. Conditions would be required for this.

In other circumstances, the proposed design of house would have raised considerably more concerns than it does here. However, as an isolated residential property that would be located behind considerably larger buildings and with appropriate landscaping treatment, the house would have relatively minimal landscape and visual impacts in views from the A702 and the surrounding countryside. The external appearance could be the subject of conditions.

## **Road safety, access and parking**

Notwithstanding objectors' concerns about road safety on this stretch of the A702, Transport Scotland has raised no objection, subject to suggested conditions. The council's Roads Planning Service has not raised any objection in principle to the relocation of the existing business and noted that the proposal will remove any conflict between residential and industrial traffic at the existing site. There is ample

land within the application site for the provision of parking for both the house and the proposed business.

### **Landscape and visual impacts**

The site is currently highly visible from the main road and any landscaping required to mitigate the visual effects of the proposal will need to be significant and may take several years to fully establish. The Landscape Architect does not object to the application, subject to the imposition of conditions should the application be granted. The proposals for landscaping of the site, reflect largely what was suggested previously by the council's Landscape Architect. It is noted that the landscaping on the south western boundary of the site is rather sparse and agree with the Landscape Architect that this should be more robust, given the stand of trees to the south west of the site is outwith the control of the applicant and could be removed, leaving the site visible from the south west.

Much of the land that is shown as being set aside for tree planting is not within the application site although the applicant intends to purchase that land. The applicant has supplied a letter confirming the current land owner's stated intention to sell this additional land to the applicant, as part of any purchase of the application site. This and other landscaping matters would require to be regulated by conditions.

It would also be necessary, if permission were granted, to require the approval of the finished floor and ground levels. Similarly, the details of the finished appearance of any bunded feature, including heights and profile would also be the subject of conditions, to ensure a satisfactory finished landscaped appearance for the site.

### **Residential amenity**

The rural location of the proposal is likely to mean that the businesses' operations would not have any unacceptable impacts upon the amenity of the nearest residential properties. Although Environmental Health did not provide a consultation response, appropriately worded conditions could address any concerns which might have been raised by them.

The applicant's proposal to operate 7 days a week and potentially on a 24 hour basis raises concerns about light pollution during hours of darkness. No specific lighting proposals have been set out within the application although there is a statement from the applicant dated March 2017 which notes that obtrusive lighting installations have a negative impact on the appearance of the night-time environment and can lead to complaints. There is potential for lighting to be installed as permitted development (e.g. as lights on buildings) but in the event of approval, it would still be appropriate to condition the provision of details for lighting in order to meet the applicant's stated intent that lighting will be appropriate to the character of the surrounding rural area.

### **Cultural heritage and archaeology**

The Archaeology Officer has not objected but has suggested a condition if the event that planning permission is granted

### **Natural heritage**

The Council's Ecology Officer and SNH are satisfied that the proposals would have no unacceptable impacts upon the natural heritage interests at the site and the

surrounding area. Conditions are suggested for any permission which might be granted.

### **Infrastructure**

Members will note that SEPA did not object to the proposed development subject to the imposition of conditions. A CAR licence will be required for foul drainage proposals and PPC permit for onsite activities. Water supply will be from the public mains.

### **Developer contributions**

If planning permission is granted, developer contributions will be required for education provision in accordance with policy IS2. A legal agreement will be necessary to secure that contribution before permission (if it is to be granted) is issued. As noted above, if the linked residential accommodation became a distinct dwellinghouse, additional contributions would be required at that stage. Members should be aware that an updated planning processing agreement would be offered to the applicant to account for the additional actions and timeframe required to secure the Legal Agreement.

### **Future use**

There is a possibility that the site might end up being used by a different business and the house may become separated from the business on which it was predicated. Once established, other businesses within the same use classes could benefit from the permission. It is unlikely the proposed buildings would be used for farming and new uses, most likely new commercial uses, could operate from the buildings without the need for further permission from the council. If permission were to be granted, it would therefore be advisable to restrict by condition the use to that proposed by the applicant, to ensure that there would be full and appropriate scrutiny of any potential successor business operations.

### **CONCLUSION**

The proposed business premises for a mixed Class 5 and Class 6 business operation does not comply in principle with LDP policies PMD4, ED7 or ED10 in that the applicant has not demonstrated any overriding economic and/or operational need for it to be located in this particular countryside location.

The proposed dwellinghouse will not meet any direct operational requirement of an agricultural, horticultural, forestry or other enterprise which is itself appropriate to the countryside. It therefore does not comply in principle with LDP policies PMD4, HD2 or ED10.

The proposal relates to a site that lies outwith a development boundary defined in the LDP and no overriding reasons have been advanced to substantiate that it is a job-generating development in the countryside that has an economic justification under Policy ED7 or HD2 or, that it is a development that would offer significant community benefits that would outweigh the need to protect the defined development boundary. As such, the proposal does not comply in principle with LDP policy PMD4.

Notwithstanding the potential to realise benefits both to the applicant's businesses and wider local economy and indirectly to the amenity of residential properties



around the applicant's existing premises in Dolphinton, there are no other material considerations that would justify a departure from the provisions of the LDP.

**RECOMMENDATION BY CHIEF PLANNING AND HOUSING OFFICER:**

I recommend the application is refused for the following reasons:

- 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 2016 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 2016 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 2016.

**DRAWING NUMBERS**

BMIX01 PL001	Location Plan
BMIX01 PL002 D	Site Plan
BMIX01 PL003 B	Floor Plans
BMIX01 PL003 C	Floor Plans
BMIX01 PL004 A	Elevations
BMIX01 PL005	Floor Plans
BMIX01 PL006	Elevations
BMIX01 PL0011	Section

**Approved by**

Name	Designation	Signature
Ian Aikman	Chief Planning and Housing Officer	

The original version of this report has been signed by the Chief Planning and Housing Officer and the signed copy has been retained by the Council.

**Author(s)**

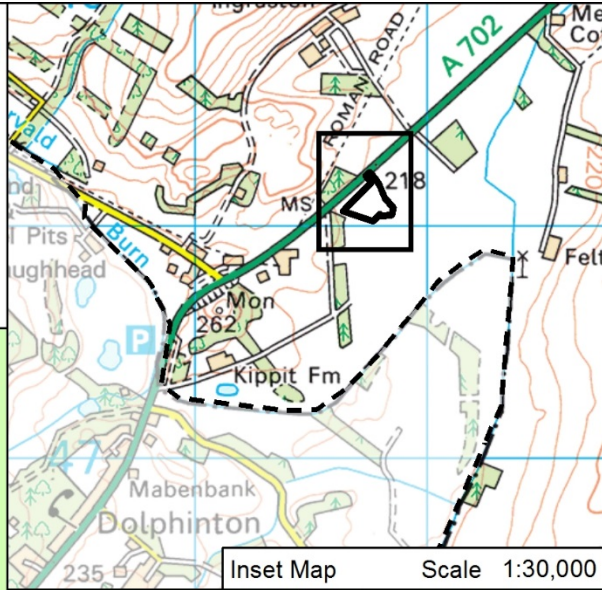
Name	Designation
Ranald Dods	Planning Officer





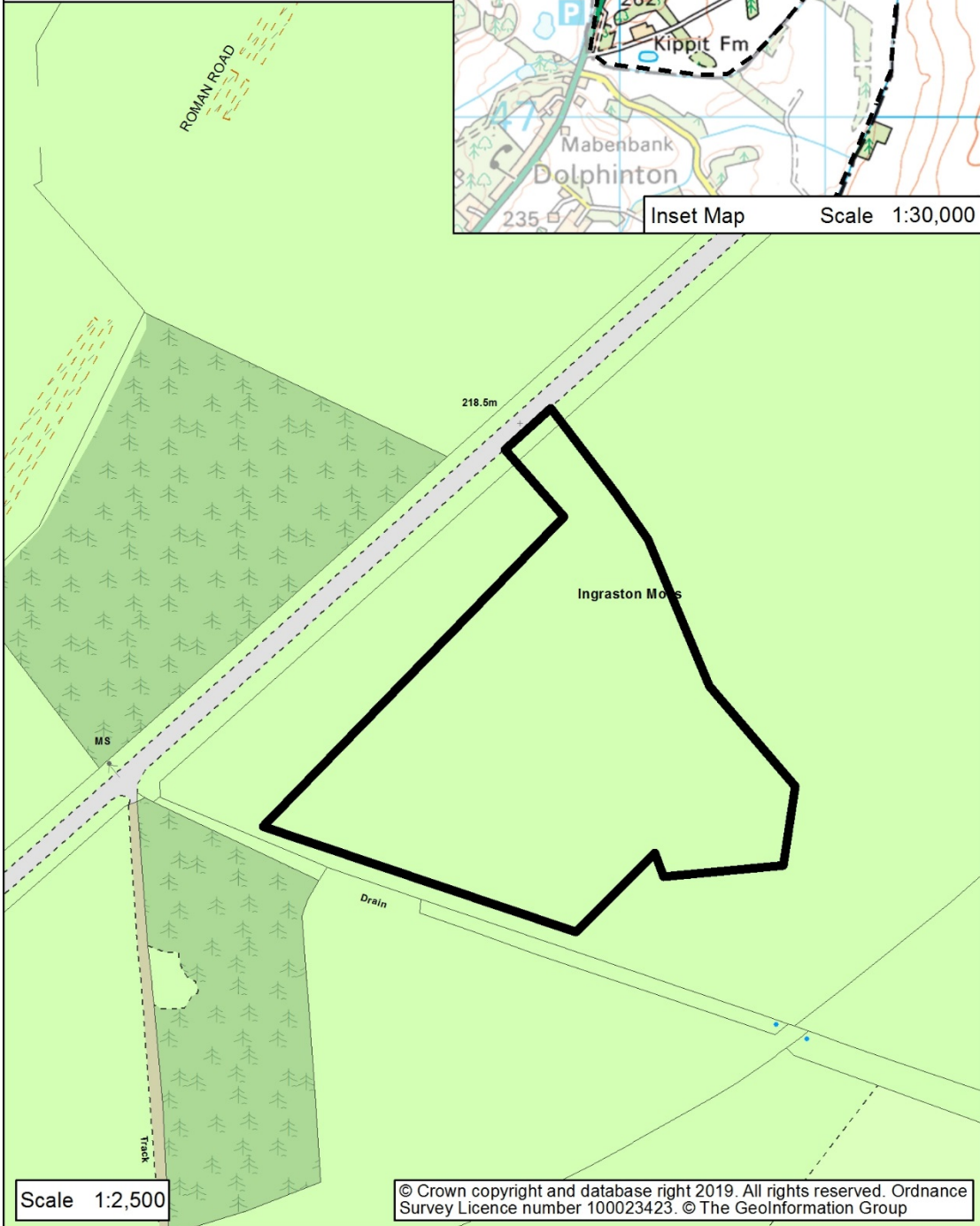
18/01377/FUL

Land North East Of  
3 The Old Creamery  
Dolphinton



Inset Map

Scale 1:30,000



Scale 1:2,500