
PLANNING APPEALS & REVIEWS

Briefing Note by Chief Planning & Housing Officer

PLANNING AND BUILDING STANDARDS COMMITTEE

2nd March 2020

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

Nil

- 2.2 Enforcements

Nil

- 2.3 Works to Trees

Nil

3 APPEAL DECISIONS RECEIVED

- 3.1 Planning Applications

- 3.1.1 Reference: 17/00226/FUL
Proposal: Erection of a windfarm comprising of 7 wind turbines 126.5m high to tip, associated infrastructure, ancillary buildings and temporary borrow pits
Site: Land North West of Gilston Farm, Heriot
Appellant: Gilston Hill Windfarm Ltd

Reasons for Refusal: The proposal is contrary to Adopted Scottish Borders Council Local Development Plan Policy ED9 in that it would have relevant unacceptable significant adverse impacts or effects that cannot be satisfactorily mitigated, and which are not outweighed by the wider economic, environmental and other benefits that would otherwise be derived from its siting and operation at the site. In particular:

- The scale, form and location of the development proposed would represent a significant, detrimental change to the existing landscape character and visual amenity of the immediate locality and the wider area, and would also result in unacceptable cumulative landscape and visual impacts through its contribution to views within which it would be visible alongside surrounding wind farm schemes; and
- It would present a hazard to aviation safety both as an obstacle to aircraft and in its potential to disrupt radar operations at Kincardine and Edinburgh Airport.

Informatives – 1. It has not been demonstrated that the proposals would not have unacceptable impacts upon a Protected Species, specifically badgers, whose setts are liable to be impacted by the operation of one of the borrow-pits. 2. It has not been demonstrated that the proposals would not have unacceptable impacts upon Priority Species, specifically butterflies, whose habitat may be impacted by the development. 3. It has not been demonstrated that the proposals would not have any unacceptable impacts upon a private water supply.

Reason for Appeal: The Appeal decision has been successfully challenged and the Court of Session has returned the case to the DPEA to be re-determined.

Method of Appeal: Written Representations, Further Written Submissions & Site Visits

Reporter’s Decision: Dismissed

Summary of Decision: The Reporter, Mike Shiel, in reaching his decision considered the environmental information that was submitted with the original application in 2017. In view of the time elapsed since then, the reporter gave the appellant and the council the opportunity to submit further information relating to the most recent policy considerations. The reporter also gave third parties the opportunity to comment on the further environmental information received. The reporter considered the development plan, the impact on landscape, residential amenity, ecology, cultural heritage, and the environment. He also considered noise, shadow flicker and aviation safety. The reporter stated that he does not believe the energy benefits associated with this development would be sufficient to outweigh its adverse environmental impact. The reporter concluded that the proposed development does not accord overall with the relevant provisions of the development plan. There are no material considerations, which would justify granting planning permission. The reporter considered all the other matters raised, but there were none which would lead him to alter his conclusions and he therefore dismissed the appeal.

3.2 Enforcements

- 3.2.1 Reference: 19/00160/UNDEV
 Proposal: Erection of a boundary fence forward of the front elevation greater than 1m in height
 Site: Silver Grange, Old Greenlaw Farm, Greenlaw, Duns
 Appellant: Jill Calder
- Reason for Notice: Without planning permission, erected a fence upon the Land Affected.

Grounds of Appeal: The new 1.8m fence replaces an existing hedge/fence which was 2m in height and was burnt down by the appellants neighbour. The appellants position is that whilst failing part (b) and (c) of class 3E (2) of the GPD, part (c) clearly states that "development is not permitted by this class if it replaces or alters an existing gate, fence, wall or other means of enclosure and exceeds whichever is the greater of the original height or the heights described in sub paragraphs (a) and (b). There is no interpretation in part 1 of the legislation that outlines any timescales for replacement. Nor can the appellant find anything in the legislation relating to the materials used must be like for like to the original boundary. The appellants position is that as her neighbour destroyed her boundary, without her knowledge, and ongoing construction works undertaken to erect the appellants dwellinghouse, that replacing the original boundary was done as soon as reasonably practicable.

Method of Appeal: Written Representations & Site Visit

Reporter's Decision: Dismissed

Summary of Decision: The Reporter, Chris Norman, upheld the enforcement notice, but has varied the terms of the notice and allowed a period of 3 months for the requisite work to be carried out.

3.3 Works to Trees

Nil

4 APPEALS OUTSTANDING

4.1 There remained no appeals previously reported on which decisions were still awaited when this report was prepared on 20th February 2020.

5 REVIEW REQUESTS RECEIVED

5.1 Reference: 18/01194/FUL
Proposal: Erection of dwellinghouse, garages and associated access
Site: Land North West of Town O Rule Farmhouse
Bonchester Bridge, Hawick
Appellant: Mr Jamie Reddihough

Reasons for Refusal: 1. It is contrary to Adopted Local Development Plan Policies HD2 and PMD2, and to the guidance of the Supplementary Planning Guidance on New Housing in the Borders Countryside (2008) and Placemaking and Design (2010), in that the development would not in its layout, scale and design, respect the amenity and character of the site and surrounding area, principally in that: (a) it would be unnecessarily and unacceptably over-dominant both relative to the site (including the existing building), its surroundings, and also within the context of the wider landscape; and (b) it would be out-of-scale with the site, in that it would project outwith what is reasonably understood to be the most legible definition and setting of the farmyard site and building group, principally in that it would be accommodated over an existing farm track and would be accompanied by a new farm access in a location further to

the southwest, without these resultant visual impacts being justified operationally, or acceptably mitigated within views from the public realm. 2. It is contrary to Adopted Local Development Plan Policy EP1 in that it has not been demonstrated to the Planning Authority's satisfaction that the proposal would not have a likely significant effect on a European Protected Species or its habitat.

5.2 Reference: 19/01629/PPP
Proposal: Erection of dwellinghouse and associated infrastructure
Site: Walled Garden Ashiestiel Mansion House, Galashiels
Appellant: Mr Simon Brown

Reason for Refusal: The development would be contrary to Policy HD2 of the Local Development Plan 2016 and New Housing in the Borders Countryside Guidance 2008 because it would constitute housing in the countryside that would be insufficiently related to an established building group and would not be sympathetic to the area's character and sense of place. An economic case has not been substantiated and there are no other material considerations that would be sufficient to outweigh this policy conflict

6 REVIEWS DETERMINED

6.1 Reference: 19/00514/FUL
Proposal: Erection of dwellinghouse
Site: Land South West of Carlenrig Farm, Teviothead, Hawick
Appellant: Mr Walter Douglas

Reason for Refusal: The proposal is contrary to Adopted Local Development Plan Policies HD2 and PMD2, in that: (i) the development would not in its siting, respect the amenity and character of the site and surrounding area, principally by resulting in new development that would be unnecessarily and unacceptably over-dominant within the landscape by interrupting the skyline in views from the public realm; and (ii) it has not been demonstrated within the supporting details that the proposal would not be accommodated in an overly-contrived and artificial way, relative to the existing natural ground levels, and/or that any such visual impacts resulting from any extensive and significant alterations to ground works would be acceptably mitigated within views from the public realm; and (iii) it would in combination with the development proposed by Prior Notification 19/00515/AGN, also contribute to a highly visible spread of development across the skyline, which would in its randomly-spaced and dispersed form, register as an unusually prominent and incongruous form of development, which would be notably out-of-keeping with the rural character of the surrounding landscape; an effect that would be exaggerated by any overly-contrived and artificial accommodation of the building.

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Overturned (Subject to conditions, Informatives and a S75 Legal Agreement)

6.2 Reference: 19/00857/FUL

Proposal: Erection of fence
Site: Land South East of Bungalow, Denholm Mill,
Denholm
Appellant: Denholm Mill Proprietors Association

Reason for Refusal: The proposed development would be contrary to Policies EP9 and PMD2 of the Scottish Borders Local Development Plan 2016 in that it would represent a prominent and incongruous form of development that would have an adverse impact on the character and appearance of the Conservation Area.

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Upheld

6.3 Reference: 19/01000/PPP
Proposal: Erection of dwellinghouse and garage
Site: Land East of Auburn Cottage, Ashkirk
Appellant: Mr & Mrs C W Davies

Reason for Refusal: The proposed development is contrary in principle to Adopted Local Development Plan Policy HD2 and the advice of Supplementary Planning Guidance - New Housing in the Borders Countryside (December 2008) and Supplementary Planning Guidance - Place-Making and Design (January 2010) in that it is not in keeping with the character, sense of place and setting of the building group, or with the landscape and amenity of the surrounding area, principally through the unsympathetic extension of the building group beyond its defined sense of place, which would also constitute and promote a 'ribbon' form of development, extending along the public road, northeastwards, into the open countryside, with no immediate or obvious containment of development in this direction. The provision of a tree belt, as proposed, will not provide acceptable mitigation against the landscape and visual impact of the development.

Method of Review: Review of Papers

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

7 REVIEWS OUTSTANDING

7.1 There remained one review previously reported on which a decision was still awaited when this report was prepared on 20th February 2020. This relates to a site at:

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|---|--|
| <ul style="list-style-type: none">Garden Ground of 7 Heriot House, Heriot | <ul style="list-style-type: none"> |
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8 SECTION 36 PUBLIC LOCAL INQUIRIES RECEIVED

Nil

9 SECTION 36 PUBLIC LOCAL INQUIRIES DETERMINED

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 20th February 2020. This relates to sites at:

• Fallago Rig 1, Longformacus	• Fallago Rig 2, Longformacus
• Crystal Rigg Wind Farm, Cranshaws, Duns	•

Approved by

Ian Aikman
Chief Planning & Housing 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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