
PLANNING APPEALS & REVIEWS

Briefing Note by Chief Planning & Housing Officer

PLANNING AND BUILDING STANDARDS COMMITTEE

18th May 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

- 2.1.1 Reference: 19/00191/FUL
Proposal: Erection of 8 No wind turbines with a maximum tip height of 130m, formation of access tracks, borrow pit, temporary construction compound, erection of control building, onsite substation and associated infrastructure and energy storage compound for up to 4MW
Site: Land North of Carcant Lodge Wull Muir Wind Farm, Heriot
Appellant: Energiekontor UK Ltd

Reason for Refusal: The proposal is contrary to Scottish Borders Council Local Development Plan 2016 Policy ED9, the "Renewable Energy" Supplementary Guidance and the Landscape Capacity and Cumulative Impact Study, in that it would have unacceptable significant adverse impacts on the landscape and aviation that cannot be satisfactorily mitigated and are not outweighed by the wider socio-economic and renewable energy benefits that could otherwise be derived from the development. In particular: 1. the scale, form and location of the development would represent a significant, detrimental change to the existing landscape character of the area, impacting adversely on the scale, appreciation and character of not only the Landscape Character Area containing the site, but also upland fringe and lowland Landscape Character Areas that lie close to, and interact with the site including a number of Special Landscape Areas. 2. the scale, form and location of the development is poorly contained within the wider landscape, especially from the north, resulting in significant adverse visual impacts from a variety of sensitive receptors in the area, including settlements, roads, paths and hill summits. 3. the development would result in unacceptable cumulative landscape and visual impacts, through greater prominence and perceived height and proximity when viewed with surrounding wind farm

schemes, creating a windfarm landscape along the Lammermuir/Moorfoot Escarpment by extending such development westwards into an area currently with little development. 4. the development would have unacceptable impacts on defence and aviation safety as it would potentially disrupt Air Traffic Control Radar operated from Deadwater Fell at RAF Spadeadam.

Reason for Appeal: The Appellants contend that the development is acceptable in landscape and visual terms and is encouraged in the Council's Spatial Strategy. They state that the development would have no significant effects on designated landscapes nor on residential amenity and there would also be no significant cumulative effects. They conclude that the development accords with the Local Development Plan, especially since the declaration of climate emergency and the need for greater weight, above and beyond Scottish Planning Policy, to be applied to renewable energy developments to meet carbon reduction targets. They also believe that the reason for refusal relating to defence interests has been met by the MOD withdrawal of objection.

Method of Appeal: Written Representations

2.2 Enforcements

2.2.1 Reference: 19/00206/UNDEV
Proposal: Erection of structure
Site: Land West of 1 Linthaugh Farm Cottage, Jedburgh
Appellant: Mr Neil Gilmour

Reason for Notice: It appears to the Council that the above breach of planning control has occurred within the last 4 years. A building has been erected on land without the benefit of permitted development or planning permission. The owner of the land has been provided with the opportunity to submit a retrospective planning application to regularise the breach in planning control however has declined to submit such an application at this time.

Grounds of Appeal: 1. The breach of control which is alleged in the notice has not occurred. 2. When the Notice was issued it was already too late to take enforcement action. 3. The steps required by the notice are excessive and less onerous steps would remedy the breach or to any injury to amenity which has been caused by any such breach.

Method of Appeal: Written Representations

2.3 Works to Trees

Nil

3 APPEAL DECISIONS RECEIVED

3.1 Planning Applications

Nil

3.2 Enforcements

Nil

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 11th May 2020.

5 REVIEW REQUESTS RECEIVED

- 5.1 Reference: 18/00748/FUL
Proposal: Variation of Condition 1 of planning permission 13/01081/FUL to allow the lifespan of the application to be extended by a further three years
Site: Plot 1 Land South East of Mounthooly House, Jedburgh
Appellant: Bentley Developments

Reason for Refusal: The development would be contrary to Policy IS8 of the Local Development Plan 2016 in that the site is at risk of flooding to the extent that there is no safe access/egress route resulting in risk to life and, in addition, development on the functional floodplain may displace the capacity to convey and store flood water, materially increasing the risk of flooding elsewhere and putting people and property at risk.

- 5.2 Reference: 18/00749/FUL
Proposal: Variation of Condition 1 of planning permission 13/01082/FUL to allow the lifespan of the application to be extended by a further three years
Site: Plot 2 Land South East of Mounthooly House, Jedburgh
Appellant: Bentley Developments

Reasons for Refusal: The development would be contrary to Policy IS8 of the Local Development Plan 2016 in that the site is at risk of flooding to the extent that there is no safe access/egress route resulting in risk to life and, in addition, development on the functional floodplain may displace the capacity to convey and store flood water, materially increasing the risk of flooding elsewhere and putting people and property at risk.

- 5.3 Reference: 19/00193/FUL
Proposal: Demolition of dwellinghouse and erection of two dwellinghouses
Site: Benrig, 1 Cuddyside, Peebles
Appellant: Mr Robert Harrison

Reasons for Refusal: 1. The development is contrary to policy PMD2 of the Local Development Plan 2016 in that the design would not be appropriate to the setting and would not be compatible with the neighbouring built form. It would also be detrimental to the amenity of

the surrounding area in that it would be result in extra vehicular traffic on a sub-standard access to the detriment of road safety. Other material considerations do not outweigh this conflict with policy. 2. The development is contrary to policy PMD5 of the Local Development Plan 2016 in that it would lead to over-development of the site, would not be visually appropriate or sympathetic to and would have an adverse visual impact on the character of the surrounding area. Other material considerations do not outweigh this conflict with policy. 3. The development is contrary to policy IS7 of the Local Development Plan 2016 in that the appropriate parking provision has not been provided which would be to the detriment of road safety. Other material considerations do not outweigh this conflict with policy. 4. The development is contrary to policy IS8 of the Local Development Plan 2016 in that the proposed development will result in a material increase in the number of properties within the functional floodplain and may likely be at significant risk of flooding. Other material considerations do not outweigh this conflict with policy.

- 5.4 Reference: 19/01019/FUL
Proposal: Installation of replacement windows (retrospective)
Site: 10 Exchange Street, Jedburgh
Appellant: Mr Anthony Williams

Reason for Refusal: The development is contrary to policies PMD2 and EP9 of the Scottish Borders Local Development Plan 2016 and the Supplementary Planning Guidance on Replacement Windows and Doors 2015 in that the windows are of an inappropriate design for the character of the building and do not preserve or enhance the character and appearance of the Conservation Area.

- 5.5 Reference: 19/01432/PPP
Proposal: Erection of two dwellinghouses and associated works
Site: Land North West of Quarry Bank, Hume
Appellant: Mr Andrew Thomson

Reason for Refusal: The proposed development fails to comply with Policy HD2 of the Scottish Borders Local Development Plan 2016 and Supplementary Planning Guidance 'New Housing in the Borders Countryside 2008' as it would not relate well to the existing building group, it would break into an undeveloped field, it would result in ribbon development and it would not be sympathetic to the area's character or sense of place. Furthermore, the development would not comply with Policy PMD2 as it has not been demonstrated that adequate linkages with adjoining built up areas could be achieved.

- 5.6 Reference: 19/01611/FUL
Proposal: Erection of dwellinghouse with attached garage
Site: Disused Sawmill, Cowdenknowes, Earlston
Appellant: Mr Francis Peto

Reason for Refusal: The proposed development would be contrary to Policy HD2 - Housing in the Countryside of the adopted Scottish Borders Local Development Plan 2016 in that the proposed dwelling would be located on land outwith the identifiable limits of the building group separated from existing buildings by mature woodland, and the need for the dwelling has not been substantiated. The erection of a dwelling on this site would not be well related to the existing group and would therefore

represent sporadic, prominent and unjustified development in the open countryside.

- 5.7 Reference: 19/01645/FUL
Proposal: Erection of dwellinghouse and detached garage
Site: Land South West of 3 Mill Lade, Blyth Bridge
Appellant: Mr & Mrs William Rose

Reasons for Refusal: 1. The development would be contrary to policy HD2 of the Local Development Plan 2016 and New Housing in the Borders Countryside Guidance 2008 in that it would not relate sympathetically to the character of an existing building group or surrounding landscape. 2. The development would be contrary to policy PMD2 of the Local Development Plan 2016 and Placemaking and Design 2010 in that it would be unsympathetic to the character of the surrounding area and it would fail to make a positive contribution to the sense of place. 3. The development would be contrary to policy PMD4 of the Local Development Plan 2016 in that it would be development beyond the settlement boundary for which there is insufficient justification and it would lead to an isolated house in the countryside with a resulting adverse impact on the character of the surrounding area. 4. The development would be contrary to policy IS8 of the Local Development Plan 2016 in that the applicant has failed to prove that the proposed development will not be at risk of flooding or materially increase the probability of flooding elsewhere. 5. The development would be contrary to policies EP1, EP2 and EP3 of the Local Development Plan 2016 and Biodiversity guidance in that the applicant has failed to prove that the development will not have an adverse effect on European Protected Species or other protected species and habitats which may be present on or adjacent to the site.

- 5.8 Reference: 19/01646/PPP
Proposal: Erection of dwellinghouse, workshop/garage and associated works
Site: Land South East of Tarf House, West Linton
Appellant: Mr Erlend Milne

Reasons for Refusal: 1. The development would be contrary to policy HD2 of the Local Development Plan 2016 and New Housing in the Borders Countryside Guidance 2008 in that it would amount to sporadic residential development in a countryside location unrelated to a building group and an overriding economic case for a dwellinghouse has not been substantiated. 2. The development would be contrary to policy ED7 of the Local Development Plan 2016 in that it has not been demonstrated that there is an overriding need for the saddlery/leather goods business to be located within this particular countryside location and its resulting development would adversely affect the rural character of the surrounding area.

- 5.9 Reference: 19/01784/FUL
Proposal: Part change of use from garage/storage and alterations to form workshop and storage for joinery business
Site: Buccleuch Hotel, Trinity Street, Hawick
Appellant: Mr Stephen Cranston

Reasons for Refusal: 1. The proposal is contrary in principle to Policy ED2 of the Local Development Plan 2016, in that the need for the proposal to operate from this specific location - which is neither an existing or allocated business or industrial site nor an allocated mixed use or

redevelopment site - has not been adequately justified; it has not been demonstrated that there would be any significant economic and/or employment benefit from the proposal being sited and operating as proposed; and it has not been demonstrated that the proposal is capable of co-existing satisfactorily with adjoining uses, specifically in that it has the potential to generate noise nuisance impacts that would be liable to have unacceptable impacts upon the residential amenity of existing and consented dwellings within the surrounding area contrary to Policy HD3 of the Local Development Plan 2016. Moreover, the proposal would be most appropriately accommodated on an existing or allocated business and industrial site, where provision exists to accommodate its impacts upon the amenity and environment of the site and surrounding area. There are no other material considerations that would be sufficient to outweigh this policy conflict. 2. The proposal is contrary to Policy PMD2 and Policy ED3 of the Local Development Plan 2016, in that it is not compatible with, and does not respect, the character of the surrounding area and neighbouring uses including the Town Centre. 3. The proposal is contrary to Policy EP1 of the Local Development Plan 2016, in that it has not been adequately demonstrated that it would not have any unacceptable impact upon a European Protected Species; specifically bats; or their habitat.

6 REVIEWS DETERMINED

Nil

7 REVIEWS OUTSTANDING

7.1 There remained 3 reviews previously reported on which decisions were still awaited when this report was prepared on 11th May 2020. This relates to sites at:

• Garden Ground of 7 Heriot House, Heriot	• Land North West of Town O Rule Farmhouse Bonchester Bridge, Hawick
• Walled Garden Ashiestiel Mansion House, Galashiels	•

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 11th May 2020. This relates to sites at:

• Fallago Rig 1, Longformacus	• Fallago Rig 2, Longformacus
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| <ul style="list-style-type: none"> Crystal Rigg Wind Farm, Cranshaws, Duns | <ul style="list-style-type: none"> |
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Approved by

**Ian Aikman
Chief Planning & Housing Officer**

Signature

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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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