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Scottish Borders Council  
Planning and Regulatory Services  
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**Appeal Statement with Notice of Review against refusal of Planning Application 20/00132/PPP for the rection of Treehouse and associated walkway for use as a Holiday Let**

Site – Sandystones Ancrum Jedburgh TD8 6UP

Applicant – Sandystones Ltd

### **Proposal**

To erect a Treehouse on stilts set within a treeline of a haugh field near the River Ale with a walkway leading to it. Existing trees would be incorporated within the walkway access. The proposed Treehouse would be used as a holiday let to cater for the Scottish Borders tourism market which is in an expansion phase, as staycation becomes more popular. The proposed floor area of the Treehouse would be 45 sqm, housing a studio apartment layout aimed at couples and/or families of 4-5.

This application is for planning permission in principle, the full design of the Treehouse is to be confirmed, but it is thought that it will be a larch clad timber frame with a pitched roof clad in slate. The use of sustainable materials is fundamental to the Treehouse's site and situation.

### **Diversification**

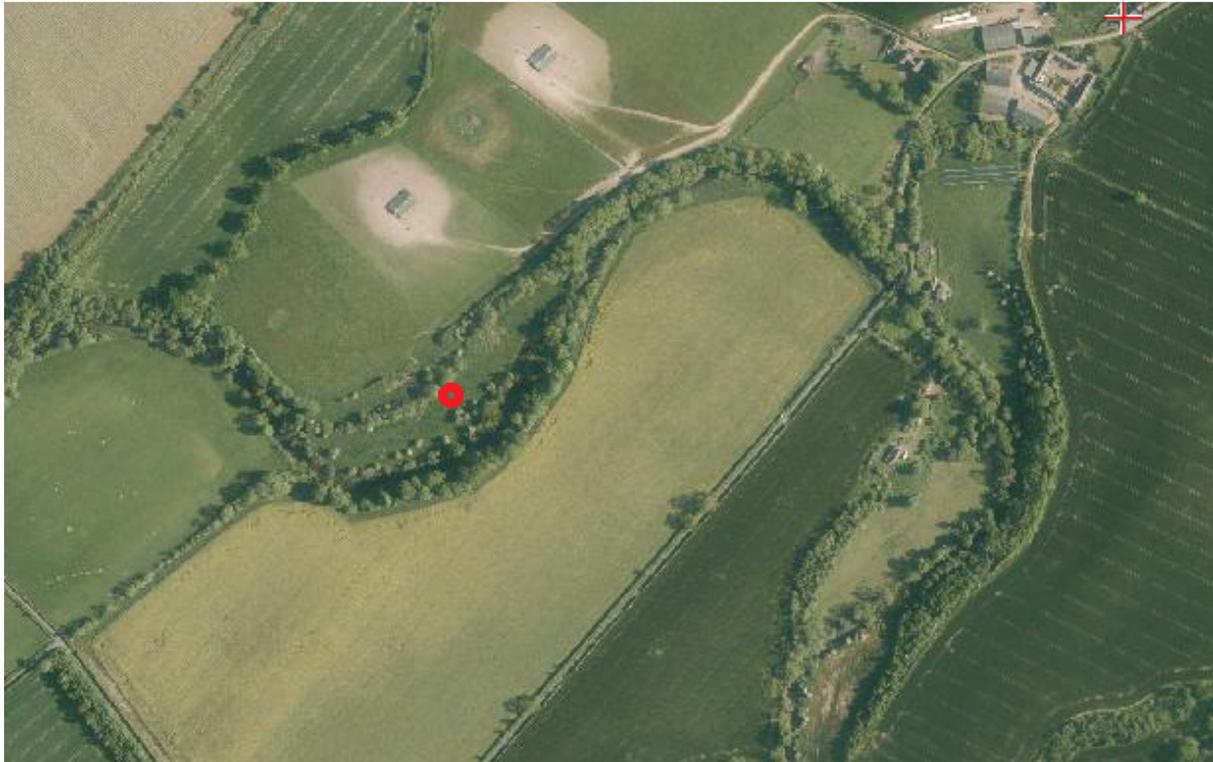
Sandystones is a relatively small agricultural unit of some 400 acres. A number of diversifications ensure the business spreads its risk and improves viability. Without diversifications, the business would not be able to provide the current 4 full time jobs. The proposed Treehouse is a further diversification which aims to further broaden the business's base, creating an additional income stream and further employment.

Tourism is an important facet of the Scottish Borders local economy. This proposal would add to the current offering of accommodation in the Scottish Borders. The Treehouse is a niche type of holiday let and we envisage demand will be high, bringing a steady supply of tourism into the Scottish Borders.

### **Sustainability**

It is important that the proposed Treehouse assimilates with its surrounds to provide a low carbon, sustainable holiday house which connects to the Scottish Borders Countryside. Construction is to be carried out using sustainable materials where possible. The sub-structure (below habitable and access walkway level) is to be formed with a steel posts clad in timber to integrate with its surroundings. The superstructure (from habitable and access walkway level up) is to be a timber frame and deck. The roof is likely to be clad with welsh slate. External walls are to be clad with timber boarding, probably larch or similar. Sheep's wool insulation is to be used to create a warm, natural and efficient internal environment.

Electricity will be provided via the Sandystones photovoltaic panel array. An existing supply cable is located on the edge of the site.



Overhead view of site location

### **Site servicing for water and foul**

Servicing of the Treehouse will include an existing mains water connection already in the vicinity. A private treatment plant will be located on-site to take foul drainage. A suitable tail drain or soakaway will be located in the vicinity of the treatment plant. Both the treatment plant and soakaway are located out with the flood plain.

Rainwater will be piped to a soakaway. A SUDS system will be employed.

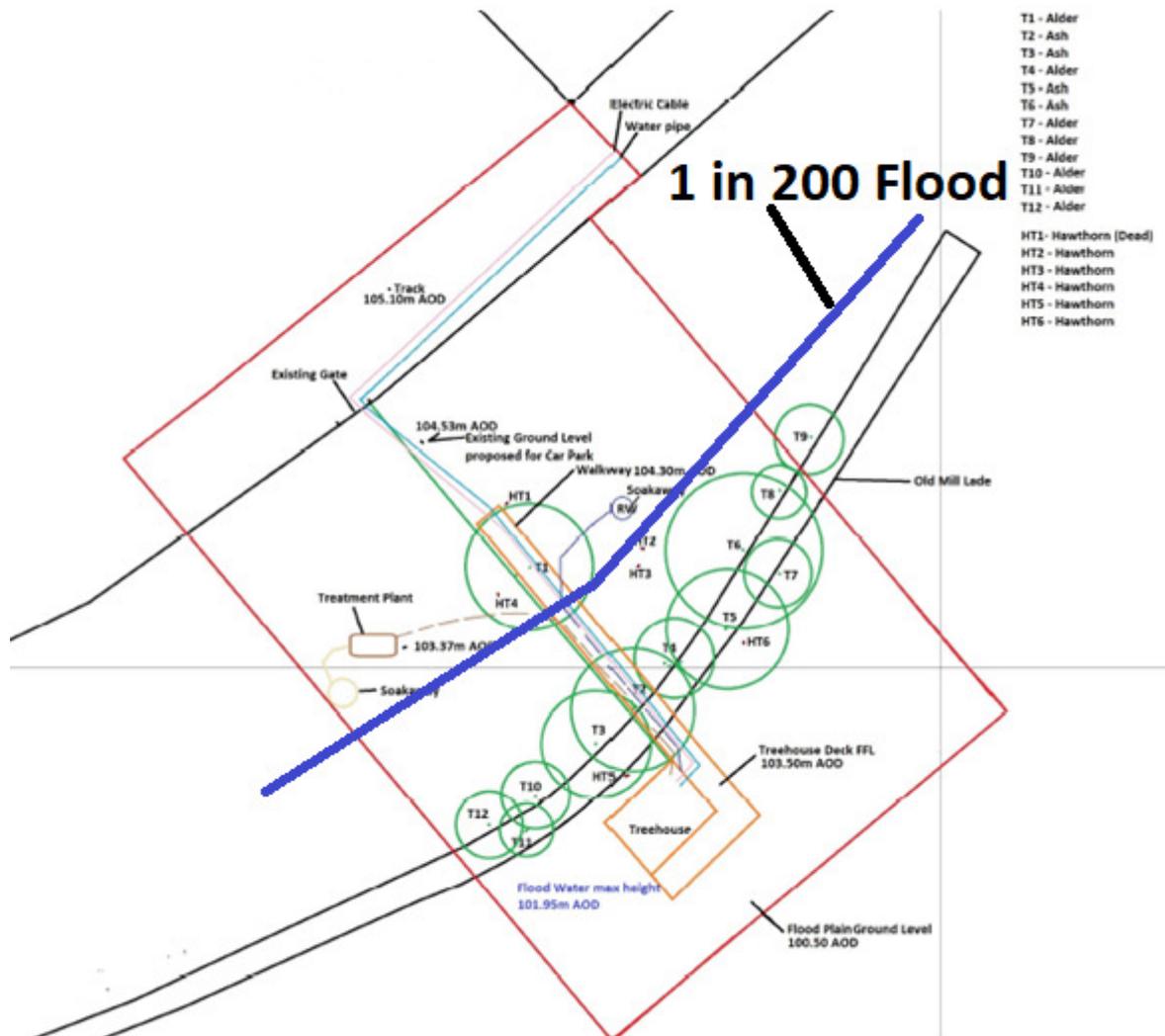
### **Service runs have been marked on the block plan.**

A renewable energy source is to provide heating and hot water to the Treehouse.

All of the above are sighted out with the flood areas and will be capable of function throughout.



Impacts of flood on development area



Block Plan view showing 1 in 200 + climate change extent flood line.



**Treehouse position in relation to trees and haugh.**

## **Impact**

The proposed development is out-with the Natural Scenic Area, there are no listed buildings within the vicinity.

There are no surrounding properties.

The proposed Treehouse would be integrated into its surrounds with minimal impact on surrounding flora and fauna. This would be achieved by using suitable construction techniques which minimise ground disturbance so that damage to habitat and tree root systems is avoided. The aim is for the Treehouse to reside in harmony with it's surrounds.

A tree survey is to be provided, confirming the current condition of the trees in the vicinity, works required/proposed and the methods used to reduce any impact. The existing trees and their crown spread are shown on the block plan.

We understand/expect an ecology survey and report will be required.

## **Planning Policy, Guidance, Compliance, Objections & Comment in response to SEPA.**

### **SBC LDP 2016**

Within the existing adopted Scottish Borders Council Local Plan, the main policy relevant to this proposal is ED7 Business, Tourism and Leisure Development in the Countryside. This proposal accords with policy ED7 and meets with criteria, as below-

- This development is to be used directly for recreation and tourism appropriate to a countryside location.
- The proposal accords with the Scottish Borders Tourism Strategy and Action Plan.
- The development will respect the amenity and character of the surrounding area.
- There will be no significant impact on nearby uses, particularly housing.
- There are no buildings capable of conversion.
- The impact will be minimised by the scale of the proposal.

Further key policies to which policy ED7 should be cross referenced include policy PMD2 Quality Standard, EP13, IS4 and IS8

PMD2: The proposed development aims to be sustainable, well designed and accessible. The location of the proposed development already links to green space and sits within natural features.

EP13: The proposed development seeks to assimilate itself into the existing surrounds. Trees are to be incorporated within this development. Proposed construction techniques will minimise the risk of harm being caused to the surrounding trees. Minimal lateral digging and foundation formation techniques will be used.

IS4: Impact on the natural and built environment will be minimal. The main access track already exists. Intensification of its use will be relatively minor.

IS8: Part of the proposed development is to take place on a flood plain. Finished floor level of the Treehouse and walkway access to it, are 3m above the flood plain ground level. The stilt construction removes very little of the functional flood plain, hence the impacts on flooding caused elsewhere by the proposed development, would be negligible.

In addition, policies EP1-3 will be relevant but we await comments from the Ecology officer.

## Scottish Planning Guidance 2014

### Managing Flood Risk and Drainage

Para 255 states-

- A precautionary approach to flood risk from all sources, including coastal, water course (fluvial), surface water (pluvial), groundwater, reservoirs and drainage systems (sewers and culverts), taking account of the predicted effects of climate change;
- flood avoidance: by safeguarding flood storage and conveying capacity, and locating development away from functional flood plains and medium to high risk areas;
- flood reduction: assessing flood risk and, where appropriate, undertaking natural and structural flood management measures, including flood protection, restoring natural features and characteristics, enhancing flood storage capacity, avoiding the construction of new culverts and opening existing culverts where possible; and
- avoidance of increased surface water flooding through requirements for Sustainable Drainage Systems (SuDS) and minimising the area of impermeable surface.

Para 256 states –

To achieve this the planning system should prevent development which would have a significant probability of being affected by flooding or would increase the probability of flooding elsewhere. Piecemeal reduction of the functional floodplain should be avoided given the cumulative effects of reducing storage capacity.

### Development Planning

Para 263. Local development plans should use the following flood risk framework to guide development. This sets out three categories of coastal and watercourse flood risk, together with guidance on surface water flooding, and the appropriate planning approach for each (the annual probabilities referred to in the framework relate to the land at the time a plan is being prepared or a planning application is made):

- Little or No Risk – annual probability of coastal or watercourse flooding is less than 0.1% (1:1000 years) – No constraints due to coastal or watercourse flooding.
- Low to Medium Risk – annual probability of coastal or watercourse flooding is between 0.1% and 0.5% (1:1000 to 1:200 years)
  - Suitable for most development. A flood risk assessment may be required at the upper end of the probability range (i.e. close to 0.5%), and for essential infrastructure and the most vulnerable uses. Water resistant materials and construction may be required.
  - Generally not suitable for civil infrastructure. Where civil infrastructure must be located in these areas or is being substantially extended, it should be designed to be capable of remaining operational and accessible during extreme flood events.
- Medium to High Risk – annual probability of coastal or watercourse flooding is greater than 0.5% (1:200 years)
  - May be suitable for:
    - residential, institutional, commercial and industrial development within built-up areas provided flood protection measures to the appropriate standard already exist and are

maintained, are under construction, or are a planned measure in a current flood risk management plan;

- essential infrastructure within built-up areas, designed and constructed to remain operational during floods and not impede water flow;

- some recreational, sport, amenity and nature conservation uses, provided appropriate evacuation procedures are in place; and

- job-related accommodation, e.g. for caretakers or operational staff.

- Generally not suitable for:

- civil infrastructure and the most vulnerable uses;

- additional development in undeveloped and sparsely developed areas, unless a location is essential for operational reasons, e.g. for navigation and water-based recreation, agriculture, transport or utilities infrastructure (which should be designed and constructed to be operational during floods and not impede water flow), and an alternative, lower risk location is not available; and

- new caravan and camping sites.

- Where built development is permitted, measures to protect against or manage flood risk will be required and any loss of flood storage capacity mitigated to achieve a neutral or better outcome.

- Water-resistant materials and construction should be used where appropriate. **Elevated buildings on structures such as stilts are unlikely to be acceptable.**

## Planning and Consultee response

The consultee responses supportive of the proposal, were -

- Roads Planning
- Economic Development
- Landscape Architect

Those against were –

- Flood Risk Officer\*
- SEPA

\* It should be noted that in the previous planning application – 19/00812/PPP, the flood risk officer was supportive of the proposals subject to suitable design engineering of the stilted structure. Subsequently a different flood risk officer has decided to object to this application. Nothing has materially changed to the application made in 2019 to that made in 2020.

### **The planning officer has refused the planning application 20/00132/PPP for a single reason -**

*“The development is contrary to Policy IS8 of the Local Development Plan 2016 in that the proposal would be within an area of flood risk and potentially place the occupants at an unacceptable risk of flooding”.*

The planning officer has not provided any other reasoning for refusal in his report, therefore, I would suggest he is in agreement that the application meets with all of the other SBC LDP policies, subject to planning condition, where consultees require.

**Further** to above, the planning officer also makes further points within his report with regard to flooding.

*‘The planning statement indicates that the treehouse would not be at flood risk due to being located on stilts some 3 metres above the predicted floodplain level and that stilts are unlikely to have an impact on floodplain capacity. It should be noted that holiday accommodation is classed as the most vulnerable and raising the development above the floodplain using stilts is not acceptable under Scottish Planning Policy and SEPA were unable to support these proposals and object in principle to this development. The occupants of this treehouse accommodation may be required to be evacuated/rescued during a flood event, thus placing others in danger, and the structure may be damaged where debris is carried by the watercourse. The cornerstone of sustainable flood risk management is the avoidance of flood risk in the first instance and it is recommended that alternative locations be considered. Furthermore, given SEPA are a statutory consultee a recommendation of approval would be contrary to this advice on flood risk, and the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009 would require referral of this application to the Scottish Ministers. Given that the provision of the development on stilts would be contrary to Scottish Planning Policy and would not overcome the flood risk to access and egress, it is considered that the proposal cannot be supported as being compliant with Policy IS8.’*

Murray Land & Buildings have commented in red text beneath.

There are a number of inaccuracies made in the planning officer's report above.

- The treehouse would be on stilts which would be 3m above the existing flood plain ground level, not the modelled flood water level.
- Stilted construction is noted as '**Unlikely to be acceptable**' in Para 263 of the SPP 2014. This is not the same as 'not acceptable'.
- On what grounds are others being placed in danger if access and egress can be retained at all times? Flood waters cannot reach either the occupied area or the walkway.
- Provision of the development on stilts is **not** contrary to Scottish Planning Policy.
- The mitigation provided is not being paid cognisance to. It is being shown that the structure of the Treehouse and walkway can be engineered to withstand the flood forces imposed on it, therefore, the risk is being reduced/removed by engineering, therefore it is compliant with Policy IS8.

SEPA'S response to the planning application is below in black text. Murray Land & Buildings comment is in red text.

## 1. Flood Risk

1.1 **Given the location of the proposed development within the sparsely developed functional floodplain we do not consider that it meets with the requirements of Scottish Planning Policy and our position is unlikely to change.** We have a shared duty with Scottish Ministers and other responsible authorities under the Flood Risk Management (Scotland) Act 2009 to reduce overall flood risk and promote sustainable flood risk management. **The cornerstone of sustainable flood risk management is the avoidance of flood risk in the first instance. We recommend that alternative locations be considered.**

1.2 In the event that the planning authority proposes to grant planning permission contrary to this advice on flood risk, the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009 provides criteria for the referral to the Scottish Ministers of such cases. You may therefore wish to consider if this proposal falls within the scope of this Direction.

1.3 Notwithstanding this position we have included our review of the information supplied. Provision of this review does not imply that we consider there to be a technical solution to managing flood risk at this site which meets with Scottish Planning Policy.

## Technical Report

1.4 We previously objected in principle to this development in June 2019 (19/00812/PPP) and noted that if an alternative location is possible, this should be outwith the functional floodplain (1 in 200-year flood extent) and free from flood risk up to the 1 in 1000-year flood events. Safe access and egress should also be ensured outwith the floodplain.

The structure supporting the treehouse and the walkway is located within the functional floodplain. The Treehouse floor level and the walkway are both at least 1.5m above the worst-case flood model provided in the Flood Risk Assessment. An engineer has provided a report to confirm the structures stability with the relevant loads applied. This allows safe access and egress to any occupants. Safe access and egress is ensured within and out-with the floodplain.

1.5 Since our previous response, there has been no change to the proposed design of the development, however updated ground levels have been provided relative to Ordnance Datum and Kaya Consulting has undertaken a Flood Risk Assessment (FRA) in August 2019.

1.6 With regards to the FRA, unfortunately the 1 in 200 year flow is lower than we would expect for the area and our estimates indicate that the 1 in 1000 year flow is more representative at the site. With that in mind, we have considered the 1 in 1000 year flow (162.8m<sup>3</sup>/s) as the 200 year flow when assessing flood risk to the site. As such, the FRA confirms that the development would be situated within the functional flood plain using this design flow (and the lower 200 year design flow adopted in the FRA).

A flood model has been built and provided. If SEPA wish to disprove or question the model, then surely they must provide alternative data, not estimates. Even allowing for SEPA's worst case scenario, the occupied area and the access/egress walkway would still be at least 1.2m above flood level.

1.7 The FRA also concludes that there are some sensitivities in the modelling when adjusting key parameters such as roughness and the downstream boundary. To mitigate for this, it is suggested to add an additional 0.3m onto the design flood levels.

Interesting that SEPA use the word mitigate, is that risk assessing using a safety factor?

1.8 Despite our reservations over the methods used in the FRA, sufficient information has been provided to confirm that the development structure lies within the 1 in 200 year functional flood plain. As such, there is no merit in updating the FRA at this stage. If an FRA update is required in the future, we would expect the flow estimates to be revised and further work to be done to improve the model sensitivity, which may include adding additional surveyed cross sections.

If you have reservations, then I think you have to be more specific. On what basis should the flow estimates be revised? Would additional data, which would undoubtedly not materially change the fact that the FFL and walkway would never flood, be relevant or likely to change SEPA's stance?

1.9 We note that the site is connected to higher land to the north. We would have no objection to an alternative design being situated on these higher ground levels outwith the functional flood plain. If an alternative location is suggested, an updated FRA would be required to inform the 1 in 1000 year flood level for the site.

The location of the treehouse is very specific -within the tree line and connected to the Haugh and River. This location is required to create a niche living space connected to nature, moving the location takes away the integration from the trees and negates the whole point of the development.

1.10 With regards to the technical notes provided by Murray Land & Buildings:

1.5 We note that the small watercourse noted in our previous response in a redundant mill lade and accept that the only source of flood risk to the site is the Ale Water.

1.6 For clarity, we consider the Treehouse to fall into the Most Vulnerable Land Use category in line with SEPA's Land Use Vulnerability Guidance, under 'holiday caravan, chalet, and camping sites' and as a 'site used for holiday or short-let caravans and camping' in line with SPP.

Such types of development are not generally not suitable within Medium to High risk, sparsely developed areas, such as this, and may only be suitable in Low to Medium risk areas if the risk from a 1 in 1000 year event can be alleviated through appropriate mitigation. We do not consider this is achievable in this case as the development structure lies within the 1 in 200 year functional flood plain.

**Generally, being the key word. Mitigation has been provided. You can't stop the flood, you can problem solve/mitigate and remove the habitable space and access/egress out with the flood water effect, therefore providing resilient development.**

1.7 Paragraph 255 of SPP states that the planning system should: promote flood avoidance by safeguarding flood storage and conveying capacity, and locating development away from functional flood plains and medium to high risk areas. This development would be constructed within the functional flood plain and does not adhere to the principles of SPP by locating development away from functional flood plains.

**Both flood storage and capacity are safeguarded -Stilts-. Development i.e. the stilted structure, may be located in the floodplain but this is not habitable space or access/egress, which remain significantly unaffected.**

1.10 We remain of the opinion that if the occupants of the treehouse accommodation were required to be evacuated/ rescued during a flood event, this would place others in danger, and the structure may be damaged where debris is carried by the watercourse. Given that such events are usually accompanied by extremely poor weather conditions and could occur during the hours of darkness, this presents an extremely dangerous situation

**This 'opinion' is not based on any facts. The modelling proves that the habitable area including the access and egress would never flood, therefore in the event that someone required to be evacuated or rescued, access and egress could be taken safely. The supporting structure will be engineered so that it is capable of withstanding the flood forces including potential debris. These established facts disprove the above statement.**

1.11 The approach currently underpinned by national policy in Scotland is for the avoidance of flood risk in the first instance as the most sustainable approach to flood risk management. There are no overriding reasons for developing in the floodplain, especially where there is availability of lower risk land, which we believe to be the case in this instance. We are therefore unable to accept the proposed stilted design as an appropriate solution to flood risk. We note the reasons given as to why it is desirable to place the accommodation at this location, but while clearly it is desirable to do so, we do not consider it acceptable to place people at risk by choice of location.

There is no basis to assume people are being placed at risk. The model proves this not to be the case. Location is key for this development, therefore it is overriding to the development. This is a niche development and requires to be assessed on this basis. It is not a generic role out for a housing development. Risks have been suitably assessed and appropriate control measures have been integrated, including engineered stilted construction.

1.13 As such we consider that there is no technical solution to the development of the site which complies with Scottish Planning Policy and we object in principle to the proposed development on flood risk grounds for the following reasons:

- In line with Scottish Planning Policy (SPP) holiday accommodation is classed as 'most vulnerable' land use and is generally not suitable within Medium to High risk, sparsely developed areas, such as this.

**Generally**, is the key word, mitigation has been provided, but it is not being paid cognisance to.

- The FRA confirms that the development would be constructed in the 1 in 200 year functional flood plain.
- SPP states that stilted accommodation is generally not acceptable within areas of flood risk.
- The development does not adhere to the principles of SPP by promoting flood avoidance by locating development away from functional flood plains and medium to high risk areas

It does adhere to SPP by avoiding flooding via engineering. SPP goes as far as mentioning stilted construction. Why? Effectively the accommodation and walkway are located out with the floodplain, the structure supporting them is not. In the same way a bridge over a river or body of water provides the structure for a road.

- Occupants of this treehouse accommodation may be required to be evacuated/ rescued during a flood event, thus placing others in danger, and the structure may be damaged where debris is carried by the watercourse

Why? There is no factual basis for this statement. Evacuation is not required if the flood does not directly affect the habitable space or access/egress. The structure would be designed to withstand flood debris and the forces exerted.

**The flood risk officer response in the 2020 application is as follows-**

*As is stated in the FRA, SPP states that the development should be located out with the 1:1000 year floodplain. This is due to the classification of holiday let accommodation as a 'most vulnerable use' within SEPA's Land Use Vulnerability Guidance. While I appreciate that the application is for a treehouse and does required to be located within the tree line given the risk of flooding and lack of flood free access and egress directly from the treehouse structure we are unable to support the development in this location.*

*I would recommend, that as per the FRA, the development is re-located out with the 1:1000 year floodplain.*

**Murray Land and Buildings comment is in red text-**

Neither the FRA or the SPP states that this development should be located out-with the 1 in 1000-year floodplain.

Both the FRA & SPP state that development of this type, in the medium to high flood risk area, is **generally** not suitable.

The mitigation provides for flood free access and egress whilst stopping flooding being a material issue. A large section of the walkway access is already out with the flood risk area.

The FRA does not recommend that the development should be re-located out with the 1:1000 year floodplain.

## Appeal Grounds

This appeal is on the grounds that the planning officer and SEPA have erred in their interpretation of Scottish Planning Policy -SPP 2014- and Scottish Borders Council Local Plan policy IS8.

For the avoidance of doubt, Holiday accommodation is noted in the most vulnerable use class.

### **Planning officer recommendation for refusal of planning application 20/00132/PPP was based on a single reason -**

*“The development is contrary to Policy IS8 of the Local Development Plan 2016 in that the proposal would be within an area of flood risk and potentially place the occupants at an unacceptable risk of flooding”.*

SBC LDP Policy IS8 states-

*1.1 This policy is intended to discourage development from taking place in areas which are, or may become, subject to flood risk. **Where some level of risk may be acceptable, it also provides for development to be designed such as to minimise it.** The policy provides guidance to developers on the information that will be required in support of a development proposal which may be at risk of flooding.*

SBC LDP Policy IS8 further aligns with the SPP 2014 flood risk framework principles including-

- Avoidance of flooding is the first principle of managing flood risk.
- Locating new development in areas free from significant flood risk.
- Development not being permitted if it would be at significant risk of flooding.
- Risk categories are used generically to inform general guidance on acceptability of development.
- Development is assessed against risk and mitigation measures.

The SPP 2014 flood risk framework is read in conjunction with the SBC LDP policy IS8.

**Para 254.** NPF3 supports a catchment-scale approach to sustainable flood risk management. The spatial strategy aims to build the resilience of our cities and towns, encourage sustainable land management in our rural areas, and to address the long-term vulnerability of parts of our coasts and islands. Flooding can impact on people and businesses. Climate change will increase the risk of flooding in some parts of the country. Planning can play an important part in reducing the vulnerability of existing and future development to flooding.

### **Line two of Para 255 in the 2014 SPP states**

The planning system should promote-

‘flood avoidance: by safeguarding flood storage and conveying capacity, and locating development away from functional flood plains and medium to high risk areas;’

### **Para 256 of the 2014 SPP then qualifies this-**

‘To achieve this the planning system should prevent development which would have a significant probability of being affected by flooding or would increase the probability of flooding elsewhere. Piecemeal reduction of the functional floodplain should be avoided given the cumulative effects of reducing storage capacity.’

### **Para 263 in the SPP 2014 flood risk framework states-**

- Medium to High risk areas are **generally** not suitable for most vulnerable types of development.

- Water-resistant materials and construction should be used where appropriate. Elevated buildings on structures such as stilts are **unlikely** to be acceptable.

Some of the above could lead one to believe that all development of this type is not permitted in medium to high risk flood areas, but why does the policy caveat with statements like ‘generally not suitable’ & ‘unlikely to be acceptable’? Careful reading and interpretation of the policy wording is required alongside assessment of the specific proposal to enable a lawful decision to be reached. In this case, both the planning officer and SEPA have read and quoted policy as they believe it to be written, not how it is written. They have also failed to pay cognisance to the mitigation provided. This is further borne by the inaccuracies in their responses.

Para 256 also qualifies Para 255 further, by stating that the planning system should prevent development which would have a significant probability of being affected by flooding or would increase the probability of flooding elsewhere.

The effects of flooding on the proposed development are not material because of the mitigation measures provided. Therefore, mitigation is providing sustainability and resilience to the development. These attributes are at the heart of what the flood risk framework seeks to achieve in planning.

Further guidance was sought from the Scottish Government to clarify the SPP 2014 and its interpretation, specifically around the flood risk framework on stilted construction. They in turn, noted that the SPP was for guidance only and that it was for the individual local authority to interpret, and not for SG to comment in individual cases. This would appear to be a paradox. The SG were asked to comment in a previous planning application made in Moray, in 2014 -by another applicant’s agent- with specific regard to the SPP 2014. The applicant’s agent sought clarification on the reference to stilted construction made within Para 263 of the SPP 2014.

SG were purported to have commented on the Moray 2014 application as follows -

**“Please note that paragraph 263 states that generally elevated buildings on structures such as stilts are unlikely to be acceptable. This does not necessarily mean therefore that stilted construction would be unacceptable in every circumstance. The inclusion of the reference to stilts come from a concern over the ability of such construction to withstand flood events. There is recognition however that within this general reference there may be construction techniques that a planning authority may find acceptable”.**

Data provided via Moray Council planning portal.

The above statement justifies and interprets the SPP 2014 policy guidance on stilted construction use with specifics to medium to high risk areas.

This would also accord with the assessment of the development undertaken by the SBC flood risk officer below, in the previous 2019 Sandystones Treehouse application -19/00812/PPP- where reference was made to the structure and the mitigation provided. It should be noted that nothing has materially changed between the 2019 and 2020 applications, only the different flood risk officer’s interpretation.

**In the 2019 application -19/00812/PPP- the Flood Risk Officer states-**

*I would require the applicant to send in the design of their structure to ensure that the walkway piers or any structures that impact stability do not increase flood risk. For example, they are not likely to catch debris or trees that could create a blockage on site.*

*Furthermore, I would require that there are no structures e.g. walkway piers are located within the watercourse.*

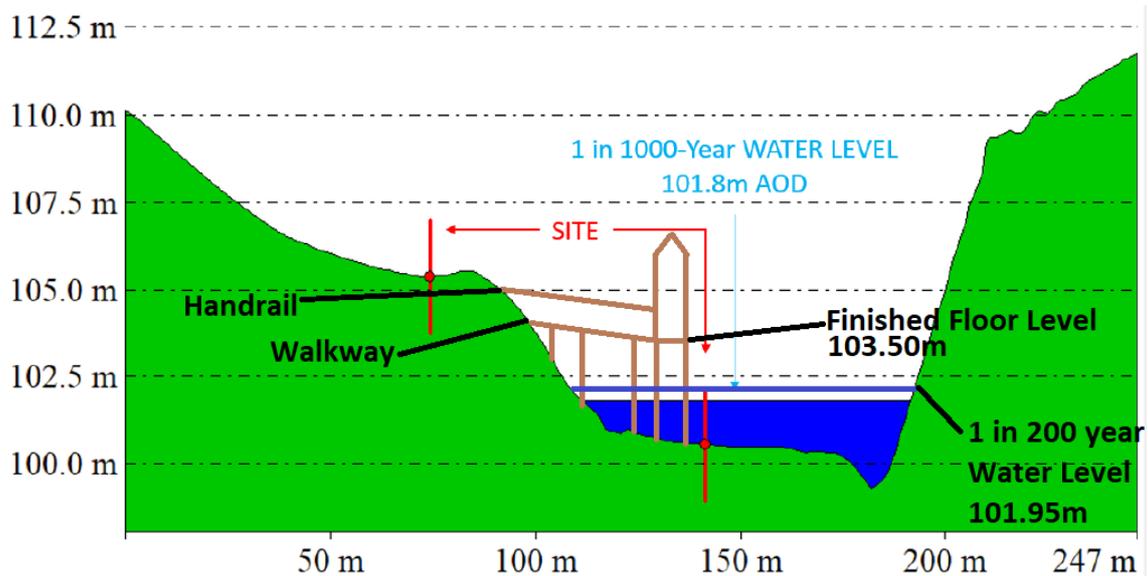
*If the above is adhered to, I would have no objections on the grounds of flood risk.'*

In arriving at his view, the flood risk officer has interpreted the mitigation correctly and seeks further information to ensure the development is resilient.

The flood officer does not object on the grounds of flood risk because of the mitigation provided.

## Mitigation and reasoning

Within the flood risk assessment report, modelling on a 1 in 200 (including climate change), 1 in 200 and 1 in 1000 year water level with respect to flooding from the Ale Water has been undertaken. It clearly shows that the highest predicted water levels would never be within 1.5m of the Finished Floor Level of the Treehouse or Walkway. Both the access road and parking area are out-with the flood risk areas.



Section demonstrating the Finished Floor Level, the 1 in 200 year flood level with climate change and the 1 in 1000 year water levels all in AOD.

The SPP 2014 flood risk policy framework and Policy IS8 are written on the basis of minimising risk to different types of development and occupants. Undoubtedly this is based on the following factors-

- Occupant safety
- Third party safety i.e. emergency services
- Buildings susceptibility/resilience to flooding
- Impact of development on flooding elsewhere
- Potential sewage discharge/contamination

There are other considerations to include, but the above provide the main factors which require to be risk assessed when writing policy or assessing development proposals.

To inform the SPP 2014 flood risk policy framework guidance and SBC LDP Policy IS8, generic factors have been used which approve certain types of acceptable development in areas deemed to be of lower risk of flooding. The framework and policy also outline certain types of acceptable development in areas deemed to be at higher risk from flooding.

The risk framework used within this policy guidance is a broad-brush approach used on a generic basis. It cannot be any more specific than that, which is why the different types of development are grouped. Both the policy guidance and policy are worded with terms like 'generally not' and 'unlikely'. This is to allow exceptions to generic rules, where specific cases demonstrate that adequate mitigation has been provided to reduce risks to acceptable levels.

This interpretation is entirely logical because it allows for development assessment to be undertaken so as not to be unreasonable in the decision-making process.

The assessment approach taken by the flood risk officer in the 2019 application is an example of viewing the development proposal on this basis and taking into account mitigation.

The assessment approach taken by the planning officer and SEPA in both the 2019 and 2020 applications is generic and pays no cognisance to the mitigation provided. Nor does it correctly interpret the policy guidance. Indeed, the planning officer and formerly SEPA, erred in their reports by stating that the SPP 2014 says stilted construction is not acceptable in this flood risk area. That is **not** what the policy guidance says. This interpretation and stance would seem lawfully unreasonable and at odds with the policy.

It therefore stands that the legality of the planning officer's decision, fails the Wednesbury unreasonableness test at Limb 1, by virtue of the planning officer's failure to pay cognisance to the engineering solutions provided. Further interpretation and quotation of the SPP 2014 policy guidance- specifically stilted construction- has also been made in error. The planning officer's decision is therefore '**Ultra Vires**'.

Fully assessing the specific development proposal and any mitigation provided, is the only way to implement the guidance policy correctly and make lawful decisions. This planning application is far from 'run of the mill', it is niche, and it should be assessed on this basis, not with a broad-brush policy interpretation.

A risk assessment based on the five factors noted above is given below. The main hierarchy of factors are that of risk to occupants and third-party safety, followed by, though intertwined, the buildings structural stability and resilience to flooding. Impacts of the development on flooding elsewhere and the potential for causing pollution follow.

### **Risk to Occupants**

- The proposed Treehouse is at least 1.5m above the modelled flood levels, therefore the habitable area and the access and egress to the property are not capable of flooding. It is undisputed, the Treehouse and the walkway cannot flood even when the Ale Water is in its worst flood. SEPA cannot and I believe do not disagree with the last statement.
- The structure supporting the Treehouse and the walkway is to be designed by structural engineers. Structural engineers have looked at the proposal, including the loads to be imposed by the flood waters. They are comfortable that the supporting structure shall be more than capable of withstanding the flow rates and potential flood debris created. A letter outlining this support is annexed.
- Above I have risk assessed the potential impacts of modelled flooding occurring to the Treehouse. All risk cannot be removed from any development, but the level of risk associated with this proposal is very acceptable given that the occupants would never be exposed to flood water within their habitable area, access or egress and the structure is to be capable of withstanding any potential flood water and debris forces applied to it. This therefore provides mitigation.

### **Risk to Third Parties**

- The above assessment holds true for the third parties which include emergency services. Access and egress is afforded at all times, therefore the life's of third parties are not being put in any more danger than they ordinarily would be in the course of their work.

### **Buildings Structural Stability**

- Again, this is intertwined with both of the above risk factors. A letter has been provided by a firm of structural engineers. The structure would be further assessed at Building Warrant stage, where the structural design/calculations and certificate will require to be provided.

### **Impacts of flooding elsewhere and pollution**

- There will be a small area of the functional flood plain removed by the area the supporting legs of the treehouse and walkway take up. This area is negligible, but if it was thought necessary, a compensatory area of extra flood plain space could be provided.
- The risk of pollution has been mitigated by locating the treatment plant and soakaway out-with the flood plain area. Pipework connecting from the treehouse to the treatment plant is located within the walkway and more than 1m above the modelled flood levels.

Following on from purported Scottish Government Directorate advice, the lawful consensus is that where it can be demonstrated that a structure is suitable to be able to withstand a flooding event, planning consent should not be refused on the basis that stilted construction is generally not acceptable. The words “generally not”, do not preclude acceptance.

## Conclusion

The safety of the Treehouse occupants is paramount for all, especially Sandystones Ltd, who would be the holiday accommodation provider. Sandystones Ltd seek to provide a welcoming, safe environment for their guests to unwind and relax in a tranquil location, in the heart of the Scottish Borders.

We conclude that-

- The Treehouse will be structurally designed to withstand the flood model loads applied, therefore the structure is not at significant risk, and neither are the occupants or third parties.
- Carrying out an assessment of the specific proposed development -as the flood risk officer in the 2019 application did- demonstrates that the Treehouse proposal does align with SBC LDP Policy IS8 as well as the SPP 2014.
- The location for the Treehouse was carefully chosen so that it assimilates with it's surrounds more easily, whilst providing the occupants with a feeling of being surrounded by nature. Any alternative site would not provide the same attachment effect required to create this unique setting.
- Benefits of the Treehouse to the local economy and the tourism offering in the Scottish Borders are considerable. The Scottish Borders tourism economy is built upon niche visitor attractions of historical and contemporary type and use. This Treehouse would add further to that offering.
- As an enterprise the Treehouse holiday let will further enhance and protect existing jobs whilst offering the potential to create new employment.
- We appreciate that this is not a generic type planning application. It does however require proper assessment against risk, not generic rebuttals in opinion and incorrect quotation/application of policy guidance in the face of established fact.
- The reasoning behind the refusal of the planning application is unreasonable at common law. Therefore, 'Ultra Vires'.
- At a time when the tourism sector needs to show resilience in the face of the fallout caused by the global pandemic, this proposal is exactly the type of boost which our local economy needs.
- The green credentials of the proposed development should be applauded. The building will use renewable energy to provide heat and power. An on-farm PV array will provide electricity and a small scale renewable energy form will provide the heating and hot water. Construction of the building will integrate sustainable materials wherever possible. This will include the timber frame of the Treehouse above the supporting structure, the sheep's wool insulation, the timber cladding and the slate roof covering.

- The application received no objection comments from the public and is supported by ‘Canopy & Stars’, a national marketing agency for Glamping.
- It is heartening that a local business still wishes to take the calculated risk to step into this sector given the current situation. This should be supported for the many benefits it brings to the local economy.

The above appeal is being made because we believe the application has not been properly assessed by the planning officer. His interpretation has been based on the incorrect application and interpretation of policy guidance. Instead of assessing the application specifically on the alleviation techniques provided, the assessment has been made generically, whilst only paying cognisance to SEPA. This is unreasonable. The facts provided show that the risks to occupants, third parties and the structure as well as other flooding and pollution risks are all being mitigated against, thereby reducing to an acceptable level and making the development sensible and one that should be wholeheartedly supported.

We would ask the local review body to reconsider the planning officer’s erroneous decision and consent this application.

A site inspection by the local review body councillors, if they wished, would be welcomed by the appellant so that the committee may fully appreciate the site’s situation. Given the current restrictions this may not be possible, but the opportunity is afforded.



Example of holiday accommodation construction next to a watercourse in Scotland.

