

**SCOTTISH BORDERS COUNCIL**

**APPLICATION TO BE DETERMINED UNDER POWERS DELEGATED TO  
CHIEF PLANNING OFFICER**

**PART III REPORT (INCORPORATING REPORT OF HANDLING)**

**REF :** 20/00809/FUL

**APPLICANT :** Eyestore Limited

**AGENT :** PD Architecture

**DEVELOPMENT :** Change of use of site to business and industrial land with associated perimeter security fence

**LOCATION:** Phase 4 Store And Yard  
Acredale Industrial Estate  
Eyemouth  
Scottish Borders  
TD14 5LQ

**TYPE :** FUL Application

**REASON FOR DELAY:**

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**DRAWING NUMBERS:**

Plan Ref	Plan Type	Plan Status
PDK-20-136-002	Location Plan	Refused
PDK-20-136 001 REV 2		Proposed Site Plan Refused

**NUMBER OF REPRESENTATIONS: 3**  
**SUMMARY OF REPRESENTATIONS:**

**CONSULTATIONS**

**SBC Access:** It is the duty of the local authority to uphold access rights, under the Land Reform (Scotland) Act 2003, in doing so to, protect and keep open and free from obstruction or encroachment any route, waterway or other means by which access rights may reasonably be exercised. Rights of Way are specifically protected by law under the Countryside (Scotland) Act 1967 sec. 46 'It shall be the duty of a planning authority to; assert, protect, and keep open and free from obstruction or encroachment any public right of way which is wholly or partly within their area.'

According to the records held by Scottish Borders Council (SBC) there is a core path on this area of land. Please note that SBC does not have a definitive record of every claimed right of way within its area. The Scottish Rights of Way and Access Society, the Community Council and local residents may have evidence of existence of claimed rights of way that have not yet been recorded by SBC. The core path track should be maintained to its original width along the boundary of this property. The new fence which has been partially installed parallel to the core path should be moved back to keep it in line with the existing post and wire boundary fence. This should be done in order to maintain the track width at around 7 metres between the fences on either side of the track, in accordance with the rest of the track.

**SBC Economic Development:** No response.

**SBC Roads Planning:** No objection.

Eyemouth Community Council: The CC have received a number of complaints regarding the erection of security fencing at this property. Although the CC support growth of local business we must highlight the breach in planning law and other issues as requested by the public.

Historic maps clearly show the Loaning walk as a well established path and access. The path gives access to farmers, utility companies, emergency vehicles and other properties which are now blocked by this 2.4 metre fence. Access is also blocked to Mains Water which is situated half-way down the Loaning and is utilized by farmers to water the crops.

Right of ways shown on maps that are long standing should have been marked with the following information. "In accordance with Scottish Law the owner of the ground must leave a minimum of two meters from the centre of the path". Currently the path has been halved down the middle forcing the neighbouring property to give up extra ground which they are not required to. The existing boundary fence which has been in place for a number of years is set at the correct distance from the centre of the Loaning path which is in accordance with the Law around Rights of Way.

Consideration of the area and its surroundings has been requested by members of the public. As with most other fencing of this height screening with hedging or trees is requested.

Maps shown, as produced by SBC for the sale of the ground are missing vital information which has clearly led the applicant to erect the fence on what he has been told is his property with no restrictions. It is widely felt the applicant was mis-sold the ground without proper information for him to consider how he should proceed with his business.

Scottish Water: No response.

## CONSULTATIONS

Two members of the public lodged letters of representation in response to the application, both raising a number of general concerns, and neither supporting or formally objecting to the proposals. The following issues were raised:

- the proposed development will increase traffic and parking demand, affecting access to neighbouring business
- neighbour notification letter not received
- the fence restricts vehicular access to neighbouring land
- effect on property value of neighbouring land [not a material planning consideration]
- the restricted access forces traffic over an unprotected and unsupported water main.

## PLANNING CONSIDERATIONS AND POLICIES:

Local Development Plan 2016:

PMD1: Sustainability  
PMD2: Quality Standards  
ED1: Protection of Business and Industrial Land  
ED10: Protection of Prime Quality Agricultural Land and Carbon Rich Soils  
HD3: Protection of Residential Amenity  
EP11: Protection of Greenspace  
EP13: Trees, Woodlands and Hedgerows  
IS5: Protection of Access Routes  
IS7: Parking Provision and Standards

Other Considerations:

Designing Out Crime in the Scottish Borders Supplementary Planning Guidance 2007  
Trees and Development Supplementary Planning Guidance 2008  
Planning Advice Note 65: Planning and Open Space 2008  
Scottish Planning Policy 2014

**Recommendation by** - Paul Duncan (Assistant Planning Officer) on 9th April 2021

## BACKGROUND

This application seeks planning permission to erect a 2.4m high steel palisade fence and change the use of land located on the edge of Eyemouth, adjacent to Acredale Industrial Estate. A section of the fenceline has already been erected, therefore the application is partially retrospective.

## SITE DESCRIPTION

The application site boundary includes the applicant's existing Eyestore premises and yard at Acredale Industrial Estate, as well as separate, undeveloped land that the applicant wishes to occupy.

The existing premises comprises a flat-roofed brick and sheet clad industrial building set back from the industrial estate road. An existing secure storage yard is located to the west/ north-west of the building, enclosed by palisade fencing and occupied by shipping containers.

To the south and west of the existing premises lies an undeveloped parcel of land in the shape, roughly, of two connected triangles, enclosed by post and wire fencing. This land was previously planted with trees, which were felled prior to the submission of the application. This area comprised amenity land which provided a screening function for the industrial estate. The outer perimeter of this area, marked by post and wire fencing, previously defined the north-east boundary of the Loaning footpath which runs parallel to the site. Land beyond the Loaning is open countryside comprising the wooded edge of the settlement and arable farmland beyond. The Loaning connects the Acredale housing estate to the north west, as well as the industrial estate, with Gillsland housing estate to the south-east. The Loaning is a Core Path (No. 59).

## PROPOSED DEVELOPMENT

It is proposed to erect a 2.4m high steel palisade fence parallel and perpendicular to the boundary of The Loaning and to change the use of land to the north-east of the fence to Class 4 (Storage) Use. The fence would provide secure enclosure for an extended storage yard operated by the applicant's existing personal storage business ('Eyestore').

The line of the proposed security fence has been revised since the submission of the application. It is now set it back 1m at the most north-west point from the previously proposed fenceline. The revised drawings appear to show the triangular shaped post and wire fencing that defines the existing boundary to the Loaning. The fence would be erected beyond this, on land which the applicant is understood to have bought last year. The applicant has offered to plant hedging in front of the fence. A revised site plan has been submitted showing the revised fenceline proposal.

The applicant's agent has insisted that the application be determined on the basis of this proposal. There is therefore no scope for further discussions.

## PLANNING HISTORY

Relevant and available planning history on the site is summarised below:

03/01454/FUL - Erection of industrial units - Approval for the applicant's existing premises.

## ASSESSMENT

### Principle

The proposed site forms part of a wider, blanket allocation of land for Business and Industrial Safeguarding (District category) within the Local Development Plan 2016. The allocation follows the development boundary to the south-west of the town and covers the entirety of the proposed site, and also includes the Loaning. There is a presumption in favour of business and industrial use development on allocated land under Policy ED1 (Protection of Business and Industrial Land). This includes the proposed Class 4 storage use. There is no question that the large majority of the proposed site could be used for Class 4 storage use,

with secure perimeter fencing, without conflicting with planning policies. There is strong policy support for this. The need for secure perimeter fencing is also not in question and was accepted at the outset of this application. However Policy ED1 also requires any such proposals respect the character and amenity of the surrounding area, and to be landscaped accordingly. For the reasons outlined further below, the proposed development is not considered to meet these tests.

### Economic Impact

The economic benefit of development is a material planning consideration. The proposed development seeks to expand an existing business within Eyemouth on allocated land. There is strong support for the principle of this. The development would generate economic activity through the construction process and later in the operational phase. It is not known how many full time employees the existing business has, and it is not clear whether its expansion would generate demand for additional staff. The Council's Economic Development Service were consulted but have not responded on this occasion. It has been stated that the proposed expansion would only be viable in the format proposed, and a site plan has been provided showing a possible internal layout for the development, including the future siting of shipping containers. Whilst useful and informative, it is not considered that this has sufficiently demonstrated that other layouts would not be viable or practical.

In summary, there would undoubtedly be economic benefits arising from the redevelopment of this land but the scale of this is unclear.

### Visual Impact

Local Development Plan (LDP) policy PMD2 (Quality Standards) requires all development to be of high quality in accordance with sustainability principles, designed to fit in with Borders townscape and landscape surroundings. Part m) states that developments should provide appropriate boundary treatments to ensure attractive edges to the development that will help integration with its surroundings.

From within the Industrial Estate, the development would not appear out of place. The site is already partially enclosed by similar fencing to the east. Visual impact from within the Industrial Estate would not be a concern.

The character of the Loaning is distinct from the industrial estate. The Community Council provides information which indicates the Loaning dates back to at least the 19th century as a rural path, and it largely retains such a character today. The path connects a narrow C-class country road to the north-west, to the Gillsand housing estate to the south-east. The south-west side of the footpath is characterised by woodland and occasional views to open arable farmland. To the north-east of the Loaning, the industrial estate is partially screened from view by the wooded screening blocks which remain. There are views into the industrial estate from the footpath. This includes views to the sides and rear of existing buildings, and views into an open grass area between buildings. There are wider views of the industrial estate closer to the Eyestore, now more extensive following the felling of the previous screen planting on the proposed site. Further to the south, at Gillsland, there are close views of timber residential fencing. There are no close views of steel fencing along the Loaning, other than the applicant's existing, unauthorised fence. For the applicant, separate assessment of the character of the Loaning has been provided as well as a visual interpretation of the area in the form of two videos.

There is an established fenceline/ hedgeline that runs along the north-east boundary of the Loaning in the vicinity of the proposed site. The applicant's unauthorised fence is erected well forward from this. It extends across the most well worn part of the footpath. The revised proposed fenceline would be moved back. The revised site plan appears to show the existing post and wire fenceline (the same triangular areas are shown on OS mapping and are assumed to relate to features on the ground) and the revised fenceline remains forward of this.

On behalf of the applicant, it is stated that the path is little used and reference has been made to a 3 day monitoring exercise carried out between the hours of 9am and 5pm. This found users of the footpath ranges from 2 to 18 per day. No details have been provided as to who carried out this exercise, the dates it was conducted, or the weather conditions on those dates. Site photos of the footpath show that it is well-worn. Eyemouth is continuing to expand in the Acredale area, and the footpath is likely to become an increasingly valuable resource in the future.

The adverse visual impact of the existing, unauthorised 2.4m high palisade fence was considered at the outset of this application to be very high. As the fence extends out into the footpath, those following the well-worn footpath need to deviate from the path to avoid walking into it. It is seen at very close range. It is intrusive both visually and literally. The fence is viewed both perpendicular to the Loaning, and parallel to it. Steel palisade fencing has security benefits and there is a place for such fencing but it has a very harsh, unattractive appearance. The original proposals were visually intrusive, incongruous to their setting and could not be supported. The applicant was invited to submit revised proposals.

Extensive discussions have since taken place with a view to achieving a mutually acceptable outcome. Given the benefits of the wider proposals, the applicant has been given every opportunity to address the concerns raised and avoid the refusal of the application.

Agreement was eventually reached on a proposal put forward on behalf of the applicant to erect a timber, close-boarded fence along the original boundary of the Loaning that is marked by post and wire fencing. Hedging to the Council's standard specification would have been required on the Loaning side of the fence to help screen it (this land is understood to be in the applicant's ownership). The applicant later advised that he could not agree to this on security grounds. The need for a steel palisade fence is accepted in principle but as noted above is very harsh visually, particularly at close range. Close boarded timber fencing is much less harsh visually, and also serves to screen what is behind the fence, in this case a storage yard that is likely to be visually detracting.

A final further revised proposal has subsequently been put forward for determination which retains a 2.4m high steel palisade fence, to be painted to an agreed colour. It has been stated on behalf of the applicant that this would follow the south-west boundary, abutting the Loaning. However as noted above this is not clearly demonstrated by the revised site plan. Notwithstanding this, the 2.4m high palisade fence would be located at very close proximity to the Loaning. A hedge would be planted in front of the fence, though there is insufficient space to accommodate the Council's standard specification screen hedge within the applicant's land. The hedge would be planted close to the well-worn centre of the footpath. This would limit space for growth and the proximity to the footpath may result in damage to the hedge once planted, and it may fail to become established.

The revised proposal does not suitably address views of the fence where it runs perpendicular to the footpath to the south of the site, nor where it would do so to the north. The fenceline in these locations follows the ownership boundary, therefore no screening would be possible on the outside of the fenceline. Painting the fence would reduce its visual impact but not sufficiently to address visual impact concerns.

The proposed development is considered to be contrary to Local Development Plan Policy PMD2 (Quality Standards) and ED1 (Protection of Business and Industrial Land) in that the development would have a harsh and detrimental visual impact and would not respect the character and amenity of The Loaning Core Path.

It has been queried, on behalf of the applicant, why the Council's Landscape Architect has not been consulted on this application. The Landscape Service has limited capacity and is generally only consulted on applications of greater scale or highly sensitive proposals. Whilst significant, the impact of the development is localised, and the issues raised are self-evident and are not considered to require specialist landscape assessment. It is noted that no input from a qualified landscape architect has been provided on behalf of the applicant.

A fence previously erected within a separate industrial estate (Gunsgreenhill) elsewhere within the town has been raised on behalf of the applicant as a precedent. This has limited relevance to the proposed development, and there are very limited parallels between the two situations. The Gunsgreenhill fence is located within an existing industrial estate, not on the edge of an industrial estate. The site is next to the local sewage works and opposite the Council's recycling centre. The fence is not visible from any close sensitive visual receptors such as the immediately adjacent Core Path that is affected by the proposed development.

A second fence, elsewhere at Acredale Industrial Estate, has also been referred to. This fence is seen from Coldingham Road, but is set back by around 10m from the road, and the public visual receptors who use the road. Trees and hedging have been planted to help screen the fence.

## Access

LDP policy IS5 (Protection of Access Routes) states that development that would have an adverse impact on a public access route will not be permitted unless a suitable diversion or appropriate alternative route is provided by the developer.

The existing unauthorised fence has clearly obstructed the route of the Core Path. The Access Service objects to this. The Service state that the fence should be maintained at the original width of the Core Path. The revised fenceline also appears to impact the original boundary of the footpath. It would be erected at such close range that, as noted above, it would have a detrimental visual impact for users of the path. This impact is not considered sufficient to warrant refusal of the application as contrary to Policy IS5 (Protection of Access Routes) however the status of the footpath as a Core Path does underline the concerns raised above.

## Green Space

LDP policy EP11 (Protection of Greenspace) states that greenspace within settlements will be protected from development where this can be justified by reference to the value of the greenspace; its role in the landscape and townscape; and its function. The policy pre-ambles states that greenspaces covered by the policy are based on the typology contained in the Scottish Government's Planning Advice Note (PAN) 65. In turn, PAN 65 confirms that the term open space covers paths within and on the edges of settlements. It also states that amenity greenspaces including landscaped areas providing visual amenity or separating different buildings or land uses for environmental, visual or safety reasons can be classed as open space. It is considered that the footpath and the adjacent land previously occupied by screen planting meets this definition.

The value of the footpath is significant. It provides both connectivity and leisure opportunities. It therefore has a clear function and with the wider wooded strip to the south-west provides a green edge to the settlement, providing a clear sense of enclosure and containment. The former screen planted area previously contributed to amenity but no longer does so.

Policy EP11 states that development that would result in the loss of greenspace will only be permitted if it can be satisfactorily demonstrated that there is a social, economic and community justification for the loss of the open space; or the need for the development outweighs the need to retain the open space; and open space or enhancement is provided elsewhere.

With adequate mitigation, the proposed development would satisfy Policy EP11. Whilst there is a degree of conflict with Policy EP11, this is not considered to amount to a reason for refusal.

## Road Safety and Parking

Policy PMD2 requires developments to have no adverse impact on road safety and adequate vehicular access.

There is existing vehicular access to the industrial unit via the industrial estate road network. The proposals have been assessed by the Roads Planning Service which does not object to the proposals. The proposed development would have no direct effect on the public road network. An objector raises a concern regarding the potential impact of the expansion on parking and access, however the Roads Planning Service has subsequently confirmed they remain of the view that no adverse impacts should arise.

## Vehicular Access via The Loaning

In response to the application, a member of the public states they have a right of vehicular access down the Loaning. The fence as erected has partially obstructed the Loaning. The member of the public is concerned that without adequate vehicular access their land would lose value. These concerns are understood, but this would be a private legal matter between the interested parties and would not be a material planning consideration for this application.

## Trees

Policy EP13 of the Local Development Plan seeks to protect trees from development.

It is noted from aerial imagery available online that the site in question was previously densely occupied by trees, which appear to have been fairly mature in age. This part of the proposed site appears to have formed part of the landscaping for the industrial estate, or part of a wider area of woodland between the open countryside to the west and the industrial estate. It is regrettable that these trees have been felled, which has removed the previous screening the industrial estate benefited from. There was no known protection for these trees however, and their felling took place outwith the planning process. The proposed development must be assessed on its own merits, and mitigation through replacement cannot be secured for trees felled in such circumstances.

#### Residential Amenity

Policy HD3 (Residential Amenity) of the Local Development Plan states that development that is judged to have an adverse impact on the amenity of residential areas will not be permitted.

The nearest residential properties are a considerable distance from the proposed site. The proposed storage use would not be anticipated to give rise any considerable nuisance implications. No harm to residential amenity is anticipated and accordingly, the proposals are considered to satisfy Policy HD3.

#### Prime Quality Agricultural Land

Local Development Plan policy ED10 (Protection of Prime Quality Agricultural Land and Carbon Rich Soils) seeks to ensure our finite agricultural land resource is retained for farming and food production. The policy states that development which results in the permanent loss of prime agricultural land will not be permitted unless the land is allocated for development; the development meets an established need and no other site is available; or the development is small scale and directly related to a rural business.

The proposed site is located within a large swathe of land designated as being prime quality agricultural land though it evidently offers no prospect of being used for arable farming. The proposed site is allocated for development, therefore these proposals satisfy Policy ED10.

#### Other Matters

The circumstances of the sale of the site to the applicant are not a material planning consideration and it would be wrong for this to influence the decision making process. It is the responsibility of any property owner to establish whether planning permission is required before carrying out development.

#### **REASON FOR DECISION :**

The proposed development is contrary to Local Development Plan Policy PMD2 (Quality Standards) and ED1 (Protection of Business and Industrial Land) in that the development would have a harsh visual impact and would not respect the character and amenity of The Loaning Core Path.

#### **Recommendation:** Refused

- 1 The proposed development is contrary to Local Development Plan Policy PMD2 (Quality Standards) and ED1 (Protection of Business and Industrial Land) in that the development would have a harsh and harmful visual impact and would not respect the character and amenity of The Loaning Core Path.

**“Photographs taken in connection with the determination of the application and any other associated documentation form part of the Report of Handling”.**