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## **PLANNING APPEALS & REVIEWS**

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### **Briefing Note by Chief Planning & Housing Officer**

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## **PLANNING AND BUILDING STANDARDS COMMITTEE**

**7<sup>th</sup> March 2022**

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### **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: 21/00958/CLPU  
Proposal: Certifying the proposed use for short stay commercial letting  
Site: Greenloaning, The Loan, West Linton  
Appellant: Michael Gerrard Cameron

Reason for Refusal: The council in exercise of its powers under the Town and Country Planning (Scotland) Acts and regulations, now determines that the development is not authorised in accordance with the particulars given in the application.

Reasons for Appeal: The appellant seeks a certificate of lawfulness of proposed use certifying that the proposed use of the property for "short stay commercial visitor accommodation" (1) does not amount to a material

change of use subject to the property being used for this proposed use for not more than 38% of the time or for 20 weeks in any calendar year and (2) on the basis of (1) such a proposed use is not a breach of the enforcement notice.

[Please see the DPEA Website for the Appeal Documents](#)

Method of Appeal: Written Representations, Hearing & Site Visit

Reporter's Decision: Dismissed

Summary of Decision: The Reporter, Paul Cackette, advised that during the hearing the applicant wished to modify certain aspects of the factual case in that he now wished the proposed use to be for a maximum of 90 days occupancy in any calendar year and a minimum stay of 2 days. The reporter wrote that although the property is the applicant's principle place of residence the bookings for short stay commercial visitor accommodation take priority and is therefore the dominant or primary use of the property. That is a material change of use for which planning permissions is required. That finding precludes the reporter from granting the certificate sought in this appeal. The reporter concluded that Section 154(3)(a) of the 1997 Act requires a certificate to be issued on appeal if the appeal decision maker is satisfied that the Council's refusal is not well-founded. In this case, for the reasons set out in the decision notice, the reporter found that the refusal is well-founded. He therefore conclude that a certificate should not be granted and that the appeal be dismissed.

[Please see the DPEA Website for the full Appeal Decision Notice](#)

### 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 24<sup>th</sup> February 2022.

## 5 REVIEW REQUESTS RECEIVED

- 5.1 Reference: 20/00796/FUL  
Proposal: Erection of dwellinghouse  
Site: Land West of Causewayfoot Cottage Wolflee, Hawick  
Appellant: Miss Dawn Kilpatrick

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 the proposed development is located outside of the identifiable boundaries of the Wolfelee building group which is contained by the woodland and public road to the north of the site. This development would appear divorced from the building group and would fail

to respect its character and historic sense of place. No economic case has been substantiated to support a house out with the extent of the building group. 2. The development would be contrary to Policy HD2 of the Local Development Plan 2016 and New Housing in the Borders Countryside Guidance 2008 and criteria h) and k) of Policy PMD2 and the Placemaking and Design SPG in that the form and design of the proposal would fail to sensitively integrate with the architectural style of the countryside location and would detract from the character and sense of place of the rural area. 3. The development would be contrary to Policy IS8 of the Local Development Plan 2016 in that the site is located within the 1 in 200 year functional floodplain of the Catlee Burn. This development would be at significant risk of flooding from the Catlee Burn and no information has been provided to demonstrate that the proposal can be safely developed on this land free from flood risk and without increasing the probability of flooding elsewhere.

- 5.2    Reference:                    21/00002/FUL  
        Proposal:                    Erection of dwellinghouse  
        Site:                            Plot 1 Land South East of Steading Buildings,  
    Greystonelees Farm, Burnmouth  
        Appellant:                   Mr Richard Wood

Reason for Refusal:    The proposed erection of a further dwellinghouse at this location would be contrary to Local Development Plan 2016 Policy HD2 (Housing in the Countryside) as there is no remaining capacity for the expansion of the building group within the current plan period. The building group's capacity for expansion within the current Local Development Plan 2016 period was two units. This capacity was taken up by two consents for new build dwellinghouses granted under this part of the policy on neighbouring plots. Policy HD2 states that no further development above this threshold will be permitted, and there are no material considerations which would outweigh this.

- 5.3    Reference:                    21/00312/AMC  
        Proposal:                    Erection of new dwelling with garage (Approval of  
    all matters specified in condition of planning  
    permission 18/01632/PPP)  
        Site:                            Land North Of Old Manor Inn, Lanton  
        Appellant:                   Mr Richard and Alison Stables

Conditions Imposed:    1. The development hereby permitted shall not be carried out otherwise than in complete accordance with the plans and specifications approved by the Planning Authority. Reason: To ensure that the development is carried out in accordance with the approved details and ensure to a satisfactory form of development, which contributes appropriately to its setting, and to minimise risk to trees. 2. Notwithstanding the submitted details in this application, the roof of the dwelling shall be slate of a type first submitted to and approved in writing with the planning authority. The development is thereafter to be completed using the agreed slate, prior to occupation of the dwelling. The external parts of the flue of the wood burning stove are to be matt black or matt grey in colour. In addition, the frames of the Solar PV panels hereby approved shall be coloured non-reflective black or dark grey unless with the prior written consent of the Planning Authority. Reason: To ensure a satisfactory form of development, which contributes appropriately to its setting. 3. The dwellinghouse shall not be occupied until the connection to the public mains water supply is made, and the approved foul and surface water drainage measures are implemented. Surface

water-run off shall be maintained at pre-development levels. Reason: To ensure that the development is adequately serviced. 4. No development shall commence until further details of landscaping (including location, species and number of new planting), timescale for implementation and future maintenance of planting have been submitted to and approved in writing by the Planning Authority. The landscaping shall be carried out and maintained in accordance with the approved details. Reason: To visually integrate the development sympathetically with the setting. 5. Construction works shall only be carried out in accordance with the submitted Arboricultural Report (Robert Gray Forestry & Arboricultural Consultants) dated September 2021. All trees shall be protected as per this report including provision of the approved driveway and parking and erection of protective fencing in accordance with BS5837:12 during the construction period. No trees shall be subsequently removed or lopped unless with the prior written approval of the Planning Authority. Reason: To ensure protection of trees that contribute to the landscape setting of the site.

- 5.4 Reference: 21/00595/PPP  
 Proposal: Erection of dwellinghouse with access and associated works  
 Site: Land East of Deuchar Mill House, Yarrow  
 Appellant: Buccleuch Estates Ltd

Reasons for Refusal: 1. The proposed development at this site would be contrary to policy HD2 of the Scottish Borders Local Development Plan (2016), and contrary to the guidance within the adopted New Housing in the Borders Countryside Supplementary Planning Guidance Note (2008), in that the proposed development would not relate sympathetically to the sense of place of the existing building group, and would potentially lead to ribbon development along a public road. 2. The proposal does not comply with Policy PMD2 of the Local Development Plan 2016 in that it would fail to ensure there is no adverse impact on road safety.

- 5.5 Reference: 21/00793/FUL  
 Proposal: Partial change of use of shop and alterations to form manager's flat  
 Site: Shop, 43 High Street, Hawick  
 Appellant: Ms Ha Pham

Reason for Refusal: The proposal is contrary to Policies ED3 and PMD2 in that it would have an unacceptable impact on the town centre, specifically in undermining the viability of an existing retail/commercial unit thereby detracting unacceptably from the vitality and viability of this area of the town centre, and would be unacceptably detrimental to the character of the surrounding area.

- 5.6 Reference: 21/01132/FUL  
 Proposal: Erection of pergola and boundary fencing (retrospective)  
 Site: 58 George Street, Peebles  
 Appellant: Lisa Dawkins

Reason for Refusal: The pergola and fencing is contrary to policies PMD2 and HD3 of the Local Development Plan 2016 in that the siting of the pergola and the varied height and style of the fencing would have an unacceptably adverse impact on the character and visual amenity of this residential area. There are no other material considerations that are

sufficient to overcome the adverse visual impact resulting from the proposed development.

- 5.7    Reference:                    21/01262/FUL  
      Proposal:                    Removal of Condition 2 of planning permission  
   18/01000/FUL pertaining to use as holiday let  
   accommodation  
      Site:                         Warlawbank Steading, Reston, Eyemouth  
      Appellant:                  Ms Louise Weddell

Reason for Refusal:    The proposed removal of Condition 2 of planning permission 18/01000/FUL would be contrary to Local Development Plan 2016 policies PMD2 (Quality Standards), HD2 (Housing in the Countryside), HD3 (Protection of Residential Amenity) and IS2 (Development Contributions) as the Planning Authority would lose control over the consented use of the development for holiday let purposes. The use of the development for residential purposes would be incompatible with neighbouring farm uses, with unacceptable levels of amenity for occupants, and would result in the creation of a new residential unit without addressing deficiencies in local education created as a result of the development. Other material considerations do not justify a departure from the Development Plan in this case.

- 5.8    Reference:                    21/01270/FUL  
      Proposal:                    Change of use from Industrial (Class 4,5,6) to a  
   Functional Fitness Gym (Class 11)  
      Site:                         Unit B, Whinstone Mill, Netherdale Industrial Estate,  
   Galashiels  
      Appellant:                  Miss Lianne Wallace

Reason for Refusal:    The development would be contrary to Policy ED1 of the Local Development Plan 2016 in that it would result in the loss of floorspace allocated for Classes 4-6 and the exception criteria within the policy are not satisfied. The loss of floorspace allocated for Classes 4-6 will have an adverse impact on the development of businesses within these Classes seeking to locate within the industrial estate. Other material considerations are not sufficient to outweigh the harm resulting from the incremental loss of allocated floorspace.

- 5.9    Reference:                    21/01422/FUL  
      Proposal:                    Demolition of steading and farmhouse and erection  
   of two dwellinghouses  
      Site:                         Land at Haughhead Farm and Steading Building,  
   Innerleithen  
      Appellant:                  Mr William, Brenda and Sarah Glennie

Reason for Refusal:    The proposed steading replacement would be contrary to Policy HD2 of the Local Development Plan 2016 in that it would comprise residential development in the countryside that does not meet criteria within Policy HD2. The steading replacement would not be related to a building group; would not comprise the conversion of an existing building; would not replace or restore an existing or former house; and, no business justification has been provided to support the requirement for a dwellinghouse to replace the existing former steading. The development would, therefore, contribute to sporadic residential development in the countryside, to the detriment of the character of the site and surrounding area. Other material considerations have been accounted for but these do not outweigh the harm that would result from the development.

## 6 REVIEWS DETERMINED

- 6.1 Reference: 21/00244/FUL  
Proposal: Erection of agricultural machinery dealership premises incorporating workshop, show space, office and associated works  
Site: Slaters Yard off Charlesfield Road, St Boswells  
Appellant: AB Wight Engineering Ltd

Reasons for Refusal: 1. The proposal would be contrary to policy PMD4 of the Local Development Plan 2016 as the site is outwith the Development Boundary for St Boswells and outwith Charlesfield Industrial Estate and is an isolated countryside location rather than a logical extension to the settlement. The proposed development would prejudice the character and natural edge of St Boswells and cause significant adverse effects on the landscape setting of the settlement. In addition, there are no significant community benefits of the proposal that justify development outwith the Development Boundary. 2. The proposal would be contrary to policy ED7 of the Local Development Plan 2016 as the site is an isolated site within the countryside and it has not been substantially demonstrated that the proposal requires this particular countryside location or that the development proposed cannot be satisfactory accommodated within the nearby Charlesfield business and industrial site or another allocated business and industrial site within an identified settlement boundary. In addition, the development would not respect the amenity and character of the surrounding area. 3. The proposal would be contrary to policy EP6 of the Local Development Plan 2016 as the site is within the area designated as Countryside Around Towns and it has not been adequately demonstrated that the development requires a rural location or that the use is appropriate for a countryside setting. In addition, the proposal would result in piecemeal and sporadic development in the countryside that would be visually intrusive and would erode the sensitive setting of St Boswells, resulting in adverse impacts on the undeveloped rural character and visual amenity of the area.

Method of Review: Review of Papers, Site Visit, Further Written Submissions & Hearing

Review Decision: Decision of Appointed Officer Overturned (Subject to Conditions)

- 6.2 Reference: 21/00502/FUL  
Proposal: Modification of Condition 2 of planning permission 12/01191/PPP in respect of extension to period of permission  
Site: Land North East of Buxton House, Buxton Road, Selkirk  
Appellant: Mr Hugh and Violet Lovatt

Reason for Refusal: The proposed development is contrary to Policy HD2 of the Scottish Borders Local Development Plan 2016 and New Housing in the Borders Countryside Guidance 2008 in that the application site does not constitute an appropriate addition to the building group at Buxton. Furthermore, given the site is currently for sale, any other material considerations, including the applicant's personal circumstances, do not override this policy conflict.

Method of Review: Review of Papers

Review Decision: Review Withdrawn

- 6.3 Reference: 21/00734/FUL  
Proposal: Change of use of agricultural building and alterations to form dwellinghouse and garage  
Site: Land North East Of Gamekeepers Cottage, Eckford, Kelso  
Appellant: Buccleuch Estates Ltd

Reasons for Refusal: 1. The proposal is contrary to policy PMD4 of the Local Development Plan 2016 as the site is outwith the development boundary for Eckford and the proposal does not satisfy the criteria within the policy for exceptional circumstances. No material considerations have been identified which would outweigh the need to consider this proposal in accordance with policies of the Local Development Plan 2016. The proposal is contrary to Part C of policy HD2 of the Local Development Plan 2016 in that the building has no architectural or historic merit and is not physically suited for residential use. The structural survey has not demonstrated that the building is capable of conversion without significant changes to the structure. The conversion would not be in keeping with current scale of the building. The development would be tantamount to rebuilding or replacement. 3. The proposal is contrary to policy PMD2 of the Local Development Plan 2016 as this pattern of development would not be compatible with or respectful to the neighbouring built form or settlement pattern. The scale, massing and height would result in an appearance which is not designed in sympathy with Scottish Borders architectural styles. 4. The proposal is contrary to policy ED10 of the Local Development Plan 2016 in that the change of use of prime quality agricultural land to garden ground would result in the permanent loss of prime agricultural land.

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Upheld

- 6.4 Reference: 21/00836/FUL  
Proposal: Siting of mobile catering truck and alterations to existing access  
Site: Land at Station Yard, Traquair Road, Innerleithen  
Appellant: Mr Gordon Bain

Reasons for Refusal: 1. The proposed development would be contrary to Policies PMD3, ED1 and ED3 of the Local Development Plan 2016 in that it would comprise the loss of employment land during the period of consent for the catering truck, thus prejudicing the availability of business and industrial land within the allocated employment land site. Furthermore, it would likely divert trade from the allocated town centre, thus undermining its vitality and viability. The resulting impacts would potentially have adverse economic implications, and these would not be sufficiently overcome by any other material considerations. 2. The proposed development would be contrary to Policy HD3 of the Local Development Plan 2016 in that the comings and goings and congregation of customers would potentially undermine the amenity of neighbouring property. The resulting impact would have potentially significant amenity implications,

and these would not be sufficiently overcome by any other material considerations.

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Overturned (Subject to Conditions)

- 6.5 Reference: 21/00965/FUL  
Proposal: Erection of glazed covered pergola to existing outside seating area (part retrospective)  
Site: Waterloo Arms, Chirnside, Duns  
Appellant: Waterloo Arms

Conditions Imposed: 1. The development hereby permitted shall not be carried out otherwise than in complete accordance with the plans and specifications approved by the Planning Authority. Reason: To ensure that the development is carried out in accordance with the approved details. 2. Permission is granted for a limited period of 3 months from the date of this consent. Thereafter, the pergola structure shall be dismantled and removed from the site within one week of the expiry of this period, unless a planning application to retain the development has been submitted to and approved by the Planning Authority. Reason: It would be harmful to residential amenity to allow the development to remain indefinitely.

Method of Review: Review of Papers & Further Written Submissions

Review Decision: Decision of Appointed Officer Overturned (Subject to Conditions)

- 6.6 Reference: 21/00999/PPP  
Proposal: Erection of dwellinghouse and formation of new access  
Site: Plot 1 Land North of Cakemuir House, Nenthorn  
Appellant: Mr and Mrs Forster

Reasons for Refusal: 1. The proposal is contrary to policy HD2 of the Scottish Borders Local Development Plan 2016, and contrary to the guidance within the adopted New Housing in the Borders Countryside Supplementary Planning Guidance 2008, in that the site is not within or well related to a building group and would unacceptably adversely impact the landscape and visual amenity of the surrounding area. 2. The proposal is contrary to policy PMD1 of the Local Development Plan 2016 in that it would present itself as ribbon development contrary to the sustainable use and management of land. 3. The proposal is contrary to Policy PMD2 of the Local Development Plan 2016, in that the site is not compatible with or respects the character of the surrounding area or building group.

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Upheld

- 6.7 Reference: 21/01000/PPP  
Proposal: Erection of dwellinghouse and formation of new access  
Site: Plot 2 Land North of Cakemuir House, Nenthorn  
Appellant: Mr and Mrs Forster



Reasons for Refusal: 1. The proposal is contrary to policy HD2 of the Scottish Borders Local Development Plan 2016, and contrary to the guidance within the adopted New Housing in the Borders Countryside Supplementary Planning Guidance 2008, in that the site is not within or well related to a building group and would unacceptably adversely impact the landscape and visual amenity of the surrounding area. 2. The proposal is contrary to policy PMD1 of the Local Development Plan 2016 in that it would present itself as ribbon development contrary to the sustainable use and management of land. 3. The proposal is contrary to Policy PMD2 of the Local Development Plan 2016, in that the site is not compatible with or respects the character of the surrounding area or building group.

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Upheld

6.8 Reference: 21/01012/FUL  
 Proposal: Erection of summer house and formation of off street parking (retrospective)  
 Site: 2 Winston Road, Galashiels  
 Appellant: Mr Conrad Campbell

Reason for Refusal: The summerhouse is contrary to Policies PMD2 and HD3 of the Local Development Plan 2016 in that it occupies a prominent and obtrusive location, and its siting has an unacceptable adverse visual impact on the character of the area. There are no other material considerations that are sufficient to overcome the adverse visual impact resulting from this part of the proposed development.

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Overturned (Subject to Conditions)

## 7 REVIEWS OUTSTANDING

7.1 There remained 4 reviews previously reported on which decisions were still awaited when this report was prepared on 24<sup>th</sup> February 2022. This relates to sites at:

• Land East of 15 Howdenburn Court, Jedburgh	• Garden Ground of Kilnknowe House, East End, Earlston
• Land South and West of Greywalls, Gattonside	• Land East of The Old Stables Lennel House, Lennel

## 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 one S36 PLI previously reported on which a decision was still awaited when this report was prepared on 24<sup>th</sup> February 2022. This relates to a site at:

- |  |  |
|--|--|
| <ul style="list-style-type: none"><li>Land West of Castleweary (Faw Side Community Wind Farm), Fawside, Hawick</li></ul> | <ul style="list-style-type: none"><li></li></ul> |
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### 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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