

REASONS FOR APPEAL DOCUMENT

In the case of:

Scottish Borders Council Planning refusal

(Application No. 21/01344/FUL)

Against:

Mr. Christopher L. Brass (Appellant)

at Land east of The Old Stables, Lennel House,

Lennel, Coldstream. TD12 4EX

Background

This appeal concerns the refusal by Scottish Borders Council for the siting of 2 x Shepherds Huts on disused agricultural land, for tourism purposes. I believe the refusal grounds are contrary to a number of existing policies which support this type of proposal.

The land in question is situated to the east of the Old Stables at Lennel House, Lennel, Nr. Coldstream. It extends 1.67 acres and contains a disused cowshed which measures 60' x 30'. The land is metres away from the river Tweed and public paths just outside the land head eastwards towards Berwick and westerly towards Coldstream and beyond. There is also a rough track used by walkers and motor vehicles which runs north – south adjacent to the land. Fishermen often use it to access the Tweed.

The path of the much heralded 'Tweed Trail,' a multi million pound tourist scheme, passes within metres of the site . This new trail encourages walkers to traverse from the source of the Tweed in the west near Moffatt to the coast at Berwick in the east. Tourism along this route is being heavily promoted and it is hoped the new trail will one day be on par with the 'coast to coast' which runs from Cumbria to East Yorkshire.

It is anticipated that demand for accommodation along the route will be high. In addition it will bring economic benefit to the local communities in terms of spending in local shops, bars, restaurants, etc. This proposal will seek to employ at least 2 x local people to assist in its running.

Decision to Refuse

This case has been with the council planning department for over 15 months. It took 11 months for the planning officer to refuse to back a pre planning application and this full application has taken 4 months to decide. The refusal notice dated 15th December cites just one ground for refusal:

'The development is contrary to Policy PMD2 of the Scottish Borders Local Development Plan 2016 (SBLDP) in that the proposed development would generate extra vehicular traffic on a sub standard access to the application site to the detriment of pedestrian and road safety'.

The planning application of 18th August 2021 specifically made clear that the site was **NOT** to be used by persons arriving by motor vehicle. The sole aim of this venture is to accommodate walkers and cyclists mostly using the new Tweed Trail route who would not have motor vehicles with them. The Planning officer's decision therefore failed to take this important aspect into account.

This rather narrow view by the planning officer goes against this Council's own policies on motor vehicle traffic (See policies PMD 1 for instance) and is in conflict with the view expressed by Lord Hope in the Supreme Court case of Tesco Stores Ltd v Dundee City Council 2012.

I have attached the relevant passage for your information to the file, but essentially Lord Hope stated that

'development management is about assessing the scheme in front of you and not some imagined alternative'.

Yet despite my making it clear in the planning application that visitors to the site would **NOT** be arriving by motor vehicle, the planning officer has ignored this very important point and has put weight on the assertion that the access track to the site is unsuitable for motor vehicles. How is this relevant when it will be walkers/cyclists using the track?

Existing Policies

Scottish Borders Council's own policies can be shown to support this proposal. I would like to go through the salient parts of each one in turn:

Policy ED 7 (Business, Tourism and Leisure Development in the Countryside) LDP 2016

1.2 'The aim of the policy is to allow for appropriate employment generating development in the countryside whilst protecting the environment and to ensure that business, tourism and leisure related developments are appropriate to their location. This policy will be applied to any applications that involve economic diversification in rural areas, for example diversification of agricultural land.....'

*'Proposals for business, tourism or leisure development in the countryside **WILL BE APPROVED** and rural diversification initiatives will be encouraged providing that:*

b) the development is to be used directly for leisure, recreation or tourism appropriate to a countryside location and, where relevant, it is in accordance with the Scottish Borders Tourism Strategy and action plan.

Policy ED 7 goes on to list further criteria which fits with tis proposal. I have not listed all here, but a copy of Policy ED7 is attached for reference.

This policy was **NOT** referred to in the refusal notice.

Policy IS4 (Transport Development and Infrastructure)

1.1 'Transport policies seek to promote the most suitable means of travel, giving priority to walking and cycling...and to public transport in preference to travel by car. As well as being positive move to tackle climate change, this approach benefits local environmental quality, personal health and mobility and helps those without access to a car'.

The council **WILL SUPPORT** proposals for transport infrastructure that:

- a) Promote sustainable travel
- b) Facilitate the development of allocated sites in ways which promote sustainable travel
- d) Have no unacceptable adverse impact on the natural and built environment
- e) Have no unacceptable adverse impact on the occupiers of adjacent land by virtue of noise, smell and noise pollution

Policy IS7 Parking Provision and Standards

1.1 '...The provision of car parking needs to be appropriate to the circumstances and the councils parking standards are explained in Appendix 3'.

'Relaxation of technical standards will be considered where appropriate due to the nature of the development and/or if positive amenity gains can be demonstrated that do not compromise road safety'.

(Appendix 3 – Transportation Standards) 'Scottish Planning Policy and PAN 75 promote the integration of land use and planning to assist...and to create favourable conditions for greater use of sustainable transport modes'.

Policy PMD 1 Sustainability

The 2020 Local Development Plan states:

'The climate change (Emissions Reductions Targets) (Scotland) Act 2019 creates a statutory framework for delivery of greenhouse gas emissions reductions in Scotland. The act sets out ambitious targets to reduce emissions and the Local Development Plan has a key role to play by helping encourage the reduction of building and transport related emissions, encouraging the use of renewable energy sources and sustainable development'.

The policy goes on to say:

*'In determining planning applications and preparing development briefs, the council will apply the following sustainability principles **WHICH UNDERPIN ALL THE PLAN'S POLICIES** and which developers will be expected to incorporate in their developments':*

g) The encouragement of walking, cycling and public transport in preference to the private car

You will note that the council's own policy states that policy PMD1 is relevant to ALL DEVELOPMENT proposals and in fact underpins the whole of the Local Development Plan. The planning officer in this instance hasn't even mentioned PMD1 in the refusal notice.

In the successfully appealed case of 15 x huts at land east of Wester Deans, West Linton (20/00019/REF) the planning officer Ranald Dodds actively quoted policy PMD1 stating at page 4 under 'Accessibility' that: ***'PMD1 requires encouragement of walking, cycling and public transport in preference to the private car. Whilst there are numerous hutting sites within the Borders, those are historic sites and are generally in locations.....which are readily accessible by public transport (and walking)'***

In the successfully appealed case for the siting of 6 x yurts and a shop, at land north east of Newburgh Farm Steading, Ettrick Valley (12/00967/FUL) one of the reason the appellant had his application refused by Scottish Borders Council was because he actually *wanted* visitors to arrive by car, whereas the council did not. This is the opposite of my appeal: *I do not want* guests arriving by car and by the nature of their travels there is not even a remote chance of that happening, yet the Planning Officer is saying I should have suitable access to allow cars.

Policy PMD 2

The Planning Officer has quoted this policy as the grounds for refusal of my application. For ease of reference I have added his full reason for refusal below:

'The development is contrary to Policy PMD2 of the Scottish Borders Local Development Plan 2016 (SBLDP) in that the proposed development would generate extra vehicular traffic on a sub standard access to the application site to the detriment of pedestrian and road safety'.

Policy PMD2 is broken down into various sections. Somewhat unhelpfully, the planning officer has not given direct quotes from each section, rather, he has infused various sections together to come up with his response under PMD 2.

The opening paragraphs to PMD2 states:

'...this policy section promotes low carbon technologies and economic growth whilst protecting the built and natural intrinsic qualities of the Scottish Borders'.

'...the plan acknowledges that quality design is not just about the aesthetic improvement of the environment, but it is as much about improved quality of life, equality of opportunity and economic growth'.

'Policies PMD1 (Sustainability) and PMD" (Quality Standards) are relevant to all development proposals. Policy PMD1 identifies a series of sustainability principles which underpin all LDP policies...'

Reading though the section titled 'Accessibility' in PMD2, the only point where there could be some concern is at (p) which states:

'it (the proposed development) incorporates, where required, access for those with mobility difficulties'.

If someone is walking the new Tweed Trail, they will most likely be without severe physical impairment as the terrain at earlier stages in the route will prohibit those with wheelchairs and the like. That point aside, if a walker with a disability is able to traverse high hill in the Tweedsmuir section, then accessing my site will not present any difficulty.

This next point is also included in the section titled 'Accessibility' and it is incredibly important, yet the planning officer has chosen not to refer to it:

(t) 'development sites need to be able to promote travel by sustainable travel modes in locations which maximise the extent to which travel demands are met first through walking, then cycling, then public transport and finally through the use of private cars'.

The above section clearly sets out that walking and cycling are infinitely preferable than the use of cars. This point alone substantially undermines the Planning Officer's reason for refusal.

Conclusion

May I make one final quote and this is from Planning Aid For Scotland (PAS) which I have attached to the file. They say:

*'Planning is not just a matter of protecting local amenity or conservation assets, but of ensuring that, strategically, the public interest is served with a suitable land for housing, business and other activities **and not unreasonably constraining the rights of property owners to develop their own property**'.*

'(Planning decisions) are subject to a requirement under planning legislation that they must have regard to the current development plan for the area...'

The Planning Officer has, rather tenuously, refused this application. He has cited an infusion of reasons from policy PMD2 whereas there are other reasons within the same policy which actively *support* my proposal. If you take this into account with all the other policies I have quoted, there is simply no justifiable reason why this application should have been refused.

My goal is to create a sustainable business on land that is no longer in use. The council and indeed the Scottish Government are keen to promote diversification of disused land and my proposal will see unused land given a practical purpose whilst sitting well in its surrounding environment.

Shepherds Huts are not permanent in nature and will not disturb nor scar the landscape.

The panel will know that throughout Scotland there are a number of bothies scattered about the countryside. These are designed to shelter walkers for a night or two with very basic facilities. The majority of these bothies are not accessible by vehicle whatsoever, yet they continue to prosper. My proposal is not dissimilar to the Bothy principle.

The Borders region is crying out for a broad range of accommodation to meet the explosive demand for 'staycations'. By granting this appeal, the Tweed Trail will have another accommodation site to offer. Jobs will be created and money will be spent locally. The site will be accessed by walkers and cyclists only. No vehicles will arrive at the site therefore negating the concerns given by the planning officer as a reason to refuse this application.

As demonstrated, there are far more council policies that favour this development than don't.

I respectfully ask that you give your full consideration to allowing this appeal.

Mr. Christopher L. Brass LL.B (Hons)

Appellant

17th December 2021