

**SCOTTISH BORDERS COUNCIL**

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

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

**REF :** 19/00456/FUL

**APPLICANT :** Mr Hamad Alsowadain

**AGENT :** KLD Architectural Design

**DEVELOPMENT :** Erection of natural pairs building, extension to existing natural pairs building and erection of annex to dwellinghouse

**LOCATION:** Windrush And Land South East Of Windrush  
Highend  
Hawick  
Scottish Borders  
TD9 9SA

**TYPE :** FUL Application

**REASON FOR DELAY:**

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**DRAWING NUMBERS:**

<b>Plan Ref</b>	<b>Plan Type</b>	<b>Plan Status</b>
A101	Location Plan	Approved
A102	Existing Plans & Elevations	Approved
A103	Proposed Plans & Elevations	Approved
A104	Proposed Plans & Elevations	Approved
A105	Proposed Plans & Elevations	Approved

**NUMBER OF REPRESENTATIONS: 0**

**SUMMARY OF REPRESENTATIONS:**

No representations.

Roads Planning Section: no objections to the proposed development which is to add to the existing infrastructure associated with the business.

Environmental Health Section: does not object, subject to conditions to require (a) that within one month of the date of any consent issued, the applicant should submit a scheme for the cleaning, disinfection, vermin proofing, protection of foodstuffs and removal of waste products from the sheds; and (b) that in the event that a noise complaint regarding the sheds is made, the Applicant should, within two weeks of the date of the complaint, submit a noise mitigation scheme to the local planning authority for approval.

The Community Council and Ecology Officer have also been consulted, but have not responded on this occasion.

**PLANNING CONSIDERATIONS AND POLICIES:**

SCOTTISH BORDERS COUNCIL LOCAL DEVELOPMENT PLAN 2016

PMD1: Sustainability  
PMD2: Quality Standards  
ED7: Business, Tourism and Leisure Development in the Countryside  
HD2: Housing in the Countryside  
HD3: Protection of Residential Amenity  
EP1: International Nature Conservation Sites and Protected Species  
EP2: National Nature Conservation Sites and Protected Species  
EP3: Local Biodiversity  
EP13: Trees, Woodlands and Hedgerows  
IS2: Developer Contributions  
IS7: Parking Provision and Standards  
IS9: Waste Water Treatment and Sustainable Urban Drainage

## SUPPLEMENTARY PLANNING GUIDANCE

Placemaking and Design (2010)  
Waste Management (2015)

**Recommendation by** - Stuart Herkes (Planning Officer) on 26th August 2019

## BACKGROUND

This application proposes various developments in connection with an existing falcon breeding and rearing centre which has recently been established under Planning Consent 15/00115/FUL in relation to an isolated residential property at 'Windrush'. The proposals are, firstly, that the existing falconry breeding pairs building should now be extended to accommodate an imprinting section; secondly, that the site should be augmented by a new breeding pairs building to the immediate southwest; and thirdly, that guest accommodation - to be operated in association with the falconry rearing business - should be included in place of an existing car port and log store within the curtilage of the residential property at 'Windrush'.

## PROPOSED NEW AND EXTENDED NATURAL PAIRS BREEDING BUILDINGS

This is not a new business, so there is no requirement under Policy ED7 to justify the business need. Further, the proposed buildings relate sufficiently well in siting and operation, and directly to the existing facilities, which I have observed to be extant and operational.

Due to changing requirements with respect to the configuration of the proposed falcon breeding structures however, the Applicant has been concerned for operational reasons, to change the design of the aforementioned extension and of the new breeding pairs building. However, given that these have not changed the basic size and function or operation of the buildings proposed or its relationship to its surroundings - and given the site's isolation from surrounding residential properties - I am content that these are still sufficiently in scale and in keeping with what was originally proposed, that these can be appropriately progressed as revisions to the original scheme.

In the case of the revision to the proposed extension, this has also addressed my concern that the extension be removed from the likely Root Protection Area of a nearby mature tree, which I consider should reasonably be maintained for as long as possible. The tree concerned does add visual amenity to the site, and surrounding area, and provides some screening to the site. It also helps keep the buildings in scale, with their landscape setting too. As such, the revised footprint is, I am content, readily supported as the better alternative in landscape and visual impact terms to the original orientation of the imprinting extension. However, it is unclear whether there is some concern to create a path or access in the vicinity of the same RPA, and the Applicant is still reasonably required to ensure that the tree is not impacted unacceptably in connection with the progress of the development described by the Proposal Drawings. However, this matter is appropriately regulated by planning conditions. If necessary, there is in fact potential to re-route any path to the north, rather than south, of the buildings to completely avoid impacting the tree's RPAs, but this can be regulated through, or in response to, the same condition, were this to become necessary.

Taking account of there being an existing and operational building of this type on site already, and taking account of the established falcon rearing facility, which is extant, and taking account of the reasonably good

landscape containment of the site and its surroundings, I am content that some allowance is reasonably made for the unusual form of the proposed buildings, provided, as before, they are finished in the same dark green profiled sheeting. Ideally any roofs would also be, if not matching, then at least matt and dark coloured (black or dark grey). These matters are however, capable of being addressed by planning condition. The proposed new breeding pairs building lies behind the existing building and the hack pen in views from the public road, and is well-related to the site and the other falconry facilities. While it is reasonably supposed that the extension would be accommodated for operational reasons on the same level as the existing building, no similar assumption follows with respect to the new building and the levels of that building would reasonably be required for prior approval to ensure that it could be accommodated appropriately, and not raised up within the landscape to make it any more visible than necessary.

I have considered whether or not there was any reason to require any new tree planting in relation to the proposed new natural pairs building, but given that it would lie to the north of the existing hackpen building, I am content that new tree-planting is not reasonably required here. I would be concerned though that the new natural pairs building, and most likely, any associated paths, could - and should - be removed from any RPAs of any existing hedging along the field boundary. It is possible that the proposed siting would not in fact impact these RPAs at all, however the large-scale nature of the plans makes it difficult to be certain that this would absolutely be the case. However, the matter is reasonably capable of being regulated under condition in that in the event that there were any such impacts, I am content that only minimal adjustments would be needed to the siting, to safeguard these hedges (in point of fact, the large-scale nature of the plan makes it more likely that it is only a more detailed description in plan that is required, to demonstrate that these impacts are actually factored in; but the matter is not, I consider, left to the Applicant's own discretion, and they should demonstrate directly, that they would in fact avoid the RPAs). In any event, the matter - including any adjustment to the siting - is of a scale that would be reasonably regulated under a planning condition, essentially requiring the Applicant to micro-site the building with this consideration in mind, if this is necessary. Again, the matter is reasonably dealt with under an appropriately worded planning condition and the Applicant should be able to demonstrate within a more detailed plan, that an appropriate distance of setback is accommodated within the specific siting of the building and related paths.

A further, technical point is that while the directions of the various elevations of the proposed extension are not identified on the drawing (being described as "front", "rear" and "side"), it is still sufficiently clear from the relationship to the existing building how the extension would be orientated. Accordingly, I am content that there would be no requirement to regulate this under a condition, in the event of approval.

#### GUEST ACCOMMODATION UNIT

The proposed guest accommodation unit although within the residential curtilage of 'Windrush' itself, is also understood to relate directly to the bird breeding operation; albeit that this is temporary, short-term accommodation for employees and perhaps guests of the business. (The proposed guest accommodation building is shown on the site plan, but is not picked out individually, on the location plan).

As far as the proposed structure is concerned, there is some ability to accommodate something of this size and form on the site under Householder Permitted Development Rights, albeit that it would require to be set back 1m from the boundary, since it is higher than 2.5m. However, in that it is clearly a secondary structure relative to the house and would occupy a subordinate location within the curtilage, its form and scale are not objectionable.

There is potential for impacts on a leylandii hedge along the boundary but I am content that this is not objectionable per se, while the use of a dark green cladding, along the lines proposed, would allow the structure to be acceptably accommodated. Something might be said about the appearance of the existing structures (car port and log store), which are not of any note or quality, and the replacement structure would have a neutral to positive impact in relative terms.

While I am content that the building as described, could find an appropriate context on site (being accommodated in place of existing domestic structures within a residential curtilage), I do find the proposed design of door somewhat out-of-keeping with the character of the building. However, if it were coloured to match the building - or were appropriately recessive in colour at least - it would not be notable in views from the public road, and not therefore unacceptable. I would note only that a less domestic (and plainer and modern) door would be preferable, and more in keeping with the outbuilding character of this structure. However, this is not objectionable, or reasonably regulated by condition.

Notwithstanding that structurally, the proposed guest accommodation building itself might be capable of being accommodated under Householder Permitted Development Rights (subject at any rate, to it being moved back 1m or more from the property boundary), the proposed ancillary use of the building as guest accommodation, including as it would principal rooms (bedroom apartments) does require planning approval in its own right. Strictly speaking, the building is not, as configured, capable of accommodating a self-contained residential use (in so far as it has no kitchen area) but the structure could readily be converted to a self-contained use at a later date, albeit with the likely loss of one of the two bedrooms. Accordingly, it is reasonably required under a planning condition in the event of approval, that the building should not be converted to any independent use, or otherwise used separately from, the use of Windrush itself.

In a purely residential context, I would have been content that a standard condition requiring ancillary domestic use would have been appropriate, and the use of the additional two bedrooms could have been left to the discretion of the householders at Windrush themselves. However, given that those accommodated therein would not necessarily be members of the same household (or even visiting friends or relatives of the household), but employees or business contacts or associates, this does open up potential for a different type of use to the operation of most domestic annexes. As such, some account is needed of how this accommodation would reasonably and acceptably operate in planning terms. The agent has advised that most employees would be there on a six weeks basis, which means that it might reasonably be expected to operate more akin to a short-term holiday let operation, albeit that the standard holiday let condition would not reasonably be applied here, given that it would be too limiting relative to the business' stated requirement. Accordingly, a bespoke condition, along the lines I have elsewhere applied to regulate the operation of temporary farm worker accommodation, would reasonably be applied here, to allow but regulate the residential use of the annex appropriately, and ensure that it would not have any unacceptable impacts. I would add that some reassurance is also reasonably taken from the very limited nature and size of what is proposed here, which makes it unsuitable for any longer-term use.

While I have elsewhere required farm worker accommodation to be laid out and operated as it has been described, I am content that what is proposed here in this particular case, is simply so restrictive in its scale that it would not reasonably facilitate any long-term residential occupation for any greater number of individuals than is described. If anything, what is shown is more liable to be reduced to a single bedroom-ed unit for a single individual's more comfortable longer-term occupation than it would be reconfigured to accommodate any further bedroom(s). However, with this in mind, householder PD rights would still reasonably be removed from the structure of the guest accommodation unit, to ensure that it is not otherwise capable of being expanded beyond the capacity indicated. In this way, the proposal could not be expanded at the owners' discretion using householder PD rights, to accommodate any larger number of bedrooms or allow a self-contained use (with a kitchen). As such, I am content that it is possible to allow the Applicant sufficient discretion to accommodate what has been described, while still ensuring that this could not be augmented outwith the planning system, to facilitate any greater and more independent residential use.

Taking account of the residential context of this particular proposal (and allowing that this is a more reasonable context within which to accommodate the proposed temporary short-term residential accommodation needs of the business than the bird breeding site itself would have been), I am content that a location within the residential curtilage of 'Windrush' is certainly the most appropriate site for this ancillary guest accommodation unit. It avoids the establishment of a residential use on the adjacent farmland, out with an existing residential property. (I am aware that in practical terms, noise from the birds might also have made any location on the bird breeding site itself less than optimum from an amenity perspective, so the proposal works sufficiently well also for the operators as well, I would observe). Accordingly and subject to a condition that does tie the unit to 'Windrush' but allows business use, this proposed guest annex, is I consider, not objectionable.

## OTHER CONCERNS

There are no new or ulterior Roads or Ecology concerns from the time of the 2015 consent. Roads has responded to advise directly, that this is the case; Ecology has not. Accordingly, it is supposed that there are no matters ulterior to those considered at the time of Planning Application (now Consent) 15/00115/FUL, including those then considered with respect to bats and barn owls.

The only consultee to raise any concerns about the current proposal, is Environmental Health; which does so in reference to "the sheds" and seeks to require management plans for prior approval, and which

furthermore, seeks to regulate noise impacts in the event of a nuisance complaint. Any and all such restrictions are however simply not reasonably applied here under planning conditions in the way sought. This is because it would be impractical - if not impossible - to demonstrate that any unacceptable nuisance impacts had been generated solely or sufficiently by what is specifically proposed here (that is, rather than by the operation of any of the existing facilities in isolation, or in combination with the proposed). Moreover, any and all such concerns would in any case be more appropriately regulated through environmental health legislation, and are not reasonably required to be regulated by the Planning Authority for any planning reasons. It would also be unreasonable to anticipate an unacceptable noise issue within a planning condition since the Planning Authority can only reasonably consider impacts that would be generated when the facility was being properly regulated and operated. In short, I am content that the proposed conditions would not be reasonably applied.

I have considered the requirements imposed by planning conditions upon the operation of the bird breeding facility in the form in which this was consented under Planning Consent 15/00115/FUL, and I note that the current development proposals do not conflict with these directly, and no consultees have advised of any perceived conflicts or ulterior related concerns. I have already noted above that the position with respect to trees and hedges requires regulation, simply to ensure that the Applicant has adequately accounted for RPAs (or can make the slight adjustments required to do so). There is, I would add, some overlap between some concerns raised by Environmental Health in its consultation response and details required under Conditions Nos 10 and 11. This is specifically with respect to waste management and pest control. These conditions are not suspensively worded, and it would suffice I consider, to require only that the Applicant provides details to show how the buildings proposed here, would be accommodated within the existing relevant operation arrangements and in a way that would ensure consistency between the two schedules. This however, is I would be clear, a technical consideration, ensuring that the proposed buildings can be accommodated within the existing operation for purposes of consistency in regulation, avoiding any position in which one part of the site might be treated differently to another.

Similarly for reasons of consistency, I would ideally not have considered it appropriate to introduce any new or different regulatory considerations with respect to the use of the new natural pairs building but the building is unusual in its function and the descriptions within the proposal description ("natural pairs building") and then in the annotations on the proposals drawing (e.g. "chamber"), are ambiguous and potentially open to re-interpretation and/or re-application to a context other than falconry breeding and rearing. In short, I consider that it is necessary to specifically require that this building should only be used for falcon breeding and rearing; with agriculture being the only admissible exception since the latter is consistent with the historic use of the site and land, and agriculture would ordinarily be capable of being accommodated as a permitted change of use by any successor unless the latter were held by an inflexibly worded planning condition.

Environmental Health reviewed water supply arrangements in relation to the previous consent and has not raised any equivalent concerns here.

I would consider it appropriate to require that the new breeding pairs building and the extension should not affect run-off rates from the site, and a standard condition would be appropriately imposed in this consideration. With respect to foul drainage, the arrangements should be regulated along similar lines to condition no 6 which was attached to the 2015 consent.

## CONCLUSION

Subject to conditions and informatives being imposed to address the above highlighted concerns, the proposals are permissible.

## REASON FOR DECISION :

Subject to compliance with the schedule of conditions, the development will accord with the relevant provisions of the Local Development Plan 2016 and there are no material considerations that would justify a departure from these provisions.

**Recommendation:** Approved - conditions & informatives

- 1 The new natural pairs building hereby consented and the extension to the existing natural pairs building hereby consented, shall both - and shall at all times - only be used for falcon breeding and rearing, and shall not, and shall not at any future time, be used for any other use (excepting only agriculture) unless an application for planning permission in such behalf has first been submitted to, and approved in writing by, the Planning Authority.  
Reason: To retain effective control over the use and operation of the non-residential buildings hereby consented, in the interests of conserving appropriately the amenity and environment of this isolated rural site and its surrounding area; including in the interests of road safety.
- 2 The residential annex (guest accommodation unit) hereby approved shall only be used in connection with the main dwellinghouse at Windrush, Highend, Hawick ("Windrush") as a single planning unit, and it shall at no time, in whole or in part, be converted to, or otherwise used as, a self-contained unit independent of Windrush, or otherwise be used or occupied as a separate residential property; or be used or occupied by any business that is not operated by the owners or occupants of Windrush, unless an application for planning permission in that behalf, has first been submitted to, and approved in writing by, the Planning Authority.  
Reason: To retain effective control over the use of the guest accommodation unit in the interests of ensuring that its operation is and, going forward, remains, appropriate to this locality in terms of the impacts upon the amenity of neighbouring residential properties (including Windrush itself) and the general amenity of the surrounding rural area, including in terms of road safety.
- 3 Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2011 (or any subsequent provisions amending or re-enacting that same Order), there shall be no extension carried out, in whole or in part, anywhere on, or in relation to, the structure of the residential annex building (guest annex accommodation unit) hereby approved, unless a planning application for such an extension, has first been submitted to, and approved in writing by, the Planning Authority. (For the avoidance of doubt, the provisions and requirements of this planning condition shall be held to be in operation at all times and in perpetuity, unless a planning application to the contrary, is first submitted to, and approved in writing by, the Planning Authority).  
Reason: To retain effective control over the operation of the residential annex in order to conserve appropriately the amenity of the site and surrounding area, including in the interests of road safety by ensuring that the level of accommodation is restricted to that which is reasonably capable of accommodation within the unit in the form in which it has been consented.
- 4 Unless otherwise agreed in writing by the Planning Authority in advance of the commencement of development, the external surfaces of all buildings hereby approved shall match precisely the finished external materials and finishes of the roof and walls of the existing natural pairs building. The door of the residential annex hereby approved shall also be finished to match this same colour unless otherwise agreed in writing by the Planning Authority.  
Reason: To ensure an appropriate finished appearance for all buildings hereby consented, in the interests of conserving the visual amenities of the site and surrounding area.
- 5 No development shall commence on the new natural pairs building hereby consented, until a scheme of details has first been submitted to, and approved in writing by, the Planning Authority, which shall describe:  
(i) the aforementioned building and associated paths described (and re-sited, if necessary) in plan, in accordance with the advice and guidance of Informative Note 1;  
(ii) the proposed finished floor level of the aforementioned building;  
(iii) the existing ground levels within the footprint of the aforementioned building; and  
(iv) a clearly identifiable datum point, or clearly identifiable datum points, located outwith the site and sufficient for the purpose of establishing the heights of the existing and proposed levels required under items (ii) and (iii) above, relative to the existing level(s) of the existing road surface.  
Thereafter, the development shall be implemented in accordance with the approved scheme of details.  
Reason: To ensure that the development does not have any detrimental impacts upon the appearance, environment and amenity of the site and surrounding area, including upon the Root Protection Areas of existing field boundary hedges, or upon the amenity of any neighbouring

properties as a consequence of the surface levels within the site being raised or lowered to any inappropriate height(s).

- 6 Notwithstanding the description of the Approved Location Plan, and unless otherwise agreed in writing by the Planning Authority in advance of the commencement of development, no development - including any ground works, or the formation of any paths or areas of hard standing - shall take place in the Root Protection Area of the tree to the immediate southeast of the existing natural pairs building, in connection with the progress of the development described by the Approved Drawings. Reason: In the interests of protecting adjacent trees - particularly that in closest proximity to the existing natural pairs building - which contributes value and amenity to the site and surrounding landscape.
- 7 All ground works associated with the development of the new natural pairs building hereby approved and the extension to the existing natural pairs building hereby approved, shall all be carried out in accordance with BS5837:12. Reason: In the interests of preserving the health and vitality of existing trees on the development site, the loss of which would have an adverse effect on the visual amenity of the area.
- 8 Unless otherwise agreed in writing by the Planning Authority in advance of the commencement of development upon the guest accommodation annex building hereby approved, the elevation of the same aforementioned building which is described by the elevation drawing annotated "Front Elevation" on Approved Drawing A105, shall only be orientated such as to face southeast (that is, inwards into, and towards, the residential property at 'Windrush') and not northwest (that is, outwards, and towards, the land to the north of 'Windrush'). Reason: To retain effective control of the development because the annotations describing the relevant elevation drawings on the approved drawing do not identify the orientation of the same elevations. The annex as an ancillary building within the curtilage of the residential property at 'Windrush' is required to be fully capable of operation within that same curtilage, in the interests of conserving the amenity of the surrounding area.
- 9 Unless otherwise agreed in writing in advance by the Planning Authority, no development shall commence until a written scheme of details has first been submitted to, and approved in writing by the Planning Authority, which describes how the development hereby approved shall be developed and operated in accordance with the requirements of Planning Conditions Nos. 4, 10 and 11, attached to Planning Consent 15/00115/FUL. Thereafter, the development shall be implemented and operated in accordance with the approved details. Reason: To ensure consistency with the implementation and operation of Planning Conditions Nos. 4, 10 and 11 attached to extant Planning Consent 15/00115/FUL in the interests of development control; and specifically, of ensuring that there is, and remains, effective control over the operation of the development approved under Planning Consent 15/00115/FUL.
- 10 Surface water drainage shall be designed to comply with PAN 61 and CIRIA SUDs manual C697, and shall be designed and installed to maintain surface water run-off from the site (including from all areas of hard standing) at, or below, greenfield levels. Further, the buildings and extension hereby approved shall not be occupied until the surface water drainage system that serves them directly, has first been completed and is fully functional. Reason: To ensure the sustainable disposal of surface water and avoid additional run-off from the site to neighbouring land, including the public road. This is in the interests of road safety and protecting the amenity of residential properties in the surrounding area.
- 11 Details of the foul drainage to be submitted to and approved in writing by the Planning Authority before the development commences. The development then to be completed in accordance with the approved details. (Please see Informative Note 2 for related advice and guidance). Reason: To ensure the development is adequately serviced and to protect the environment; and to ensure consistency with the operation of Planning Condition No 6 attached to Planning Consent 15/00115/FUL.

## Informatives

It should be noted that:

1       INFORMATIVE NOTE 1:

It is unclear from the description of the Approved Location Plan (including from the large-scale nature of the same plan) whether or not there would be any potential for works on the new natural pairs building hereby consented (or any associated access path), to impact the Root Protection Areas (RPAs) of any field boundary hedges to the southeast, south or southwest of the site of this same aforementioned building. However, even if there is a risk in these terms, there is ample potential for the building (and paths) to be micro-sited to avoid such impacts; principally in development being capable of being set back a sufficient distance from the field boundaries and hedges to avoid impacting the RPAs altogether. This is anticipated to involve only minimal adjustments to the siting as this is currently described on the Approved Location Plan, if indeed any such 're-siting' is actually required. Accordingly, the details required to address Planning Condition No 5, item i. should either demonstrate that there would be no impacts upon the RPAs of the hedges were the building and/or paths to be sited as proposed, or that the building and/or paths would instead be micro-sited in accordance with a proposed revised site plan or location plan, to avoid such impacts. In either event, the details should establish the distance of set-back for the building and path from the hedges, to demonstrate that the RPAs would be conserved appropriately.

2       INFORMATIVE NOTE 2:

The details required under Planning Condition No 11 attached to this same planning consent with respect to the proposed foul drainage arrangements, should be consistent with those required under Planning Condition No 6 attached to Planning Consent 15/00115/FUL.

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