

PLANNING AND BUILDING STANDARDS COMMITTEE

5th December 2022

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

- 2.1.1 Reference: 21/00152/FUL
Proposal: New quarry for Sand and Gravel Extraction
Site: Land West of Slipperfield House Slipperfield Loch,
West Linton
Appellant: Mr Hayden Thomas

Reasons for Refusal: 1. The proposal is contrary to Policies PMD2, ED12 and EP5 of the Scottish Borders Local Development Plan 2016 in that the development lies outwith an Area of Search, within an Area of Moderate Constraint and would cause significant adverse landscape and visual amenity impacts both to the detriment of important local landscape character and the Pentland Hills Special Landscape Area. The local landscape character and topography are recognised to be a fine example of "kettle and drum" glacial geomorphology, the proposals removing the intimate topographical relief pattern and creating a large concave landform out of character with the existing landform. The site also includes part of the expanded Pentland Hills Special Landscape Area, comprising farmland foreground as part of the integral setting of the hills, the proposals interrupting that setting and view of the hills by introducing an industrial and incongruous development, detrimentally impacting on the wildness character of the hills and recreational path usage around the site, in contravention of the role and purpose of the farmland inclusion in the designation. These impacts have neither been sufficiently mitigated nor outweighed by a clearly demonstrated need for the quarry and public benefit. 2. The proposal is contrary to Policy 4 of SESPlan 2013 in that the site lies outwith an area of search and within an Area of Moderate Constraint where no existing extraction sites exist. The proposals are not considered to be small scale and the applicants have failed to demonstrate the particular operational, community or environmental benefits of the proposed development. 3. The proposal is contrary to Policies ED12 and EP8 of the Scottish Borders Local Development Plan 2016 in that the

development will cause significant adverse impacts on, and unacceptable disturbance to, appreciation of the setting of the Roman Road which passes the north-west boundary of the site either on or adjoining the line of the current Core Path. The proposal will cause unacceptable conflict between appreciation of the heritage route and a working quarry immediately alongside it, with associated visual discordance, noise and dust. The impacts have neither been sufficiently mitigated nor outweighed by a clearly demonstrated need for the quarry and public benefit.

Reasons for Appeal: The evidence shows that the Proposed Development is in accordance with the Development Plan, either because the impacts are not unacceptable; or, if the impacts are initially deemed unacceptable, there are "public interest" (Policy ED12) or "social or economic benefits of national or local importance" (Policy EP5) to justify a grant of planning permission. The existing and emerging Scottish Government policies, as well as other material considerations, also support a grant of planning permission. The Proposed Development is in the public interest and delivers social or economic benefits of national or local importance. SPP and the draft NPF4 refer to the "important" and "essential" contribution minerals make to the economy. The Proposed Development would address a substantial deficit in the minerals landbank in the market area. The mineral deposit within the Proposed Development area is a good quality sand and gravel. There is an established market demand for these products within the Scottish Borders and adjoining regions. The Proposed Development will support continued employment at the Appellant's existing business at Broxburn. The Proposed Development will support local supply, which avoids unsustainable imports by minimising the distance of travel from source to point of consumption. The Council's reasons for refusal are not based on the correct interpretation of the development plan policies and are not supported by the evidence.
[Please see the DPEA Website for the Appeal Documents](#)

Method of Appeal: Written Representations

2.2 Enforcements

Nil

2.3 Works to Trees

Nil

3 APPEAL DECISIONS RECEIVED

3.1 Planning Applications

3.1.1 Reference: 21/01302/FUL
Proposal: Erection of dwellinghouse
Site: Land South West of West Lodge, Minto
Appellant: David Anderson And Prof. Sally Haw

Reason for Refusal: The dwellinghouse would be contrary to Policy PMD5 of the Local Development Plan 2016 in that it would detract from the character and amenity of the surrounding area and would not respect the scale, form, design and density of the surrounding area. The erection of a

house on this site would have an unacceptable adverse impact on the setting of the settlement on a prominent approach to the village.

Reasons for Appeal: The design principles are set out in the Design Statement. The appellant took on board the Planning Officers suggestions when producing the final design proposal. The case officer's report committee concludes that the application conforms with the Scottish Borders Local Plan. The new Committee did not seem to understand the criteria by which to judge the proposal and ignored the recommendation of the Head of Planning, the advice of the officers and over-arching national planning policies. The zero carbon home proposed will help fight climate change and contribute to the local economy.

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

Method of Appeal: Written Representations & Site Visit

Reporter's Decision: Sustained

Summary of Decision: The Reporter, Tammy Swift-Adams, states that the design of the proposed house is satisfactory and would accord with criterion (d) of Policy PMD5, the relevant provisions of Policy PMD2 of the Local Development Plan (LDP) and the guidance on placemaking and design. The proposed development would not have a detrimental impact on the character and amenity of the area, the residential amenity of adjacent homes on the setting of the village. The reporter found the proposed development satisfactory in relation to criteria (b) and (f) of Policy PMD5, as well as Policy HD3 of the LDP. The reporter concluded that the proposed development accords overall with the relevant provisions of the LDP and that there are no material considerations which would still justify refusing to grant planning permission and therefore grant planning permission subject to conditionals and a Section 75 legal agreement.

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

3.2 Enforcements

- 3.2.1 Reference: 21/00005/UNDEV
Proposal: Siting of static caravan clad in timber and land engineering works undertaken
Site: Land South West of Yethouse Farmhouse, Newcastleton
Appellant: A Hale

Reason for Notice: It appears to the Council that the above breach of planning control has occurred within the last 4 years. A static caravan which has been clad in timber has been sited on the land and remains so without the benefit of planning permission. An amount of land engineering works have also been undertaken within the land shown edge in red on the attached plan.

Grounds of Appeal: The static caravan is used as welfare facilities for The Holding, has no foundations, sewerage or other plumbing or grid electricity supply and the Appellant therefore believes it is permitted. The Appellant was not aware that cladding the caravan represented a contravention of any regulations. A static caravan has been on the land for at least ten years and therefore falls outside of any enforcement powers. In recent times the circular earthworks located centrally within

The Holding were created by the previous owner. These were to provide a horse exercise facility. The Appellant is undertaking to reinstate the field and erect a livestock fence through that location, to restore the land to agricultural production. The polythene tunnel is small, being 3.6m long x 2.4m wide and 2.4m at the ridge. It is sited 2.4m from the boundary with a primary function to provide shelter for new-born lambs. The Appellant does not consider that this requires planning permission. Outside of lambing time the tunnel is used to produce vegetables for personal consumption.

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

Method of Appeal: Written Representations & Site Visit

Reporter's Decision: Dismissed

Summary of Decision: The Reporter, Tammy Swift-Adams, states that in relation to the caravan, it is apparent from the appellant's evidence that the caravan is used for residential purposes which are unrelated to the lawful use of the land. During the site investigation the reporter found the caravan, and the part of the land on which it is sited, to be more residential in appearance than agricultural. The reporter concluded that there has been a material change in the use of the land from agriculture. The reporter is not satisfied, on the balance of probabilities, that the static caravan on the land for over 10 years continuously, was used for residential purposes before the appellant began use of it, during the pandemic. The reporter noted that the polytunnel was erected on site and appeared solid in nature, therefore under the 1997 Act this is a building. Primarily used for agricultural purposes, with the growing of vegetables in between lambing season as an ancillary use. Agricultural permitted development rights would not apply in this instance as the polytunnel is situated less than 25 metres from a road and must be applied for prior to erection. In relation to the earthworks the reporter states the evidence suggests the previous landowner created this earthwork to provide a surface for exercising horses. The appellant states that the earthworks are being removed and the reporter noted that the site did appear less prominent than the aerial photos dated 2020 and 2021. The reporter stated the earthwork is operational development that was undertaken without the requisite planning permission. The matter did therefore constitute a breach of planning control when the enforcement notice was issued. The reporter therefore concluded that the siting of the caravan, the erection of the polytunnel and the engineering earthwork did constitute breaches of planning control. The appeal is therefore dismissed and the enforcement notice upheld.

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

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 25th November 2022.

5 REVIEW REQUESTS RECEIVED

- 5.1 Reference: 21/01081/FUL
Proposal: Change of use of land and plot layout to form extension to caravan park
Site: Land West of Pease Bay Holiday Home Park, Cockburnspath
Appellant: Mr Graham Hodgson

Reason for Refusal: The proposals are contrary to Local Development Plan policies PMD2 (Quality Standards), ED8 (Caravan and Camping Sites), EP5 (Special Landscape Areas), and EP14 (Coastline). The siting and design of the proposed development would have a significant adverse landscape and visual impact on the landscape quality of the Berwickshire Coast Special Landscape Area. The benefits of the development, including economic benefits, would not outweigh this harm. This conflict with the Local Development Plan is not overridden by any other material considerations.

- 5.2 Reference: 21/01618/FUL
Proposal: Erection of dwellinghouse
Site: Land South West of Castleside Cottage, Selkirk
Appellant: Mr P J Lewis

Reason for Refusal: The proposed development would, due to its design and materials, be unsympathetic to, and adversely impact on, the character of the existing building group, contrary to Policies PMD2 and HD2 of the Local Development Plan 2016, and contrary to Placemaking and Design Supplementary Planning Guidance 2010 and New Housing in the Borders Countryside Supplementary Planning Guidance 2008. Other material considerations do not override these policy conflicts and the harm that would arise as a result of the development.

- 5.3 Reference: 22/00959/FUL
Proposal: Siting of shepherds hut and siting of cabin (retrospective) to form holiday let accommodation
Site: Land South West of Corstane Farmhouse, Broughton
Appellant: Firm of Corstane

Reasons for Refusal: 1. The development would be contrary to policy ED7 of the Local Development Plan 2016 in that insufficient information has been submitted to demonstrate that the proposal is capable of being developed and operated as a viable holiday accommodation business in this location, potentially resulting in unsustainable development in a rural location. The need to site the development in this particular location has not been adequately justified. The proposed development would be isolated and physically segregated from the operation of Corstane Farm and would break into a previously undeveloped field. As a result, the proposed development would represent a sporadic and unjustified form of development in the countryside. No overriding case for the development as proposed has been substantiated. This conflict with the development plan is not overridden by other material considerations. 2. The proposal would be contrary to policy PMD2 of the Local Development Plan 2016 in that: The development would not respect the character of the surrounding area and the neighbouring built form, particularly the cabin. It would be an incongruous development, extending into an undeveloped field, that would not create a sense of place based on a clear understanding of the

context and the cabin has not been designed in sympathy with the design and character of the existing buildings. Furthermore, the development would not relate sympathetically to the landscape setting of the NSA, conflicting with the terms of policy EP4. These deficiencies could not be addressed by means of landscaping or other mitigation. No overriding case for the development as proposed has been substantiated. This conflict with the development plan is not overridden by other material considerations.

6 REVIEWS DETERMINED

Nil

7 REVIEWS OUTSTANDING

7.1 There remained 15 reviews previously reported on which decisions were still awaited when this report was prepared on 25th November 2022. This relates to sites at:

• Land East of 16 Hendersyde Avenue, Kelso	• Plot 1, Land North of Belses Cottage, Jedburgh
• Plot 2, Land North of Belses Cottage, Jedburgh	• Garden Ground of Cheviot View, Eden Road, Gordon
• Land West of 1 The Wellnage, Station Road, Duns	• Land North and East of Tweed Lodge, Hoebridge East Road, Gattonside
• Derelict Agricultural Building North of Ladyurd Farmhouse, West Linton	• Deanfoot Cottage, Deanfoot Road, West Linton
• Caddie Cottage, Teapot Street, Morebattle, Kelso	• Land West of Burnmouth Church, Stonefalls, Burnmouth, Eyemouth
• Townfoot Hill, Land North West of Cunzierton House, Oxnam, Jedburgh	• Land North East of Runningburn Farm, Stichill
• Land at Silo Bins Edington Mill Chirnside, Edington Mill Road, Chirnside	• Hillside, Duns Road, Swinton, Duns
• Mansefield, 91 High Street, Coldstream	•

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 25th November 2022. This relates to a site at:

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

Ian Aikman
Chief Planning & Housing Officer

Signature

Author(s)

Name	Designation and Contact Number
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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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