



Mr Peter Hedley  
per Stuart Davidson Architecture  
Design Studio  
32 High Street  
Selkirk  
Scottish Borders

**Please ask for:** Euan Calvert  
01835 826513  
**Our Ref:** 22/00464/FUL  
**Your Ref:**  
**E-Mail:** ecalvert@scotborders.gov.uk  
**Date:** 27th June 2022

Dear Sir/Madam

**PLANNING APPLICATION AT Townfoot Hill Land North West Of Cunzierton House Oxnam  
Jedburgh Scottish Borders**

**PROPOSED DEVELOPMENT:** Erection of residential holiday let with associated facilities

**APPLICANT:** Mr Peter Hedley

Please find attached the formal notice of refusal for the above application.

Drawings can be found on the Planning pages of the Council website at  
<https://eplanning.scotborders.gov.uk/online-applications/>.

Your right of appeal is set out within the decision notice.

Yours faithfully

John Hayward

Planning & Development Standards Manager

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (as amended)**

**Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013**

**Application for Planning Permission**

**Reference: 22/00464/FUL**

**To: Mr Peter Hedley per Stuart Davidson Architecture Design Studio 32 High Street Selkirk  
Scottish Borders TD7 4DD**

With reference to your application validated on **30th March 2022** for planning permission under the Town and Country Planning (Scotland) Act 1997 (as amended) for the following development :-

**Proposal: Erection of residential holiday let with associated facilities**

**At: Townfoot Hill Land North West Of Cunzierton House Oxnam Jedburgh Scottish Borders**

The Scottish Borders Council hereby **refuse** planning permission for the **reason(s) stated on the attached schedule**.

**Dated 27th June 2022  
Regulatory Services  
Council Headquarters  
Newtown St Boswells  
MELROSE  
TD6 0SA**

**John Hayward  
Planning & Development Standards Manager**

**APPLICATION REFERENCE: 22/00464/FUL**

**Schedule of Plans and Drawings Refused:**

Plan Ref	Plan Type	Plan Status
A Location Plan	Location Plan	Refused
P726-PL-001	Proposed Plans	Refused
P726-PL-002	Proposed Site Plan	Refused

**REASON 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 an undeveloped rural landscape. The need to site the development in this particular rural location has not been adequately justified.

Furthermore, the proposal has not fully assessed the requirement of Policy ED7 to reuse existing buildings, brownfield sites and/or to locate the proposal adjacent to existing buildings. The proposed development would appear divorced from the operation of Swinside Townfoot Farm and within a previously undeveloped field.

As a result, the proposed development would represent a sporadic and unjustified form of development in the countryside, which would set an undesirable precedent for similar unjustified proposals.

- 2 The development would be contrary to Policy PMD2 of the Local Development Plan 2016 in that its siting and design would not respect and be compatible with the character of the surrounding area, and would result in a significantly adverse impact upon existing landscape character and rural visual amenity.

**FOR THE INFORMATION OF THE APPLICANT**

If the applicant is aggrieved by the decision of the Planning Authority to refuse planning permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under Section 43A of the Town and Country Planning (Scotland) Act 1997 (as amended) within three months from the date of this notice.

The notice of review must be submitted on the standard form and addressed to the Clerk of The Local Review Body, Democratic Services, Scottish Borders Council, Council Headquarters, Newtown St Boswells, TD6 0SA or sent by email to [localreview@scotborders.gov.uk](mailto:localreview@scotborders.gov.uk). The standard form and guidance notes can be found online at [Appeal a Planning Decision](#). Appeals to the Local Review Body can also be made via the Scottish Government Planning and Environmental Appeals Division by clicking on the following link [PEAD](#)

If permission to develop land is refused or granted subject to conditions, whether by the Planning Authority or by the Scottish Ministers, and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner may serve on the Planning Authority a purchase notice requiring the purchase of his interest in the land in accordance with the provisions of Part 5 of the Town and Country Planning (Scotland) Act 1997 (as amended).

**SCOTTISH BORDERS COUNCIL**

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

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

**REF:** 22/00464/FUL

**APPLICANT:** Mr Peter Hedley

**AGENT:** Stuart Davidson Architecture

**DEVELOPMENT:** Erection of residential holiday let with associated facilities

**LOCATION:** Townfoot Hill  
Land North West Of  
Cunzierton House  
Oxnam  
Jedburgh  
Scottish Borders

**TYPE:** FUL Application

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**DRAWING NUMBERS:**

<b>Plan Ref</b>	<b>Plan Type</b>	<b>Plan Status</b>
A Location Plan	Location Plan	Refused
P726-PL-001	Proposed Plans	Refused
P726-PL-002	Proposed Site Plan	Refused

**NUMBER OF REPRESENTATIONS: 0**  
**SUMMARY OF REPRESENTATIONS:**

There was an advert placed in the Southern Reporter and on tellmescotland.gov.uk for neighbour not known. No representations were received.

**Consultations:**

Landscape Architect: Objection. Concerned that the glazed front elevation may draw attention in distant views, during the day and when lit at night, appearing incongruous in the landscape.

Roads Planning: Further information required. No objection to the principle. Require further details of location and specification of the access from public road. Require amendments to the proposed turning area as the design is too restrictive and will not allow access and egress in forward gear.

Scottish Water: No public water supply or waste water infrastructure are available.

Access Officer: Further information required. The development interrupts the public right of way BR191. Require details as to how public access on the route and junction with Dere Street/public road would be managed. BR191 is an unsurfaced route over open hillside. Some clarification of the route would be required on plans to allow impact to be assessed.

Ecology Officer and Environmental Health Officer: No response.

**PLANNING CONSIDERATIONS AND POLICIES:**

Local Development Plan 2016

PMD1: Sustainability

PMD2: Quality Standards

ED7: Business, Tourism and Leisure Development in the Countryside

HD3: Protection of Residential Amenity

IS5: Protection of Access Routes

IS7: Parking Provision and Standards

IS9: Waste Water Treatment Standards and Sustainable Urban Drainage

Supplementary Planning Guidance:

Placemaking and Design, 2010

Landscape and Development 2008

SPP - Scottish Borders Tourism Strategy 2013-2020

**Recommendation by** - Euan Calvert (Assistant Planning Officer) on 27th June 2022

Site and Proposal

This report considers full planning permission for the erection of a holiday let within a former burrow pit/quarry working on the western side of Townfoot Hill (295 AOD) within the land holding of Swinside Townfoot, Oxnam, Jedburgh.

The proposed development is the formation of a new track, a parking area for three vehicles and a pedestrian path leading to a new building to accommodate a residential holiday let set into the slope of the hill. There would be extensive glazing on the single front elevation.

The excavated material would be used to form the vehicular access to the site. There would be natural stone faced walls to the built structure and to the storage/ plant rooms, which would be formed from shipping containers. There would be a stair leading to a first floor terrace, which would feature grass bunds in place of balustrades to give the impression of a sub-terrain building.

The supporting statement makes a case for the development, which is said to restore the scarring caused by the quarry (which has left a visible mark). It is stated that this site is to be restored to match the surrounding land. Grazing is intended to continue in the immediate surroundings with the red line boundary tightly surrounding the proposed track and building. The building is designed to be sustainable in design and construction and would be heated by a ground source heat pump.

A Feasibility Study has been provided, which highlights marketing opportunities, potential occupancy and indicative pricing figures based on comparable properties locally and nationwide. A three year price and occupancy model has been provided to demonstrate indicative revenue based on 75/80/ and 85% occupancy. The following documents have also been submitted; Appendix 1: Research, Appendix 2: Competitor Audit, Appendix 3: Agencies and Listing Sites, Appendix 4: Swot and Appendix 5: Pest.

The application requires to be considered principally in terms of policy ED7 of the Local Development Plan on Business, Tourism and Leisure development in the countryside. The development will not conflict with policy HD2 if controlled as holiday accommodation only.

Policy PMD2 of the LDP sets out that developments should respect the character of the surrounding area, neighbouring uses, and neighbouring built form.

Assessment

The principle of tourism and leisure development in the countryside is supported under Policy ED7, where the proposal is in accordance with the Scottish Borders Tourism Strategy and Action Plan.

No business plan has been submitted however I have considered the Feasibility Study. I am content that a tourist development in the countryside could be possible in the correct location. This site is however elevated and is sensitive in landscape and visual terms.

Policy ED7 however, also requires that any specific proposal should respect the amenity and character of the surrounding area and have no significant adverse impacts upon nearby uses, particularly housing. Further, where a new building is proposed, evidence is to be provided to demonstrate that no appropriate existing building or brownfield site is otherwise available to accommodate the proposal. Account for the environmental and amenity considerations set out under Policy PMD2, is also explicitly required under Policy ED7.

#### Road Safety and Access

Roads Safety is a material planning consideration. In principle, the proposed junction location (a new vehicular access through the dyke at the existing passing place) and design would be acceptable to the Roads Planning Service. It is not possible for them to confirm no objection without photographs and bellmouth specification/design. The Roads Planning Service do however, have concerns that the parking and turning proposals are too restrictive.

It is not possible to confirm that the proposals are acceptable in terms of impacts on road safety. The site and layout are not currently acceptable as the Road Planning Service has concerns that the parking area is not sufficient in size for access and egress in a forward gear. The size of hardstanding would need to be increased to accommodate sufficient parking and turning with corresponding concerns for landscape impacts of this further earthwork.

Policy IS5 protects rights of way and there is one claimed right of way that is affected by this proposal. Claimed right of way BR191 has not been shown on the plans and it is not therefore possible to confirm whether there will be adverse impacts to public access arising from these proposals. The Access Officer requires further details as to how public access on the route and junction with Dere Street/public road would be managed in future in the event of an approval. BR191 is an unsurfaced route over open hillside and clarification is sought as to the applicant's management of public along this route between Dere Street and Swinside. The routing of public access would need to be established and whether public access rights existed on the proposed track and within the curtilage of the proposed building. Policy IS5 is not currently satisfied but this is not liable to be a determinant issue in this case.

Criteria e) and f) of policy ED7 are not satisfied.

#### Landscape Impact and Visibility

The Council's Landscape Architect has concerns regarding this proposal. This is Rolling Farmland - Borders as described in the SNH (Nature.scot) National Landscape Character Assessment (Landscape Character Type 99). The site is characterised by undulating topography and 'constant gentle gradients giving wide horizons and skylines'.

There are no landscape related designations on this site therefore it is not considered to have high visual sensitivity. The site is open and exposed on a bare hillside and inherently there are views to the site from upland footpaths, Dere Street and the Oxnam to Swinside road. The glazed front elevation will draw attention in distant views, (as it shimmers) during the day and when lit at night, appearing incongruous in the landscape. The roofline and chimney flue have the potential to breach the skyline therefore compounding the visual appearance. Addition of overhead services, a 400m long machined access track, visibility splays, associated fencing and a change in the maintenance regime of the area within the fencing would contribute to adverse landscape and visual impacts.

The proposals therefore do not respect the character of the surrounding area, due to the elevated and isolated location of site, relative to surrounding dwellings and buildings.

Introduction of any building is liable to be inappropriate in this upland fringe setting. The site is at an elevation above all other development in the locality and at considerable distance from surrounding building groups/clusters.

The application has not first demonstrated that there are no more appropriate sites within the applicant's control. This should take account of any existing buildings as well as any opportunities to reuse brownfield land.

The site is considered greenfield. It is certainly within a greenfield. Aerial images confirm that there has been materials/ aggregates borrowed or won on a local and small scale. The visual impact of this scale of burrowing is negligible or minor at most.

I have concerns with the assertion that this development would somehow remove this "scarring" and return it to match the surroundings hillside. This is spurious. There will, in fact, be greater visual impacts arising from the introduction of building, associated roads, services and parking. The visual impacts of this building, roads and services are being heavily downplayed in this application. No landscape scheme or planting proposals have been submitted to mitigate the impacts and no Landscape and Visual Impact Assessment has been provided.

The site is in an isolated rural location, with no existing development in the immediate vicinity, whatsoever. This is not a site that would be preferred for such a development. Opportunities to reuse existing buildings, brownfield sites and/or to locate the proposal adjacent to existing buildings at the farm of Swinside Townfoot Farm need to be explored.

The chosen site would appear divorced from the farm complex, located at over one mile away (through field enclosures) or 5 miles away if traveling by the adopted road network. This chosen site therefore appears as a chance location, which is arbitrary to any historic pattern of development of the local area. Visually it would read as a chance encounter to develop a borrow-pit on a prominent site, not on the edge but central to a permanent grass enclosure. This case would set an undesirable precedent for the entire Borders countryside. All over the Borders countryside there are agricultural borrow pits within fenced enclosures. The Feasibility Study plays heavily on the strength of the site being close to Beirhope Alpacas and walking tourism routes. This is not in itself a strong reason to be unnecessarily detached and in an isolated site. This is not a suitable location for any residential tourism proposal. The perceived need for an isolated site (to accommodate this semi-subterranean architecture) is not in itself reasonable justification in planning terms either. The character and quality of the open countryside must be protected from development in this instance. Hierarchically speaking, it would be difficult to find a more inappropriate site in planning terms. The proposal does not accord with Criterion c. of Policy ED7; and is unacceptable, as the application fails to rule out other potentially more suitable alternatives.

In terms of Criterion d. intensification of use at this site would not be appropriate to the character of this area, which is defined by agricultural husbandry practices, increasingly afforestation and natural landscape features. The proposed discreet visual containment (disguising the walls in natural stone and roofscape as hillside) is not in itself considered to be a mitigating factor or a material consideration in this decision. The Landscape Architect agrees that the contemporary design of the building is responsive in minimising the visual impact but this is not a determinant issue and, in principle, the upland fringe setting is incompatible for the use proposed which would conflict with the isolated and remote characteristics.

At almost 400m long, the access track required to access and service the site would be highly visible and inappropriate. It would be highly detrimental to the amenity and character of the site and surrounding area, and the application therefore cannot be supported. There is no requirement in landscape terms to reconcile the appearance of this borrow pit and this is not a valid or immediate justification for the chosen siting. This proposal demonstrates a desire to capitalise on the outlook from the site but not a need for this specific countryside location.

#### Viability

The proposal is not informed by any actual experience of operating a holiday letting business at the site or indeed at the farm complex. There is no information presented to demonstrate costs of the development against projected income. The Feasibility Study identifies occupancy rates, which are far above those identified in the market trends presented. Economically, the case is uncertain or ambiguous therefore fails requirements of policy ED7. A material consideration on this basis is; "what would happen if the proposal were to prove unviable?"

I would be concerned then that an approval of the current application based on such an insubstantial business case would be liable to promote the establishment of permanent residential unit in an isolated rural location, and in circumstances that would be contrary to the Council's Housing in the Countryside Policy. Conditions can and should be used, in the event of any approval, to regulate this use (requiring a record of guest and restricting occupancy to short-term holiday let use only) but such conditions are often challenged and removed with a change in circumstances or in the event of business failure. For this reason, imposing planning conditions should not be relied on.

The need for such considerable investment in infrastructure does raise concerns that the project might not in fact be fundamentally viable to begin with. I acknowledge the diversification aims and potential fit with the Tourism Strategy but the supporting information does not reasonably provide any reassurance to viability. Support to the farm and wider economy is not demonstrated by this application. Besides this point, unacceptable impacts are identified to the visual amenity of the site and surroundings.

#### Conclusion

The proposal does not, in its siting, layout and design respect the landscape and visual amenities of the site and surrounding area, and would lead to a form of development that in all of the above noted respects, would be incongruous in this isolated rural location.

Further, and without the need for the particular site, layout and design of the proposal having been demonstrated, the proposal would be liable to promote holiday development on a site with respect to which no justification has been given to substantiate any operational or economic requirement of any business requiring itself, to operate from this specific countryside location. As such, it is considered that the proposal would be contrary to Adopted Local Development Plan Policies ED7 and PMD2, and should be refused.

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

The proposal is contrary to Local Development Plan 2016 Policy ED7, in that the applicant has failed to provide adequate business justification to demonstrate that the proposal is capable of being developed and operated viably as a holiday accommodation business in this location, potentially resulting in unsustainable development in an undeveloped rural landscape;

In addition, the proposal would be contrary to policy PMD2 in that its siting and design would not respect and be compatible with the character of the surrounding area, and would result in a significantly adverse impact upon existing landscape character and rural visual amenity.

#### **Recommendation:** Refused

- 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 an undeveloped rural landscape. The need to site the development in this particular rural location has not been adequately justified.

Furthermore, the proposal has not fully assessed the requirement of Policy ED7 to reuse existing buildings, brownfield sites and/or to locate the proposal adjacent to existing buildings. The proposed development would appear divorced from the operation of Swinside Townfoot Farm and within a previously undeveloped field.

As a result, the proposed development would represent a sporadic and unjustified form of development in the countryside, which would set an undesirable precedent for similar unjustified proposals.

- 2 The development would be contrary to Policy PMD2 of the Local Development Plan 2016 in that its siting and design would not respect and be compatible with the character of the surrounding area, and would result in a significantly adverse impact upon existing landscape character and rural visual amenity.

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