
PLANNING APPEALS & REVIEWS

Briefing Note by Chief Planning & Housing Officer

PLANNING AND BUILDING STANDARDS COMMITTEE

27th March 2023

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: 21/00152/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 & Site Visit

Reporter's Decision: Sustained

Summary of Decision: The Reporter, David Buylla, states that Policy ED12 of the Local Development Plan is compatible with Policy 33 of the NPF4. He concludes that the site's location outside an identified area of search and within an area of moderate constraint is not a policy impediment to this proposal. The reporter states that that maintaining a landbank of at

least 10 years is a policy expectation for LDPs and that the presence or absence of such a landbank will be a material consideration in any assessment of the likely positive and negative consequences of the proposal in the planning balance. However, the existence of a 10 year land bank is not, in itself, a policy test within the development plan that can be used in the assessment of an individual development proposal. The Reporter finds that it has not been demonstrated that there is a land bank of sand and gravel either within Scottish Borders or the wider Edinburgh and south east Scotland region that is sufficient to provide at least 10 years supply. This does not trigger a presumption in favour of granting permission to this proposal, but provides some weight in favour of approval when assessing the positive and negative implications of permitting the proposal. The proposal would cause some localised significant adverse landscape and visual effects, but no significant effects on the SLA as a whole, due to the site's location at the very edge of that designation in a location where human influence is readily apparent and the quality and character of the landscape is noticeably different to that found across the majority of the designated area. The proposal would deliver a public interest benefit in terms of addressing a locally unmet demand for sand and gravel and through the additional employment and spin-off benefits it would provide. Even if one adopted a pessimistic valuation of those benefits, he has no doubt that they would outweigh the minimal harm that would be caused to the underlying reasons for designating the SLA. Consequently, he finds no conflict with Policy ED12 c). The reporter is satisfied that the social and economic benefits of the proposal would outweigh the adverse effects and therefore the proposal would not conflict with Policy EP5. The proposal also accords with Policy 4 of the NPF4. The reporter therefore concluded that the proposed development accords overall with the relevant provisions of the development plan and that there are no material considerations which would justify refusing to grant planning permission, subject to 34 conditions and 4 advisory notes.

[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 2 appeals previously reported on which decisions were still awaited when this report was prepared on 17th March 2023. This relates to sites at:

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| • 1 Hall Street, Galashiels | • The Old Cow Shed, Lennel, Coldstream |
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5 REVIEW REQUESTS RECEIVED

5.1 Reference: 22/01357/FUL

Proposal: Erection of dwellinghouse and associated work
Site: Land South of Ebbastrand, Coldingham Sands,
Coldingham
Appellant: Mr Rob Cameron

Reasons for Refusal: 1. The proposed development is contrary to Local Development Plan 2016 policy HD2 (Housing in the Countryside) and EP14 (Coastline) in that the site is not well related to the Coldingham Sands building group and the building group has no further capacity for expansion within the current plan period. The development would result in unacceptable harm to Coldingham Sands' sense of place and would cause unacceptable cumulative impact to the character of the building group and the undeveloped coast. 2. The proposed erection of a dwellinghouse at this location would be contrary to Local Development Plan 2016 policy PMD2 (Quality Standards) criterion (Q) in that the additional traffic generated by the development would have an adverse impact on road safety. The section of road between St Veda's House and the application site is considered incapable of accommodating such further traffic. In particular, the lack of forward visibility at a blind corner outside St Veda's House results in vehicles meeting on a narrow section of road with the need for one vehicle to reverse to the detriment of road and pedestrian safety. 3. The proposed development is considered contrary to Local Development Plan 2016 policies PMD2 criterion (L), EP1 (International Nature Conservation Sites and Protected Species), EP3 (Local Biodiversity) and EP5 (Special Landscape Areas) in that it has not been demonstrated that the development can be satisfactorily accommodated within the site without unacceptable harm to the Berwickshire Coast Special Landscape Area, internationally designated sites, and to the local environment. It has not been demonstrated that the risk of coastal erosion and land slippage can be avoided or mitigated in a manner without unacceptable detrimental impacts to these interests.

5.2 Reference: 22/01421/FUL
Proposal: Formation of access and boundary fence
(retrospective)
Site: The Millers House Scotsmill Kailzie, Peebles
Appellant: Mr And Mrs Peter Nowell

Reason for Refusal: The development would be contrary to policy PMD2 of the Local Development Plan 2016 in that it would fail to ensure there is no adverse impact on road safety, including but not limited to the site access. This conflict with the development plan is not overridden by other material considerations.

5.3 Reference: 22/01612/FUL
Proposal: Alteration and extension to dwellinghouse
Site: Ratchill Farmhouse, Broughton
Appellant: Mrs Jane Prady

Reason for Refusal: The development would be contrary to policy PMD2 of the Local Development Plan 2016 in that the following criteria require that developments: h) create a sense of place based on a clear understanding of the context and are designed in sympathy with Scottish Borders architectural style; i) are of a scale, massing and height appropriate to the existing building; j) are finished externally in materials which complement the existing building; k) respect the character of the surrounding area and neighbouring built form. The proposed development is unsympathetic to the building which it would extend in terms of form,

scale, height, massing and materials and would not complement that building. No overriding case for the development as proposed has been substantiated. This conflict with the development plan is not overridden by other material considerations.

- 5.4 Reference: 22/01811/FUL
 Proposal: Modification of condition No.1 of planning permission 15/01355/FUL to allow the holiday chalet to be occupied as dwellinghouse
 Site: Land at Disused Railway Line Rachan, Broughton
 Appellant: Mr I Maxwell

Reason for Refusal: The development would be contrary to policies PMD1 and HD2 of the Local Development Plan 2016 and supplementary planning guidance on New Housing in the Borders Countryside in that no information has been submitted to demonstrate that the proposal is incapable of being operated as a viable holiday accommodation business. Granting permission would result in unsustainable development in a rural location. The resultant dwellinghouse would be isolated and physically segregated from the dispersed Rachan building group. As a result, the development would represent sporadic and unjustified housing 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.

- 5.5 Reference: 22/01982/FUL
 Proposal: Installation of photo voltaic array to roof
 Site: Scott House, Douglas Square, Newcastleton
 Appellant: Mr Alistair Hodgson

Reason for Refusal: The proposed development is contrary to Policies PMD2, ED9 and EP9 of the Local Development Plan (2016) and Policies 7 and 11 of the National Planning Framework 4 in that the pv panels would fail to preserve and enhance the character and appearance of Newcastleton Conservation Area. There are no other material considerations that are sufficient to overcome the adverse visual impact resulting from the proposed development.

6 REVIEWS DETERMINED

Nil

7 REVIEWS OUTSTANDING

- 7.1 There remained 11 reviews previously reported on which decisions were still awaited when this report was prepared on 17th March 2023. This relates to sites at:

• Land North East of Runningburn Farm, Stichill	• Land at Silo Bins Edington Mill Chirnside, Edington Mill Road, Chirnside
• Land South West of Castleside Cottage, Selkirk	• Land South West of Corstane Farmhouse, Broughton
• Land North and East of Clay Dub, Duns Road, Greenlaw	• 17 George Street, Eyemouth

• Dove Cottage Gate Lodge Press Castle, Coldingham, Eyemouth	• Ravelaw Farm, Duns
• Land South West of West Loch Farmhouse, Peebles	• 100 Abbotseat, Kelso
• Land West of Greenburn Cottage, Auchencrow	•

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 17th March 2023. This relates to a site at:

• Land West of Castleweary (Faw Side Community Wind Farm), Fawside, Hawick	•
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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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