

Legal Opinion by Neil Collar, Brodies LLP

prepared for Richard Spray in respect of  
planning application ref: 22/00933/FUL

28 December 2022



ENLIGHTENED THINKING

**LEGAL OPINION: 22/00933/FUL ERECTION OF TIMBER STORAGE AND PROCESSING FACILITY WITH NEW ACCESS JUNCTION, YARD AREA, LANDSCAPING, TREE PLANTING, SUDS AND ASSOCIATED WORKS AND PLANNING PERMISSION IN PRINCIPLE FOR ASSOCIATED DWELLINGHOUSE WITH OFFICE FOR THE TIMBER PROCESSING FACILITY AT LAND SOUTH WEST OF WEST LOCH FARMHOUSE, PEEBLES, SCOTTISH BORDERS**

1 Planning permission was refused for the timber storage and processing facility on 5<sup>th</sup> October 2022. This Opinion relates to the first reason for refusal:

*The development would be contrary to policy ED7 of the Local Development Plan 2016 in that the applicant has not demonstrated any overriding economic and/or operational need for the proposed Class 5 and Class 6 business operation to be located in this particular countryside location. This conflict with the development plan is not overridden by other material considerations.*

2 Policy ED7 indicates the circumstances in which business, tourism or leisure development will be approved. The key provision in relation to the Proposed Development is:

a) The development is to be used directly for agricultural, horticultural or forestry operations, or for other uses which by their nature are appropriate to the rural character of the area

3 If the Proposed Development complies with a), there is no requirement to show an economic and/ or operational need for the location, as paragraph c) would not apply.

4 The Proposed Development complies with a), either because it relates to forestry operations, or is a use which is appropriate to the rural character of the area.

5 Although Policy ED7 refers to "forestry operations", in practice it only applies to off-site forestry operations, because:

5.1 Forestry use does not require planning permission; and

5.2 Class 22 of the Permitted Development Order grants deemed planning permission for development on land used for the purposes of forestry, which is reasonably necessary for those purposes.

6 It is therefore implicit in Policy ED7 that forestry operations can require off-site development, otherwise the reference to forestry operations in paragraph a) would be pointless.

7 That complies with the decision of the Court of Session in Farleyer Estate v Secretary of State for Scotland 1992 S.C. 202 that forestry use includes operations necessary to render timber marketable, even where the operations are carried on some distance from the plantation.

8 The Proposed Development is primarily a timber storage facility, with occasional timber processing. Applying the principle in the Farleyer case, the Proposed Development is therefore "used directly for ... forestry operations". The Proposed Development therefore complies with Policy ED7 paragraph a).

- 9 It is also clear from the wording of paragraph a) that "used directly for ... forestry operations" does not require the development to also be "appropriate to the rural character of the area". The inclusion of "or for uses ...." indicates that it is only development which is not used directly for agricultural, horticultural or forestry operations, that has to satisfy the requirement that it is "appropriate to the rural character of the area".
- 10 Even if the Proposed Development is not "used directly for .... forestry operations", it still complies with Policy ED7 paragraph a) because it is a use which is "appropriate to the rural character of the area". The Proposed Development is primarily a timber storage facility. Timber is frequently stored in rural areas. The Proposed Development also involves occasional timber processing, which is at a scale appropriate to a rural area – farming and other rural uses involve the use of machinery. The processing is also appropriate to the rural character of the area because it reduces the number of HGV timber lorry movements. The processing will be carried out in a building of similar design to agricultural buildings, which is therefore "appropriate to the rural character of the area".
- 11 The Report of Handling incorrectly interprets Policy ED7. The Report states:
- It is clear that timber which would be processed results from forestry operations. Whilst timber is a product grown in the countryside and this site may have operational advantages for the applicant, the processing of timber is an industrial process which does not require to be within a rural location. The operation proposed encompasses both Class 6 storage and Class 5 industrial uses, which have no requirement to be sited and operated in this particular location and the council is not convinced that the development cannot be accommodated reasonably within the development boundary of a settlement.*
- 12 Those statements contain the following errors:
- 12.1 *the processing of timber is an industrial process which does not require to be within a rural location* – however, Policy ED7a) requires assessment of whether the development is to be "used directly for ... forestry operations". If it does, the policy does not require consideration of whether the development requires a rural location. As mentioned above, the Court of Session decision in the Farleyer case indicates that forestry use includes operations necessary to render timber marketable, ie. processing.
- 12.2 *The operation proposed encompasses both Class 6 storage and Class 5 industrial uses* – again, that is not the relevant issue for the purposes of Policy ED7a), which can apply to class 5 and 6 uses if the development is "used directly for ... forestry operations".
- 12.3 *which have no requirement to be sited and operated in this particular location* – Policy ED7a) does not contain any such requirement.
- 12.4 *and the council is not convinced that the development cannot be accommodated reasonably within the development boundary of a settlement* – again, that is not required by Policy ED7a).

- 13 The Report of Handling appears to have amalgamated Policy ED7a) and c). However, paragraph c) refers to "the development is to be used for other business or employment generating uses". It is therefore clear that paragraph c) is an alternative to paragraphs a) and b). The Proposed Development complies with paragraph a), and paragraph c) does not therefore apply.
- 14 The Report of Handling states:
- 15 *As noted in the preceding section, the principle of the proposed timber processing operation would be contrary to policy ED7. With that in mind, it follows that there would be no need for a house at the site. On this basis alone, the proposed dwellinghouse would fail to comply with the requirements of policy HD2.*
- 16 On the basis that policy ED7 has been interpreted incorrectly, it follows that there is scope, too, for reassessment of the planning application – specifically the proposed dwellinghouse – in terms of policy HD2.