

STATEMENT OF FURTHER WRITTEN SUBMISSIONS

RESPONSE TO REPRESENTATIONS RECEIVED FROM COUNCIL OFFICER'S ON APPLICANT'S NEW INFORMATION

Appeal against the delegated refusal of planning permission for the proposed 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

Land South West of West Loch Farmhouse, Peebles

On behalf of Mr Richard Spray, Pentland Biomass

Scottish Borders Council References: 22/00933/FUL & 23/00001/RREF

Purpose of Statement

1. This Statement has been prepared on behalf of the applicant, Pentland Biomass. It provides the applicant's response to the representations received from the Council's Planning Officer, Managing Solicitor, Ecology Officer and Landscape Architect on the new information submitted by the applicant, namely: the applicant's Legal Opinion; Tree Protection Plan; Ecology Appraisal Plan; Noise Impact Assessment and Photographs PB02/PB03 and PB06.

Comments on Planning Officer's Representation (email dated 10 May 2023)

Proposed House

2. In his email of 10 May, the Planning Officer comments on Photographs PB02/PB03 and PB06 and notes that the applicant's current timber processing facility at Loanhead has been operating for 15 years and does not have an on-site house. These comments are correct.
3. However, what the Planning Officer has failed to acknowledge is that there are actually two houses that are owned and occupied by the owners of Pentland Plants located directly adjacent to the Pentland Plants garden centre and nursery business which are both within 500 metres of the current timber yard site. These houses are "tied" to the existing business through planning conditions and legal agreements imposed by Midlothian Council specifically to connect the houses to the Pentland Plants business.
4. It is accepted that these houses are not located within the existing timber yard, but this is because that site is not owned by the applicant and is only leased by the applicant.
5. Furthermore, and as we explained at the accompanied site visit on 22 May, the timber yard is connected to these houses through a CCTV system and this arrangement provides an element of 24 hour security for the existing timber yard.

6. However, and despite these security arrangements, the existing yard has been the subject of break-ins and vandalism on three separate occasions over the past two years, which has resulted in over £8,000 worth of damage to equipment, vehicles and machinery as well as a loss of income due to the down time associated with the vehicle damage. Photographs of this damage are attached at the end of this statement.
7. There is therefore a need for on-site security for the proposed operations, and as we have explained at paragraphs 63 to 73 of our Grounds of Appeal Statement, a plot for the erection of a new house and permanent office/staff accommodation has been proposed on the Westloch site and would provide on-site management and security of the new facility which is considered necessary given the expensive (£1M+) equipment that will be stored on site.
8. At this stage, only planning permission in principle is being sought for the house/permanent office accommodation, with all detailed design matters to be reserved for future approval. This reflects the anticipation that it will take time for the new timber storage area to be fully operational following the closure of the current facility at Loanhead.
9. For this reason, the applicant would be happy to accept a condition restricting the occupation of the proposed house and permanent office/staff accommodation until the timber yard is operational. This approach will ensure that the new house is directly linked to the rural business.
10. We can also confirm that the applicant would be happy to control the delivery and future occupation of the proposed house/office building by way of a condition or a suitable legal agreement to ensure that it is directly linked to the rural business at all times. This would follow the approach taken by Midlothian Council to control the housing at the Loanhead site.
11. This suggested condition would therefore allow the planning application for the Westloch site, including the proposed house, to be supported by criteria f of LDP Policy HD2 and part a)v of NPF4 Policy 17 which both permit the erection of houses in rural areas, where it is directly connected to a rural business.
12. The fourth reason for refusal (proposed house in the countryside) is not therefore a valid or appropriate reason to refuse this application.

Location of Log Splitter

13. In his email, the Planning Officer has also chosen to highlight that the log splitter in Photograph PB03 is located adjacent to the Pentland Plants glasshouses and he appears to have a concern that the photograph was not taken at the timber processing facility.
14. We can confirm that the photograph was taken at the Pentland Plants garden centre. However, that is because the log splitter is on wheels. It is a mobile log splitter that is designed to move from location to location. The purpose of submitting Photograph PB03 was to demonstrate to the LRB the true nature and scale of equipment that is used as part of the timber processing facility.

15. Regardless of the Planning Officer's comment, the equipment stored and used at the existing facility was clearly evident at the accompanied site visit, and the site visit quite clearly confirmed that the existing operation is a timber storage and processing facility which is located in a rural area. It is not, as the Planning Officer has suggested in his assessment and delegated refusal of the original planning application, a large scale industrial process.

Proximity of Adjacent Housing at Loanhead Site

16. The Planning Officer then makes a rather serious, but a quite misleading and entirely erroneous statement in his email that the photographs in PB06 have been *"foreshortened and make the houses appear much closer to the timber processing facility than they are"*. That statement is quite simply not correct.
17. These photographs were taken by the applicant and have not been edited in any way. Why the Planning Officer considers it necessary to imply to the LRB that the applicant has doctored these photographs is not known.
18. But what this comment from the Planning Officer does confirm, is his total failure to understand the proposals being advanced by Pentland Biomass.
19. It is therefore our submission that the LRB must give no weight to any of the comments from the Planning Officer. He has quite clearly failed to understand the proposals, the site or the relevant planning policies, and his determination of the original application is quite clearly flawed.
20. The proximity of the existing houses to the Loanhead timber yard was clearly evidenced at the site visit and we would ask the LRB to take that factual evidence into account, and not the misleading allegations and quite reckless and unsubstantiated comments of the Planning Officer.

Noise Objections

21. The Planning Officer then concludes his email by stating that Midlothian Council's Environmental Health Officer objected to an application for a further 300 house extension to the existing Taylor Wimpey housing development which would bring the extent and scale of housing much closer to the Loanhead timber yard site, and he suggests that this is a noisy activity that cannot be located close to housing.
22. However, what the Planning Officer has again failed to understand or indeed explain, is the fact that Midlothian Council's Planning Officers and its Planning Committee agreed that this matter (i.e. potential noise impact) could be suitably and appropriately controlled by way of a planning condition requiring the preparation and submission of a Noise Impact Assessment. Planning Permission in Principle has been granted by Midlothian Council for a further 300 units on a site directly adjoining the existing timber yard. Permission has NOT been refused.

23. Noise impact was NOT a reason to refuse this or any other housing adjoining or close to the Loanhead facility. That is the factual evidence. The Planning Officer, for some reason, has chosen to ignore this factual evidence.
24. The Planning Officer's comments on this matter are therefore once again quite clearly misleading. His comments are, with all respect, disingenuous and must be given no weight. It is our submission, that the Planning Officer is clearly misrepresenting the facts in an attempt to shore up his incorrect assessment and erroneous determination of the original planning application. His comments must therefore be disregarded.
25. The factual position on this matter (as evidenced by Appendix 3 of the applicant's original Supporting Planning Statement) is that Midlothian Council has granted planning permission for a further 300 houses to be located in very close proximity to the exiting timber yard at Loanhead. A condition was placed on this planning permission requiring the submission of a Noise Impact Assessment to ensure that the housing and timber yard could successfully coexist and to ensure that this would not give rise to any unacceptable impact on residential amenity.
26. This is precisely the approach that Pentland Biomass has adopted at Westloch. We have submitted a detailed Noise Impact Assessment, and have offered to accept a condition on the planning permission to control this matter. That is, in our opinion, the correct approach for addressing this matter. This was also the position adopted by Midlothian Council's Planning Committee.
27. We are not clear why the Planning Officer who determined the Westloch application feels he cannot accept this approach, and has chosen instead to make misleading comments about the correct, factual position.
28. For all these reasons, and those set out in our earlier Statements, we would urge the LRB to give no weight to the Planning Officer's comments and observations on this proposal. He has quite clearly failed to understand the proposals being advanced by Pentland Biomass.
29. The second reason for refusal (noise impact) is not therefore an appropriate or valid reason to refuse this application.

Comments on Managing Solicitor's Representations (note dated 11 May 2023)

30. The Council's Managing Solicitor has provided observations on the appeal, but has not actually offered a position. He simply suggests that the applicant has provided one interpretation of Policy ED7 and the Planning Officer has provided another.
31. The Council's Solicitor has not therefore provided his opinion on the interpretation Policy ED7, and significantly, has also not stated that the applicant's interpretation is wrong.
32. The Council's Solicitor has not therefore added anything to this matter, and it is our opinion that no weight should be given to this note.

33. As we have stated throughout our earlier submissions, the question for the LRB to consider is does this proposal accord with the terms of LDP Policy ED7?
34. In our opinion, and that of Mr Neil Collar of Brodies Solicitors who is one of the leading planning lawyers in Scotland, the answer is clearly yes.
35. As we have set out at paragraphs 35 to 44 of the Grounds of Appeal Statement and also in some detail at page 31 of the Supporting Planning Statement, this planning application requires to be determined under Policy ED7 which is set out on pages 49 and 50 of the LDP. A copy of this Policy has been submitted as Document PB04.
36. Policy ED7 is titled "*Development in the Countryside*". The application site involves development in the countryside. At the site visit, the members of the LRB saw for themselves that the current timber yard facility is located in the countryside. It is not located in a settlement or in an urban area, but is quite clearly in a rural location.
37. If there is any doubt about the relevance of Policy ED7, paragraph 1.5 on page 49 of the LDP clearly explains that: "*This policy also relates to farm diversification **as well as timber processing facilities***". Policy ED7 therefore covers timber processing facilities.
38. This planning application is seeking "*planning permission for the proposed erection of timber storage and processing facility*". This is the description stated on the application form and is the description confirmed by the Council in its formal registration of this planning application. The members of the LRB who attended the site visit have seen for themselves the true nature and scale of the existing operation at Loanhead.
39. Policy ED7 is therefore the relevant policy for this planning application.
40. The full wording of Policy ED7 is set out in page 50 of the LDP and it quite clearly states that: "*Proposals for **business, tourism or leisure development in the countryside will be approved** and rural diversification initiatives **will be encouraged** provided that: (a) **the development is to be used directly for agricultural, horticultural or forestry operations***".
41. This development is to be used directly for forestry operations. It is located in the countryside and will store and process felled timber. It can therefore be supported by, and is encouraged by, criteria (a) of Policy ED7.
42. The principle of this proposal therefore accords with Policy ED7; and planning permission can be granted in accordance with Policy ED7.
43. The second part of Policy ED7 lists a set of additional matters (a to f) that "*will also be considered*". This criteria was assessed by the applicant on page 31 of the Supporting Planning Statement which was submitted in support of the original planning application. This assessment is repeated below.

- (a) The proposed development has been designed to respect the amenity and character of the surrounding area, and this has been confirmed in the submitted Design Statement.
 - (b) The development will have no significant adverse impact on nearby uses, particularly housing. This has been confirmed through the submission of the Noise Assessment.
 - (c) As we have explained in the site search section provided in the Supporting Planning Statement, the applicant has considered a range of other sites within the Westloch Farm area, including the existing farm steading buildings but these are unavailable due to the aspiration of the owner (Mr Neave who attended the site visit) to convert these farm buildings to residential use. The reuse or conversion of an existing building in this location, including the former farm steading buildings, are not therefore possible as Mr Neave has a desire to convert these to residential use.
 - (d) The proposed use and scale of development (as evidenced at the Loanhead site visit) is considered to be appropriate to the rural character of the area. The proposal involves the storage and processing of felled timber within a forest estate. It is clearly a compatible use. The proposed new buildings are small scale agricultural buildings and are entirely appropriate to this countryside location.
 - (e) We have established in the Supporting Planning Statement that the proposed development meets all relevant siting, and design criteria in accordance with Policy PMD2, and this is also discussed and explained in the submitted Design Statement.
 - (f) We have confirmed that the relocation of the existing timber yard will help to reduce transport movements as the new facility is located closer to the company's existing timber stocks, its customer base and its employees. The development will also have no impact on any planned transport developments or infrastructure and is located adjacent to an existing timber haulage road.
44. For these reasons the planning application can be fully supported by, and accords with, the relevant provisions of LDP Policy ED7. It is therefore our opinion that Planning Permission can be granted in accordance with LDP Policy ED7.
45. We would therefore urge the LRB to accept this interpretation of Policy ED7, and not the flawed and incorrect interpretation of the Planning Officer.
46. On this basis, the first reason for refusal (Rural Development Policy ED7) is not valid or appropriate, and the application can in fact be supported and encouraged by Policy ED7.
47. If the LRB has any remaining concerns about the proposed use of the site, or its future use, we can confirm that the applicant would be happy to agree to a Condition or a Legal Agreement restricting the use of the facility to timber storage with ancillary timber processing. This would ensure that the site could not be used for class 5 industrial or class 6 storage and distribution uses.

48. The applicant would also be happy to accept a condition that requires all timber to be sourced from the Scottish Borders area.

Comments on Observations of Council's Ecology Officer (Response dated 04 May 2023)

49. The Council's Ecology Officer has confirmed that the submitted Ecological Appraisal and Arboricultural Impact Assessment are acceptable and has recommended conditions to control these matters.
50. As we confirmed in our earlier Statements, the applicant is happy to agree to such conditions.
51. As a result, the Response from the Ecology Officer demonstrates that the fifth and sixth reasons for refusal (impact on trees and ecology) are not valid or appropriate reasons to refuse this application.

Comments on Observations of Council's Landscape Architect (Response dated 05 May 2023)

52. The Council's Landscape Architect has confirmed that the submitted Arboricultural Impact Assessment and Tree Protection Plan are acceptable and has recommended conditions to control these matters as well as the details of the proposed landscaping scheme.
53. As we confirmed in our earlier Statements, the applicant is happy to agree to such conditions.
54. This Response therefore demonstrates that the third and fifth reasons for refusal (landscape and tree impact) are not valid or appropriate reasons to refuse this application.

Reasons for Refusal

55. We have therefore established above, and in our earlier Statements, that none of the six reasons for refusal put forward by the Planning Officer are valid or appropriate. This has been confirmed by the updated consultation responses received from the Council's Solicitor, Ecology Officer and Landscape Architect.

Accordance with the Development Plan and NPF4 Policies

56. For the reasons set out above, and in our earlier Statements and submissions, it can be concluded that the application proposals have been designed to accord with, and are supported by all relevant policies and provisions of the adopted LDP and also the new NPF4, and there are no material considerations that would justify a departure from these provisions.
57. We have also demonstrated (and this was also evidenced at the Loanhead site visit) that the proposal is an appropriate type, form and scale of development for this countryside location and would sit comfortably within the surrounding area making a positive contribution to the local rural economy.

58. Our detailed review of relevant planning policy has confirmed that the proposal can be considered favourably in terms of all relevant LDP and national planning policies, and particularly the provisions of LDP Policies ED7 and HD2; and NPF4 Policies 17 and 29 which specifically cater for this particular type of rural development in this particular location.
59. Under the terms of Section 25 of the Town and Country Planning (Scotland) Act 1997 planning permission should therefore be granted for this proposed development.

Proposed Conditions

60. As set out above, and in our earlier Statements, we can confirm that the applicant would be happy to accept conditions to control the proposed development. These conditions would, in our opinion, address all the relevant planning matters that have been raised by local objectors and would address all of the concerns raised by the Planning Officer, and would ensure that these matters are appropriately and suitably controlled. We would suggest the following conditions to the LRB:
1. Restricting the use of the site to timber storage with ancillary timber processing, and no other uses.
 2. Removing all permitted development rights to ensure that the site cannot be used for class 5 industrial or class 6 storage and distribution uses in the future.
 3. Requiring all timber to be sourced from the Scottish Borders area.
 4. Restricting the number of days and hours of operation of any chipping on the application site to a total of 4 days per month between the hours of 8am and 6pm and no chipping at any time on Saturdays, Sundays or any bank holidays.
 5. Restricting the delivery and occupation of the proposed dwellinghouse/office to ensure that it is only delivered after the main timber storage operations have been established on site.
 6. Restricting the occupation of the dwellinghouse/office to occupants directly employed by and associated with the main timber storage operation on the site.
 7. Requiring the applicant to agree suitable mitigation measures with the Council's Roads Planning Officer, such as suitable passing places or signage on the adjoining public road, and implementing the agreed measures prior to occupation of the site.
 8. Requiring the development to be implemented on site in accordance with the recommendations of the Arboricultural Assessment.
 9. Requiring the development to be implemented in accordance with the recommendations of the Ecological Appraisal.

10. Requiring the development to be implemented in accordance with the recommendations of the Noise Assessment.

11. Requiring the applicant to secure the implementation of a programme of archaeological work in accordance with a Written Scheme of Investigation prior to the commencement of any works.

Summary and Conclusions

61. The inclusion of these suggested conditions would address all material planning matters raised by consultees, interested parties and the Planning Officer. It would ensure that all relevant matters are properly controlled and regulated.
62. The application proposals can therefore be supported by the relevant provisions of both the adopted LDP, through Policies ED7 and HD2, and the newly adopted NPF, through Policies 17 and 29. This allows the LRB to grant planning permission for this proposed development.
63. We would therefore respectfully request on behalf of the applicant that the LRB reviews the Planning Officer's decision and upholds this appeal and grants planning permission for the proposed development, subject to the conditions suggested above.

John Handley
BSc (Hons), MRTPI
Director
John Handley Associates Ltd
Chartered Town Planning Consultants
Edinburgh

Photographs Showing Vandalism at Loanhead Site



