

LAND SOUTH WEST OF WEST LOCH FARMHOUSE, PEEBLES

22/00933/FUL AND 23/00001/RREF

NOTES ON LEGAL OPINION PROVIDED BY THE APPLICANT

1. I have had the opportunity to consider the terms of the legal opinion from Neil Collar of Brodies, provided by the applicant as part of their application to Local Review Body.
2. The principal thrust of this relates to the interpretation of LDP policy ED7. The legal opinion argues that what is proposed falls under ED7a in that *“the development is to be used directly for agricultural, horticultural or forestry operations or for uses which by their nature are appropriate to the rural character of the area.”*
3. The Planning Officer refused this application on the basis that *“The development would be contrary to policy ED7 of the LDP 2016 in that the applicant has not demonstrated any overriding economic and/or operational need for the proposed Class 5 or 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.”*
4. The applicant has put forward an alternative interpretation of ED7 to support their client’s development. It is their view that this development is a forestry operation, or is appropriate to the rural character of the area. The officer takes an alternative view in that, taking all matters into account, as is required when looking at ED7, that this particular development does not meet the tests set out in the LDP.
5. The case law referenced is noted to state that *“forestry use includes operations necessary to render timber marketable, even where the operations are carried on some distance from the plantation.”* However the specific circumstances of the case should be noted, in particular that the development in question was only 1500m from the site of forestry works. This does not appear to be the case here.
6. Taking all factors into account, the opinion sets out a different interpretation. However, the interpretation taken by the Planning Officer remains justifiable in light of it.
7. It should be noted that ED7 was only one of a list of six reasons for refusal.

Ron Kirk, Managing Solicitor

11.05.2023