

## STATEMENT OF FURTHER WRITTEN SUBMISSION

### APPLICANT'S RESPONSE TO THIRD PARTY REPRESENTATIONS

**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**

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#### **Purpose of Statement**

1. This Statement has been prepared by Chartered Town Planning Consultants, John Handley Associates Ltd on behalf of the applicant and site owner, Mr Richard Spray of Pentland Biomass. It provides the applicant's response to the further representations which have been submitted by interested parties. Copies of these representations were issued to the applicant by email on 31<sup>st</sup> January 2023.
2. As we will demonstrate in this Statement these representations have quite clearly misunderstood the scale, nature and type of development being proposed on the application site, and in doing so, have misinterpreted the relevant planning policies applicable to this development. We have therefore addressed the various public comments submitted in response to this appeal below.

#### **Overview of Representations Submitted in response to Application and Request for Review**

3. The public representations submitted in response to the original planning application were summarised on page 1 of the Planning Officer's Report of Handling which explained that: "*13 representations were received from 12 individual addresses. The material grounds contained within those can be summarised as follows: Noise; impact on wildlife; flooding [surface water]; road safety; impact on amenity; increased traffic; landscape issues; development not suited to countryside*". These matters were addressed in some considerable detail in the applicant's Grounds of Appeal Statement dated 4<sup>th</sup> January 2023 and we would refer the Local Review Body (LRB) to that document for full details of the submissions made.
4. Following the applicant's submission of the Request for a Review of the Planning Officer's Decision, the application was re-notified by Scottish Borders Council and this resulted in the submission of 5 further public representations which were provided to the applicant on 31<sup>st</sup> January.

5. We have reviewed these 5 representations which raise very similar points to those raised in response to the original application submission and essentially cover matters relating to noise and amenity issues; impact on wildlife and ecology; access and road safety; the scale and type of development; and the correct interpretation of Policy ED7. We have responded to each of these points below.

### **Misunderstanding of the nature and scale of the proposals**

6. One member of the public raises concerns about the health impacts of a “*biomass plantation*”. However, we can confirm that the proposed development is not a biomass plantation, or a biomass plant. It has been submitted by “Pentland Biomass”, but is not a biomass plantation or plant. This comment is not therefore relevant to this application. It does, however, highlight the level of misunderstanding about this proposal.
7. This misunderstanding is also evidenced by the number of public comments raising concerns about the alleged large scale and industrial nature of the proposals. For example, the owner of West Loch Farm, raises concerns about the “*industrial planning...at this large scale*”.
8. However, and as we have explained in the Grounds of Appeal Statement (paragraphs 30 to 33), this application is not seeking planning permission for an industrial development; and it is not a large scale development.
9. The vast majority of the site will be used to store timber. This is not an industrial use.
10. Due to its small size, the application is defined as a “*local development*”, and not a “*major development*” under the terms of the *Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009*. The proposed buildings include a temporary portacabin building, and two agricultural sheds which, as a result of their small size, fall within the definition of permitted development and do not, on their own, require planning permission. These are not large scale industrial buildings. These are agricultural sheds, which are common throughout the countryside.
11. Should the LRB require further evidence that this is not a large scale industrial development, we would invite the LRB to visit the applicant’s existing operation at Pentland Mains Farm, Loanhead.
12. If further comfort is needed in terms of the proposed use and scale of development being proposed, the applicant would also be happy to control these matters by way of conditions.
13. As we have confirmed at paragraph 92 of the Grounds of Appeal Statement, these conditions would restrict the use of the site to timber storage with ancillary timber processing; would remove 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; and would require all timber to be sourced from the Scottish Borders area.

14. If any further comfort is needed to address this matter and provide clarification and confirmation to the Council, and indeed the local residents, on the nature and scale of the proposals, the applicant would also be happy to restrict 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.
15. This approach would address the objectors concerns about the scale and nature of the proposals and would ensure that the chipping operations are restricted to an ancillary use of the site.

### **Noise & Amenity**

16. A number of local residents also raise concerns about the potential noise impact of the proposed development. This matter is addressed at paragraphs 45 to 57 of the Grounds of Appeal Statement, and in order to provide the LRB with further comfort on this particular point the applicant has instructed noise consultants, The Airshed, to undertake a detailed and robust noise assessment of the application site and the proposed development.
17. This noise assessment has been submitted as **Document PB09** and includes recommended mitigation measures to ensure that there is no adverse noise impact on any residential properties. These recommendations are listed at section 6 of the noise assessment and include: restricting the hours of operation, locating the access doors of the noise-generating buildings on the south-west elevation, fitting a high level of acoustic insulation and automatic self-closing doors, the erection a substantial amenity bund and the adoption of appropriate working methods.
18. We can confirm that the applicant would be happy to accept conditions requiring the development to be implemented in accordance with the recommendations of the submitted Noise Assessment, and we would welcome the opportunity to agree suitable conditions with the Council to control this particular matter.

### **Impact on Wildlife**

19. A number of local residents also claim that the proposed development of the site will lead to a loss of wildlife and would harm the ecology of the local area. This matter is addressed at paragraphs 74 to 86 of the Grounds of Appeal Statement.
20. In order to provide the LRB with further comfort on this particular point the applicant has instructed Arbor Vitae Arboriculture Ltd to undertake a detailed Arboricultural Assessment of the proposed development; and ecologists, David Dodds Associates to undertake an Ecological Appraisal of the site. These reports are submitted as **Documents PB07, PB08 & PB10** and confirm that there will be no adverse impact on any trees or protected species within or surrounding the application site.

21. The submitted Arboricultural Assessment and Ecological Appraisal both include recommendations to ensure that all adjacent trees can be protected and safeguarded and to ensure that nesting birds are protected prior to construction of the development. We can confirm that the applicant would be happy to agree to suitable conditions requiring the proposed development to be implemented in accordance with the recommendations set out in the submitted Arboricultural Assessment and Ecological Appraisal.
22. We would also note that the proposals for the site include the provision of substantial areas of new landscaping and tree planting which will be populated with local species of trees and shrubs and new wildlife hedgerows to provide a natural habitat for nesting birds and small mammals. This approach, together with the submitted assessments, confirm that the application proposals will not, as claimed by the objectors, have any adverse effect on any trees or protected species, and will in fact, enhance the biodiversity of the site and the local area.

### **Access and Road Safety**

23. Concerns have also been raised by local residents about the proposed means of access to the application site who have raised issues regarding the safety of the public road running past the application site. However, and as we explained at paragraph 25 of the Grounds of Appeal Statement, one of the primary considerations for the selection of the application site was the fact that the site benefits from its direct access to the A703 which is an Approved Route for Timber Transportation as it is linked to the A703 by a public road which is also classified as a Consultation Route for timber transport.
24. We would also add that Scottish Borders Council granted planning permission for the construction of a new forestry access road from this very same public road in March 2016 (SBC Ref: 16/00132/FUL). This new forestry access road was constructed immediately to the west of the application site, and the full set of planning application documents are available to view at: <https://eplanning.scotborders.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=O27U47NTJXA00>
25. In approving the planning application for a new forestry access route in this location, Scottish Borders Council clearly considered that the use of this very same public road for transporting timber was appropriate and acceptable.
26. We would also note that the Council's Roads Planning Officer has not recommended refusal of this planning application, but has suggested that conditions could be imposed to address any required mitigation measures. This is confirmed in **Document PB01**.
27. As noted in the Grounds of Appeal Statement, the applicant is happy to agree to a condition requiring suitable mitigation measures to be agreed and implemented in consultation with the Council's Roads Planning Officer. These measures could include suitable passing places or signage on the adjoining public road, and implementing the agreed measures prior to any occupation of the application site.

## **Interpretation of Policy ED7**

28. A number of public comments also criticise the applicant's interpretation of Policy ED7. This includes a detailed submission by Mr Neave of "West Loch Farm Steading" which is the redundant farm steading buildings located to the east of the application site. These steading buildings have been the subject of a number of planning applications over the past five years seeking a change of use of the farm storage buildings to form three residential dwellings (SBC Application Refs: 17/00434/FUL; 17/01462/FUL and 22/01423/FUL). The latest planning application was submitted in September 2022 on behalf of Mr Neave.
29. Mr Neave has also engaged Senior Counsel to provide an opposing legal opinion on the interpretation of Policy ED7, and other objectors have also suggested that Policy ED7 is not relevant to this planning application.
30. 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 of the Scottish Borders LDP which is set out on pages 49 and 50 of the LDP. A copy of this Policy has been submitted as **Document PB04**.
31. Policy ED7 is titled "*Development in the Countryside*". The application site involves development in the countryside.
32. Paragraph 1.5 on page 49 of the LDP explains quite clearly that: "*This policy also relates to farm diversification as well as timber processing facilities*".
33. 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.
34. Policy ED7 is therefore the relevant policy for this planning application.
35. 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*".
36. 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 criteria (a) of Policy ED7. It accords with Policy ED7; and planning permission can be granted in accordance with Policy ED7.
37. The second part of Policy ED7 lists a set of additional matters (a to f) that "*will also be considered*".
38. 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) to convert these to residential use. The reuse or conversion of an existing building in this location is not therefore possible.
  - (d) As we have explained above, the proposed use and scale of development is considered to be appropriate to the rural character of the area, and the proposal is for 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 also 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 discussed in the submitted Design Statement.
  - (f) We have also 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.
39. For these reasons the planning application can therefore be fully supported by, and accords with, the relevant provisions of LDP Policy ED7. Planning Permission can therefore be granted in accordance with LDP Policy ED7.

#### **National Planning Framework 4**

40. If the LRB has any remaining doubts about the proper interpretation of LDP Policy ED7, further support for the application proposals can also be taken from the new National Planning Framework 4 (NPF4) which was adopted by the Scottish Ministers on 13 February 2023 and now forms part of the statutory development plan.
41. NPF4 must be taken into account as part of the determination of this planning application.
42. Policy 29 of NPF4 is set out on page 86 and covers "*Rural Development*". We have submitted a copy of NPF4 Policy 29 as **Document PB11**.

43. Part a) iii of Policy 29 specifically confirms that: “*production and processing facilities for local produce and materials, for example sawmills*” will be supported.
44. The application proposals can therefore be supported by Policy 29 of the recently adopted NPF4, and this planning application can be granted planning permission in accordance with this national development plan Policy.

#### **Accordance with Development Plan Policy**

45. The application proposals can therefore be supported by the relevant provision of both the LDP Policy ED7 and the newly adopted NPF4 Policy 29. These statutory development plan policies allow the LRB to grant planning permission for this proposed development.

#### **Proposed Conditions**

46. As set out above, and at paragraph 92 of the Grounds of Appeal Statement, we can confirm that the applicant would be happy to accept the following conditions to control the proposed development.
47. These conditions would, in our opinion, address all the relevant planning matters that have been raised in the submissions made by interested parties, and would ensure that these matters are appropriately and suitably controlled. This would include the following matters:
1. Restricting the use of the site to timber storage with ancillary timber processing.
  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 submitted Arboricultural Assessment prepared by Arbor Vitae Arboriculture Ltd.
9. Requiring the development to be implemented in accordance with the recommendations of the submitted Ecological Appraisal prepared by David Dodds Associates.
10. Requiring the development to be implemented in accordance with the recommendations of the submitted Noise Assessment prepared by The Airshed.

### **Summary & Conclusions**

48. The inclusion of these suggested conditions would address all material planning matters raised by interested parties and would also address the concerns of the Planning Officer. It would ensure that all relevant matters are properly controlled and regulated.
49. The application proposals can therefore be supported by the relevant provisions of both the LDP Policy ED7 and the newly adopted NPF4 Policy 29. This allows the LRB to grant planning permission for this proposed development.
50. We would therefore respectfully request on behalf of the applicant that the LRB reviews the Planning Officer's delegated refusal and upholds this appeal and grants planning permission for the proposed development, subject to the suggested conditions.

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**List of Appeal Documents:**

- PB01:** SBC Roads Planning Officer's updated response; email dated 4<sup>th</sup> October 2022
- PB02:** Photographs of existing timber yard at Loanhead
- PB03:** Photographs of Chipping Machines used at Loanhead
- PB04:** LDP Policy ED7 (highlighted)
- PB05:** Legal opinion from Mr Neil Collar, Partner and Planning Law specialist, Brodies Solicitors
- PB06:** Photographs showing proximity of housing adjacent to existing timber yard at Loanhead
- PB07:** Arboricultural Assessment prepared by Arbor Vitae Arboriculture Ltd
- PB08:** Tree Protection Plan prepared by Arbor Vitae Arboriculture Ltd
- PB09:** Noise Impact Assessment prepared by The Airshed
- PB10:** Ecology Appraisal prepared by David Dodds Associates
- PB11:** NPF4 Policy 29 (highlighted)