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## PLANNING APPEALS & REVIEWS

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### Briefing Note by Chief Planning & Housing Officer

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## PLANNING AND BUILDING STANDARDS COMMITTEE

3<sup>rd</sup> July 2023

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### 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

- 2.1.1 Reference: 23/00332/ADV  
Proposal: Installation of illuminated signage (retrospective)  
Site: 35 Horsemarket, Kelso  
Appellant: Mr Anthony Khoury

Reason for Refusal: The signage, by reason of the size, scale, design and materials, is contrary to Policy 14 of National Planning Framework 4 in terms of creating distinctive places and policies PMD2, EP9 and IS16 of the Local Development Plan 2016 and the Council's Supplementary Planning Guidance on Shop Fronts and Shop Signs in that the signage has an adverse detrimental impact on the traditional character of the host building and the character and appearance of the conservation area.

Reasons for Appeal: Refusal was based on the size, design and material used for the new shop sign, along with an illuminated strip light. Existing shop fronts in the near vicinity have similar installations, with some gaining planning approval. The new signage is not entirely different from other shop fronts, and the applicant feels he has been unfairly singled out with an enforcement notice.

[Please see the DPEA Website for the Appeal Documents](#)

Method of Appeal: Written Representations

- 2.1.2 Reference: 23/00430/CLPU  
Proposal: Erection of a double garage  
Site: 32 Dunglass Road, Coldstream  
Appellant: Mr & Mrs M & A Anderson

Reason for Refusal: The proposed development is not permitted under Class 3A of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended).

Reasons for Appeal: The proposed development is situated entirely within the residential curtilage of 32 Dunglass Road and is fully consistent with the Permitted Development rights granted under Class 3A.

[Please see the DPEA Website for the Appeal Documents](#)

Method of Appeal: Written Representations

## 2.2 Enforcements

Nil

## 2.3 Works to Trees

Nil

### **3 APPEAL DECISIONS RECEIVED**

#### 3.1 Planning Applications

3.1.1 Reference: 22/01962/CLPU  
Proposal: Change of Use of an existing agricultural building to dwellinghouse  
Site: The Old Cow Shed, Lennel, Coldstream  
Appellant: Mr C Brass

Reason for Refusal: Appeal against non-determination of application.

Reason for Appeal: An application for Prior Approval (22/01123/PNCOU) was not responded to within the 28 day period and therefore the development proposed is considered to be lawful. Scottish Borders Council issued a decision notice on this application. A legal opinion was sought and shared with the Council's Legal Service inviting the withdrawal of the ostensible decision notice. The invitation was declined. An application for a Certificate of Lawful Proposed Use or Development was then submitted, but no decision was issued by the Council within the statutory timeframe for determination.

[Please see the DPEA Website for the Appeal Documents](#)

Method of Appeal: Written Representations & Site Visit

Reporter's Decision: Dismissed

Summary of Decision: The reporter, Paul Cackette, advised that the Council did not determine the certificate of lawful proposed use application within the required 28 day period, as stated in the Act. On that non-determination, the application was therefore deemed to have been refused by them. The agricultural building at the appeal site was used as such in the past. The use is stated as ceasing in mid 2018. The building is currently vacant. The reporter accepts the appellant's confirmation of that use and the dates of that use, for the purposes of this appeal. The proposal is to only convert part of the building to a dwellinghouse and leave the remaining section as an agricultural store. The development would result in the partial change of use of the building which would create a mixed use of the resulting building. The development would therefore

fail to comply with Class 18B of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992. The reporter concluded that refusal would have been well founded and therefore that a certificate should not be granted. The appeal is therefore refused.

[Please see the DPEA Website for the full Appeal Decision Notice](#)

3.1.2 Reference: 23/00072/LBC  
Proposal: Installation of insulated plasterboard system to walls  
Site: 68 High Street, Coldstream  
Appellant: Mrs Joanne Noade

Reason for Refusal: The proposal fails to comply with Policy 7 of the National Planning Framework 4 and Policy EP7 of the Scottish Borders Local Development Plan 2016 as the proposed development would have an adverse impact on the interior of the listed building.

Reasons for Appeal: The Appellant states that the existing lounge, dining & kitchen cornice is being retained and will be physically unaffected by the installation. This is also the case with the timber panelled window shutters. The skirting's that will be affected will be replaced with like for like profiles which have been recorded and will be purpose made in the installers workshop.

[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, Ailie Callan, advised that the council referred to policy 7 of the National Planning Framework 4 2023 and policy EP7 of the Scottish Borders Local Development Plan 2016. As this is an appeal against the refusal of listed building consent, the development plan does not have primacy in decision making. However, the policies provide an indication of how the council intends to achieve the statutory aims under section 14 of the Act, and the reporter has taken them into account in their consideration. The proposal is for the installation boarding to a number of first floor interior walls of a C listed building which was listed in October 1983. Reference in the listing to the first floor relate to the 12 pane sash windows with aproned panels and two sash windows on the side elevation. The reporter saw on the site inspection that these features would be unaffected by the proposal. Information relating to the specification of the proposed insulation material was clarified on the site inspection, and subsequently confirmed by the appellant in writing. This related to the depth of insulation board and where they would be installed. Although the insulation would protrude from the wall, the wooden window architrave surrounds would be retained and remain visible. The proposed tapered angle of the top of the insulation would ensure the corncicing would remain visible. Taking all this in to consideration the reporter feels that the proposal would not result in any significant alteration to the integrity or appearance of the interior of the building and therefore allows the appeal subject to a condition and advisory note.

[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 no appeals previously reported on which decisions were still awaited when this report was prepared on 22<sup>nd</sup> June 2023.

## 5 REVIEW REQUESTS RECEIVED

5.1 Reference: 22/01824/PPP  
Proposal: Erection of dwellinghouse with access, landscaping and associated works  
Site: Land South and West of Greywalls, Gattonside  
Appellant: Mr & Mrs N & C Cameron

Review against non-determination of Application.

5.2 Reference: 22/01236/FUL  
Proposal: Erection of dwellinghouse  
Site: Land Northeast of The Bungalow, Crosshill, Chirnside  
Appellant: Miss Janette Hall

Reason for Refusal: The proposed development is contrary to Local Development Plan policy PMD5 (Infill Development). The proposal would amount to over-development of the site, also known as 'town cramming', resulting in a dwellinghouse with a poor level of amenity which would relate poorly to the surrounding streetscene and would harm the setting of the neighbouring listed building. Consequently, the proposed development is also contrary to National Planning Framework 4 policies 7 (Historic Assets and Places) and 14 (Design, Quality and Place), and Local Development Plan policies PMD2 (Quality Standards), EP7 (Listed Buildings) and HD3 (Protection of Residential Amenity). This conflict with the development plan is not overridden by other material considerations.

5.3 Reference: 22/01905/FUL  
Proposal: Demolition of stable and erection of dwellinghouse  
Site: Site Adjacent The Steading Whiteburn Farm, Lauder  
Appellant: Ms Elaine McKinney

Reason for Refusal: The proposal is contrary to policy 17 of National Planning Framework 4 and policy HD2 of the Local Development Plan 2016 and the Council's Supplementary Planning Guidance: New Housing in the Borders Countryside December 2008 as the site is outwith the defined boundaries of the building group and sense of place and does not relate well to the existing houses within the building group in terms of their spacing. The development would read as isolated and divorced from the group, to the detriment of the character, amenity and setting of the building group.

5.4 Reference: 22/01936/FUL  
Proposal: Erection of raised decking (retrospective)

Site: 33 Weensland Park, Hawick  
Appellant: Mr Thomas Kemp

Reason for Refusal: The development is contrary to Policy HD3 of the Scottish Borders Local Development Plan (2016) and Policy 16 of the National Planning Policy Framework 4 (2023), in that the raised decking, by reason of its scale, height and positioning would result in an unacceptable impact in terms of outlook, overlooking and loss of amenity and privacy to neighbouring residential properties and their associated garden grounds.

5.5 Reference: 23/00026/FUL  
Proposal: Change of use of shop and alterations to form 2 no dwellinghouses  
Site: Shop, 22 - 24 South Street, Duns  
Appellant: Mr Hugh Garratt

Review against non-determination of Application.

5.6 Reference: 23/00129/FUL  
Proposal: Erection of dwellinghouse  
Site: W Pearce and Sons St Ronan's Works, 2 Miller Street, Innerleithen  
Appellant: Mr Alex Clapperton

Reason for Refusal: The proposed development would be contrary to Policy IS8 of the Local Development Plan 2016 and Policy 22 of National Planning Framework 4 in that it would introduce a Highly Vulnerable Use (as defined in SEPA's Flood Risk and Land Use Vulnerability Guidance) into a flood risk area, with potential displacement of flood water and loss of flood plain storage, thus placing additional residential property and persons at risk of flooding, and potentially increasing flood risk to other properties. The resulting risk of harm is not overridden by other material considerations.

5.7 Reference: 23/00260/PPP  
Proposal: Erection of a dwellinghouse with access, landscaping, garden space, and associated works  
Site: Land West of Greywalls, Gattonside  
Appellant: Mr & Mrs N & C Cameron

Review against non-determination of Application.

## **6 REVIEWS DETERMINED**

6.1 Reference: 22/00933/FUL  
Proposal: 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  
Site: Land South West of West Loch Farmhouse, Peebles  
Appellant: Mr Richard Spray

Reasons for Refusal: 1. 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. The proposed development would be contrary to policy HD3 of the Local Development Plan 2016 in that the applicant has not provided any information in relation to how noise generated by the proposal would impact on residential amenity within the locality. This conflict with the development plan is not overridden by other material considerations. 3. The development would be contrary to policy PMD2 of the Local Development Plan 2016 in that the proposed bunds would not be appropriate to the landscape setting of the site. The development would not, therefore, be compatible with or respect the character of the surrounding area. These conflicts with the development plan are not overridden by other material considerations. 4. The proposed dwellinghouse does not comply in principle with policy HD2 of the Local Development Plan 2016 in that it would not meet any direct operational requirement of an agricultural, horticultural, forestry or other enterprise which is itself appropriate to 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. The development would be contrary to policy EP13 in that no account has been taken of trees immediately adjacent the site. The applicant has failed to prove that the development would not have an adverse effect on trees which are an important landscape feature. No overriding case for the development as proposed has been substantiated. 6. The development would be contrary to policies EP1, EP2 and EP3 of the Local Development Plan 2016 in that the applicant has failed to prove that the development would not have an adverse effect on protected species which may be present on the site. These conflicts with the development plan are not overridden by other material considerations.

Method of Review: Review of Papers, Site Visit & Further Written Submissions

Review Decision: Decision of Appointed Officer Overturned (Subject to Conditions and a Legal Agreement)

6.2 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.

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Overturned (Subject to Conditions)

6.3 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.

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Upheld

6.4 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.

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Overturned (Subject to Conditions)

## 7 REVIEWS OUTSTANDING

7.1 There remained 16 reviews previously reported on which decisions were still awaited when this report was prepared on 22<sup>nd</sup> June 2023. This relates to sites at:

• Ravelaw Farm, Duns	• Land West of Greenburn Cottage, Auchencrow
• The Millers House Scotsmill Kailzie, Peebles	• Land South of Ebbastrand, Coldingham Sands, Coldingham

• Land West of The Old Barn Westwater, West Linton	• Paddock West of Hardens Hall, Duns
• 11 Tweed Avenue, Peebles	• Land North of Belses Cottage, Jedburgh
• 2 Rowan Court, Cavalry Park, Peebles	• Land South of 1 Kelso Road, Coldstream
• Church House, Raemartin Square, West Linton	• Land South of Greenbraehead Farmhouse, Greenbraehead, Hawick
• Land North West of Rosebank Cemetery Lodge, Shedden Park Road, Kelso	• Land at Rachan Woodlands, Broughton
• Land South of Headshaw Farmhouse, Ashkirk, Selkirk	• Land South East of Tarf House, West Linton

## 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 22<sup>nd</sup> June 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.



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