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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

7<sup>th</sup> August 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: 23/00648/CLEU  
Proposal: Erection of Stable  
Site: Keppel Gate Nettleingflat, Heriot  
Appellant: Mrs Lindsey Campbell

Reason for Refusal: On the basis of present evidence, it has not been demonstrated, on the balance of probability, that the stable building was substantially completed more than four years ago, as required by Section 124(1) of the Planning (Scotland) Act 1997. The application is, therefore, refused since the building comprises development under Section 26 of the Planning (Scotland) Act 1997 for which no Planning Permission has been granted or has been deemed to be granted.

Reasons for Appeal: The Council has denied the Certificate on the basis of 3 inconclusive photographs it holds, taken around July/September 2018. However, for the stables to be deemed unlawful, the Council must be able to provide evidence that contravenes both the Appellant's Affidavits and demonstrate that the stables were not substantially completed by 13 July 2019 (4 years from Appeal date). The Council has acted unreasonably in taking the delegated decision to refuse to issue a Certificate.

[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

Nil

#### 3.2 Enforcements

Nil

#### 3.3 Works to Trees

Nil

### 4 APPEALS OUTSTANDING

4.1 There remained 2 appeals previously reported on which decisions were still awaited when this report was prepared on 21<sup>st</sup> July 2023. This relates to sites at:

- |                         |                                |
|-------------------------|--------------------------------|
| • 35 Horsemarket, Kelso | • 32 Dunglass Road, Coldstream |
|-------------------------|--------------------------------|

### 5 REVIEW REQUESTS RECEIVED

5.1 Reference: 23/00325/FUL  
Proposal: Proposed change of use for Units 8-2 and 8-3 to mixed use include Classes 1 and 10  
Site: U-Stor Business Units, Spylaw Road, Kelso  
Appellant: U-Store Business Units Ltd

Reasons for Refusal: 1. The proposal is contrary to National Planning Framework 4 Policy 26 as the proposal is not for business and industry uses on a site allocated for such uses in the Local Development Plan, and the Class 1 and Class 10 uses are not compatible with the business and industrial character of the area and would prejudice the function of the area. In addition, the proposal is contrary to National Planning Framework 4 Policy 27 and the Town Centre First Approach, as it has not been adequately demonstrated that the proposed uses cannot be accommodated within the town centre or edge of centre or that there will be no significant adverse effect on the vitality and viability of the town centre; the proposal would set an undesirable precedent when town centres should be supported. 2. The proposal is contrary to Policy ED1 of the Local Development Plan 2016 in that the proposal would result in the loss of safeguarded business and industrial land and the Class 1 and Class 10 uses are not compatible with the predominant surrounding uses and would set an undesirable precedent for other retail uses, which are more suited to town centre locations, prejudicing the long term provision of business and industrial land in Kelso. In addition, the proposal is contrary to Policy ED3 of the Local Development Plan 2016, which seeks to develop

and enhance the role of town centres by guiding retail development to town centres.

## 6 REVIEWS DETERMINED

6.1 Reference: 22/01421/FUL  
Proposal: Formation of access and boundary fence (retrospective)  
Site: The Millers House Scotsmill Kailzie, Peebles  
Appellant: Mr And Mrs Peter Nowell

Reason for Refusal: The development would be contrary to policy PMD2 of the Local Development Plan 2016 in that it would fail to ensure there is no adverse impact on road safety, including but not limited to the site access. This conflict with the development plan is not overridden by other material considerations.

Method of Review: Review of Papers & Further Written Submissions

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

6.2 Reference: 22/01740/PPP  
Proposal: Erection of dwellinghouse  
Site: Paddock West of Hardens Hall, Duns  
Appellant: Ms Norma Conroy

Reason for Refusal: The proposed development is contrary to Policy HD2 of the Scottish Borders Local Development Plan 2016 as the scale of addition for the existing building group has been exceeded during the current Local Development Plan period and there is no spare capacity to add an additional dwellinghouse. Furthermore, the proposed development would fail to comply with Policy PMD1 and Policy PMD2 as there is no footway to support pedestrian movements between the application site and the settlement of Duns. This would unduly impact upon pedestrian safety and it would not provide adequate access to sustainable transport modes, which would result in over reliance on the private car.

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Upheld (Terms of Refusal Varied)

6.3 Reference: 23/00236/FUL  
Proposal: Amendment to Condition 3 of planning application 19/01646/PPP pertaining to occupation of dwellinghouse  
Site: Land South East of Tarf House, West Linton  
Appellant: Mr & Mrs Erlend and Karen Milne

Review against non-determination of Application.

Method of Review: Review of Papers

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

## 7 REVIEWS OUTSTANDING

7.1 There remained 20 reviews previously reported on which decisions were still awaited when this report was prepared on 21<sup>st</sup> July 2023. This relates to sites at:

• Ravelaw Farm, Duns	• Land West of Greenburn Cottage, Auchencrow
• Land South of Ebbastrand, Coldingham Sands, Coldingham	• Land West of The Old Barn Westwater, West Linton
• 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 and West of Greywalls, Gattonside
• Land West of Greywalls, Gattonside	• Land Northeast of The Bungalow, Crosshill, Chirnside
• Shop, 22 – 24 South Street, Duns	• Site Adjacent The Steading Whiteburn Farm, Lauder
• W Pearce and Sons St Ronan's Works, 2 Miller Street, Innerleithen	• 22 Weensland Park, Hawick

## 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 21<sup>st</sup> July 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.

**Note** – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Jacqueline Whitelaw can also give information on other language translations as well as providing additional copies.

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