
PLANNING APPEALS & REVIEWS

Briefing Note by Chief Planning & Housing Officer

PLANNING AND BUILDING STANDARDS COMMITTEE

2nd October 2023

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: 22/01993/FUL
Proposal: Erection of dwellinghouse
Site: Land Adjacent Rose Cottage, Maxwell Street,
Innerleithen
Appellant: Mr Raymond Keddie

Reason for Refusal: The proposals are contrary to Policies PMD2 and PMD5 of the Scottish Borders Local Development Plan 2016 in that the site is not allocated for housing, the scale and density of the proposals are not appropriate for this site, and the erection of a house would result in inappropriate infill development. The proposals are also contrary to Policies EP9 and EP11 of the Scottish Borders Local Development Plan 2016 and Policy 7 of National Planning Framework 4 in that the erection of a house on this site will result in the loss of an area of green space and will not enhance the character of the conservation area.

Reasons for Appeal: The Committee's decision to refuse planning permission is contrary to the Planning Officer's recommendation to approve. The Local Review Body granted planning permission to erect a single house on the same site back in 2019 with an intentions notice. No LRB decision notice has been issued yet as the Legal Agreement has still to be concluded. The proposal complies with Policies PMD2, PMD5, ED9 & EP11 of the LDP. The proposal also complies with criteria (d) and (e) of the National Planning Framework 4 Policy 7.

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

Method of Appeal: Written Representations

- 2.1.2 Reference: 23/00131/PPP
Proposal: Residential development with access, landscaping
and associated works

Site: Land East of Kirkwell House, Preston Road, Duns
Appellant: Robert Lamont

Reasons for Refusal: 1. The proposal is contrary to Policies PMD2, PMD4, HD3 and EP13 of the Local Development Plan 2016, Policies 9 and 14 of NPF4 and the "Placemaking and Design" SPG as the site is outwith the Development Boundary for Duns and the development would not constitute a justifiable extension to the settlement, in that it is not a job generating development, not affordable housing, there is no shortfall in the 5 year effective housing land supply and there are no significant community benefits sufficient to justify development outwith the Development Boundary. The proposed development would also cause significant adverse effects on the landscape setting of the settlement, local landscape character, visual and residential amenity, representing a prominent and elevated greenfield incursion out of character with the settlement pattern and surroundings. 2. The development is contrary to Policy ED10 of the Local Development Plan 2016 and Policy 5 of NPF4 as the development would result in the permanent loss of prime quality agricultural land which is a valuable and finite resource. Furthermore, the land has not been demonstrated to be necessary for housing or infrastructure development, alternative sites are available and the proposal is neither small scale nor directly related to a rural business.

Reasons for Appeal: The proposed development represents erection of new dwellings fronting onto Preston Road from the north-west. The design of the proposed development would have the effect of completing the street by mirroring the existing developed frontage onto Preston Road from the south-east. The proposed development represents erection of 10 dwellings in a high-demand location which would contribute to filling the shortfall in the supply of land for market housing suitable for occupation by young families in the Berwickshire HMA and the Borders more widely, in accordance with NPF4 Policy 16. The proposed development is considered to have satisfied the other criteria of Policy PMD4 and represents sustainable development. The proposed development is considered to accord with Policy ED10 and Policy 5 of NPF4 as it does not represent the loss of Prime Quality Agricultural Land. It is considered that the proposal is in general accordance with relevant adopted policy of the Local Development Plan and NPF4 and is not afflicted by any other material considerations.

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

Method of Appeal: Written Representations

2.1.3 Reference: 23/00777/FUL
Proposal: Installation of communication lattice tower 35m high c/w headframe on new 6.5m x 6.5m RC concrete base and associated ancillary works
Site: Land at Menzion Forest Block, Quarter Hill, Tweedsmuir
Appellant: Hutchison 3G UK Ltd

Reasons for Refusal: 1. The proposed telecommunications mast is contrary to Policy 24 (e) of National Planning Framework 4 in that development would not minimise visual and amenity impacts. The proposed mast would also be contrary to Policy 25 of National Planning Framework 4 in that it does not contribute to community and local economic development that focuses on community and place benefits. 2. The proposed telecommunications mast is contrary to Policy ED6 of the

Scottish Borders Local Development Plan 2016 in that it will have an adverse impact on the natural environment, particularly landscape and visual impact. The proposed development is also contrary to Policy IS15 (a) in that equipment would not be positioned or designed sensitively and would have an adverse effect on the environment, in particular, the Tweedsmuir Upland Special Landscape Area. The developers have not adequately demonstrated that an alternative location has been sought.

Reasons for Appeal: The installation of the proposed upgrade would not be contrary to but would contribute to the achievement of the Policy objectives of SBC's Development Plan, the NPF4 and PAN62. The proposal would not be to the detriment of visual amenity or result in harm to the character of the area. The proposal would further the delivery of sustainable development through intelligently managed and considered change. There will not be a 4G coverage hole in the area (as is currently the case) and all efforts have been injected into the site selection process to deploy a proposal where the visual amenity or landscape character of the area will not be adversely affected. Any perceived impact on amenity the site will be outweighed by the many positive benefits that telecommunications bring to the economy and community. The development meets the requisite criteria and standards, as well as contributing to and according with the 'Planning for Growth' objectives. [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: 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 & Site Visit

Reporter's Decision: Sustained

Summary of Decision: The Reporter, Trudi Craggs, noted that the key issue in dispute is whether this land is within the curtilage of the property. On the site visit the Reporter saw that there were two parking spaces at the rear of the dwellinghouse beyond the rear garden. The spaces were accessible by a gate in the fence separating the spaces from the garden. A plaque with the number of the appellant's house was affixed to the fence in front of each space. All of the parking spaces immediately to the rear of the houses were numbered in this way and were clearly allocated for use by the associated property. Visitor parking was clearly designated as such. Communal parking across the road from the rear of the houses was not designated at all. Although the ridge of the proposed garage would be greater than 2.5 metres in height, it is sufficiently set back and within the curtilage of the site. The reporter concluded that the proposed development would be permitted development by virtue of Class 3A(1) of the 1992 Order as amended and therefore granted a certificate of proposed lawful use.

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

3.1.2 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 & Site Visit

Reporter's Decision: Dismissed

Summary of Decision: The Reporter, Paul Cackette, noted that the main issues of this appeal are firstly whether a building at the site was substantially completed as at 19th May 2019. Secondly, whether the stables building should have been included as part of a 2018 retrospective application for another building. On the first point there is a range of photographs from before this time, a range of statements including from the builder of the whole works and a plan from the 2018 application, which establishes that the stable building was substantially completed by the 19th May 2019. The second point is less clear. The application plan accords with the position the Reporter saw on his site visit. However, this differs from the 2018 application plan in two respects. The edge of the secondary building and the shape & area of the larger building are different. The Reporter stated that the building shown in the 2018 plan has had an

extension added. The appellant does not appear to accept that the 2018 plan and the application plan are different and offers no evidence or indication as to when the layout dates from. The reporter concluded that the building substantially completed in 2018 is not the same building as at present and as sought in the appellant's application, the appellant has not established to the required standard that the stables building shown in the application has existed as substantially completed for the period of four years prior to the 19th May 2019. Accordingly, the appeal in relation to the application as made required to be refused.

[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 22nd September 2023.

5 REVIEW REQUESTS RECEIVED

5.1 Reference: 23/00331/FUL
Proposal: Erection of dwellinghouse
Site: Land South of 1 Netherwells, Jedburgh
Appellant: Mr Peter Caunt

Reasons for Refusal: 1. It is considered that the proposals are contrary to National Planning Framework 4 policy 17 and policy HD2 of the Local Development Plan 2016 and Supplementary Planning Guidance New Housing in the Borders Countryside (2008) in that the proposed development would be sited within a previously undeveloped field, beyond the natural and man-made boundaries of the Netherwells building group, outwith the sense of place of the building group and out of keeping with the character of the building group resulting in an unacceptable adverse impact on the landscape and amenity of the surrounding area.

Accordingly, the proposed development would represent a sporadic and unjustified form of development in the countryside, which would set an undesirable precedent for similar unjustified proposals. 2. The proposal would be contrary to policy PMD2 of the Local Development Plan 2016 as the poor quality design, over development of the site and inappropriate ribbon development would not be compatible with or respect the character of the surrounding area or building group to the detriment of the character and amenity of the building group.

5.2 Reference: 23/00507/PPP
Proposal: Erection of dwellinghouse
Site: Plot C Land West of Hedgehope Cottage, Winfield
Appellant: Aver Chartered Accountants

Reason for Refusal: The development is contrary to policies 1, 2 and 17 of National Planning Framework 4 and PMD1 and HD2 of the Local Development Plan 2016 because it would constitute unsustainable, car dependent, sporadic housing development in the open countryside, unrelated to any existing building group and would be out of keeping with the character of the area. This conflict with the development plan is not overridden by any other material considerations.

- 5.3 Reference: 23/00508/PPP
Proposal: Erection of dwellinghouse
Site: Land East of Dunedin Lodge, Crossrig
Appellant: Aver Chartered Accountants

Reasons for Refusal: 1. The development is contrary to policy HD2 (Housing in the Countryside) of the Local Development Plan 2016 because it would not be well related to any existing building group, would break into an undeveloped field with strong natural boundaries, and no other supporting justification has been made. The development gains no support from policy 17 of National Planning Framework 4. This conflict with the development plan is not overridden by any other material considerations. 2. The proposed development is contrary to Local Development Plan 2016 policy ED10 (Protection of Prime Quality Agricultural Land and Carbon Rich Soils) and National Planning Framework 4 policies 5 (Soils) and 9 (Brownfield, Vacant and Derelict Land and Empty Buildings) as it would result in the permanent loss of greenfield, prime quality agricultural land without any necessary exceptional justification.

- 5.4 Reference: 23/00509/PPP
Proposal: Erection of dwellinghouse
Site: Land North East of Alba Cottage, Fishwick
Appellant: Aver Chartered Accountants

Reason for Refusal: The development is contrary to policies 1, 2 and 17 of National Planning Framework 4 and HD2 of the Local Development Plan 2016 because it would constitute unsustainable, car dependent, sporadic housing development in the open countryside, unrelated to any existing building group and would be out of keeping with the character of the area. This conflict with the development plan is not overridden by any other material considerations.

6 REVIEWS DETERMINED

- 6.1 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.

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Upheld

6.2 Reference: 22/01357/FUL
Proposal: Erection of dwellinghouse and associated work
Site: Land South of Ebbastrand, Coldingham Sands, Coldingham
Appellant: Mr Rob Cameron

Reasons for Refusal: 1. The proposed development is contrary to Local Development Plan 2016 policy HD2 (Housing in the Countryside) and EP14 (Coastline) in that the site is not well related to the Coldingham Sands building group and the building group has no further capacity for expansion within the current plan period. The development would result in unacceptable harm to Coldingham Sands' sense of place and would cause unacceptable cumulative impact to the character of the building group and the undeveloped coast. 2. The proposed erection of a dwellinghouse at this location would be contrary to Local Development Plan 2016 policy PMD2 (Quality Standards) criterion (Q) in that the additional traffic generated by the development would have an adverse impact on road safety. The section of road between St Veda's House and the application site is considered incapable of accommodating such further traffic. In particular, the lack of forward visibility at a blind corner outside St Veda's House results in vehicles meeting on a narrow section of road with the need for one vehicle to reverse to the detriment of road and pedestrian safety. 3. The proposed development is considered contrary to Local Development Plan 2016 policies PMD2 criterion (L), EP1 (International Nature Conservation Sites and Protected Species), EP3 (Local Biodiversity) and EP5 (Special Landscape Areas) in that it has not been demonstrated that the development can be satisfactorily accommodated within the site without unacceptable harm to the Berwickshire Coast Special Landscape Area, internationally designated sites, and to the local environment. It has not been demonstrated that the risk of coastal erosion and land slippage can be avoided or mitigated in a manner without unacceptable detrimental impacts to these interests.

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

Review Decision: Decision of Appointed Officer Upheld

6.3 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.

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Upheld

6.4 Reference: 23/00034/PPP
Proposal: Erection of dwellinghouse
Site: Land North of Belses Cottage, Jedburgh
Appellant: Mr Kenneth Short

Reasons for Refusal: 1. The development is contrary to policy HD2 of the Local Development Plan 2016 and New Housing in the Borders Countryside Guidance 2008 because it would constitute housing in the countryside that would not relate well to a building group and would lead to an unjustified sporadic expansion of development into a previously undeveloped field. In any case, the capacity of the building group has exceeded the limitations allowed for by Policy HD2. The resulting visual impact of the development would be adverse and, therefore, also conflict with policy PMD2. Furthermore, there is no overriding economic justification to support the development, and the development has no support from NPF4. This conflict with the development plan is not overridden by any other material considerations. 2. The development is also contrary to policy PMD2 of the Local Development Plan 2016 in that the means of access onto a public road out with a settlement boundary would adversely affect the road safety of this road, including but not limited to the site access without providing any overriding economic and or road safety improvements. This conflict with the development plan is not overridden by any other material considerations.

Method of Review: Review of Papers & Site Visit

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

6.5 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.

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Overturned (Subject to Notification to Scottish Ministers)

7 REVIEWS OUTSTANDING

7.1 There remained 3 reviews previously reported on which decisions were still awaited when this report was prepared on 22nd September 2023. This relates to sites at:

<ul style="list-style-type: none">• Land South of Headshaw Farmhouse, Ashkirk, Selkirk	<ul style="list-style-type: none">• Site Adjacent The Steading Whiteburn Farm, Lauder
<ul style="list-style-type: none">• U-Stor Business Units, Spylaw Road, Kelso	<ul style="list-style-type: none">•

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 22nd September 2023. This relates to a site at:

<ul style="list-style-type: none">• Land West of Castleweary (Faw Side Community Wind Farm), Fawside, Hawick	<ul style="list-style-type: none">•
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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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