

**SCOTTISH BORDERS COUNCIL
LOCAL REVIEW BODY DECISION NOTICE**

**APPEAL UNDER SECTION 43A (8) OF THE TOWN AND COUNTRY PLANNING
(SCOTLAND) ACT 1997**

**THE TOWN AND COUNTRY PLANNING (SCHEMES OF DELEGATION AND LOCAL
REVIEW PROCEDURE) (SCOTLAND) REGULATIONS 2013**

Local Review Reference: 23/00001/RREF

Planning Application Reference: 22/00933/FUL

Development 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

Location: Land South West of West Loch Farmhouse, Peebles, Scottish Borders

Applicant: Mr Richard Spray

DECISION

The Local Review Body reversed the decision of the appointed officer and indicated that it intended to grant planning permission for the reasons set out in this decision notice subject to conditions and the applicants entering into a Section 75, or other suitable Legal Agreement, as set out below.

The necessary Section 69 Agreement has now been concluded.

DEVELOPMENT PROPOSAL

The application relates to the erection of a timber storage and processing facility with new access junction, yard area, landscaping, tree planting, SUDs and associated works and planning permission in principle for an associated dwellinghouse with office for the timber processing facility, at land South West of West Loch Farmhouse, Peebles. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	PEN22S01-95-001
Topographical Survey	PEN22S01-95-010
Proposed Site Plan & Levels	PEN22S01-01-102D
Floor Plan & Elevations Chipping Shed	PEN22S01-01-103A

Floor Plan & Elevations Processing Shed	PEN22S01-01-104A
Floor Plan & Elevations Office/Staff	PEN22S01-01-105
Street Scene and Site Section	PEN22S01-01-106A

PRELIMINARY MATTERS

The Review was initially considered by the Review Body at its meeting on 20th February 2023. At that meeting, Members noted that National Planning Framework 4 (NPF4) was in force as part of the Development Plan and considered it necessary for the Review Body to have regard to any relevant Policies in NPF4 before determining the Review. Members concluded that it was appropriate to undertake further procedure by seeking written submissions from the Appointed Officer and Applicant in relation to NPF4.

The Local Review Body then considered the review, which had been competently made, under section 43A (8) of the Town & Country Planning (Scotland) Act 1997 at its meeting on 17th April 2023.

After examining the review documentation at that meeting, which included a) Notice of Review (including the Decision Notice and Officer's Report); b) Papers referred to in Officer's Report; c) Consultation Replies; d) Objection Comments and e) Further Representations, the Review Body considered whether certain matters included in the review documents constituted new evidence under Section 43B of the Act and whether or not this evidence could be referred to in their deliberations. This related to a Legal Opinion, Tree Protection Plan, Ecological Assessment, Noise Impact Assessment and photographs of the existing business and machinery. After consideration, Members agreed that this information was new, met the Section 43B test and that it could be considered, given it was material to the applicant's case and, therefore, to the determination of the Review.

The Review Body agreed to further procedure by means of written submissions to obtain the comments of the Planning Officer, Ecology Officer and SBC Solicitor on the new information. Members also agreed to undertake an accompanied site visit, to the applicant's existing timber storage and processing yard at Loanhead, Mid Lothian and also to the application site itself. The site visits were undertaken on 22 May 2023.

The Review was, therefore, continued to the Local Review Body meeting on 19th June 2023 where the Review Body considered all matters, including the responses from the Planning, Legal, Ecology and Environmental Health Officers and the applicant's reply to these submissions. Members then proceeded to determine the case.

REASONING

The determining issues in this Review were:

- (1) whether the proposal would be in keeping with the Development Plan, and
- (2) whether there were any material considerations which would justify departure from the Development Plan.

The Development Plan comprises: Scottish Borders Local Development Plan 2016 and NPF4. The LRB considered that the relevant listed policies were:

- Local Development Plan policies: PMD1, PMD2, HD2, HD3, ED7, EP1, EP2, EP3, EP8, EP13, EP16, IS2, IS7, IS9 and IS13
- NPF4 Policies: 1, 2, 3, 4, 5, 6, 7, 9, 12, 13, 14, 16, 17, 18, 22, 23, 25, 26 and 29

Other Material Considerations

- SBC Supplementary Planning Guidance on Biodiversity 2005
- SBC Supplementary Planning Guidance Housing in the Countryside 2008
- SBC Supplementary Planning Guidance on Developer Contributions 2019
- SBC Supplementary Planning Guidance on Placemaking and Design 2010
- SBC Supplementary Planning Guidance on Sustainable Urban Drainage Systems 2020
- SBC Supplementary Planning Guidance on Waste Management 2015
- SBC Supplementary Planning Guidance on Trees and Development
- SBC Supplementary Planning Guidance on Developer Contributions 2011, updated 2023

The Review Body noted that the proposal was for the erection of a timber storage and processing facility with new access junction, yard area, landscaping, tree planting, SUDs and associated works and planning permission in principle for an associated dwellinghouse with office for the timber processing facility, at land South West of West Loch Farmhouse, Peebles

Members firstly considered the timber storage and processing elements of the proposals, especially in relation to Policies ED7 and 29. Taking into account all submissions, the Review Body were of the opinion that, after balancing the processing and chipping elements against the use of the proposed site for timber storage and drying, any industrial process was a very small part of the overall development and that it predominantly involved forestry operations. In considering this, Members noted the offer from the applicant to limit chipping to four days a month and the extent of timber storage on the site which would be left drying for lengthy periods without movement. The Review Body concluded that as the development was predominantly for forestry operations, it was more justifiable on a greenfield rather than brownfield site and that it was an appropriate development for a rural location, in compliance with the principle of Policy ED7.

Members then considered specific criteria within Policy ED7, including noise and residential amenity which were also controlled by Policies HD3, 14 and 23. All submissions were considered in relation to noise impacts on nearby existing and proposed housing, the Review Body noting, following the site inspection, the proximity of housing to the applicant's existing facility at Loanhead. Members noted a number of mitigating factors that reduced impacts in this instance. These included the offer by the applicant of a maximum 4 day limit of chipping per month by condition, the location of the chipping and processing buildings furthest away from existing houses, the area of applicant ownership without any works proposed and, notwithstanding the proximity of West Loch Farmhouse, the degree of distance to the steading and other cottages that could be affected. Given all these factors, the Review Body were content that sufficient buffer existed to reduce the noise impacts of the development, which would be infrequent with regard to chipping noise. Members also noted the findings of the Noise Impact Assessment and were content that, with the full implementation of the mitigation in the Assessment secured by condition, the impacts of the development on residential amenity were reduced to acceptable levels and, thus, in compliance with Policies ED7, HD3, 14 and 23.

The Review Body then considered the issue of road safety under Policies PMD2 and ED7. Having noted from the site visit the winding nature of the public road leading to the site and taking into account the existing and proposed traffic movements, Members were in support of the Roads Officer's requirements for a scheme of road improvement, involving passing places on the public road. Subject to an appropriate condition securing the scheme for completion before the development becomes operational, the Review Body considered the proposal in compliance with Local Development Plan Policies PMD2 and ED7 in relation to access and road safety.

There was also discussion over the applicant's offer to limit all timber received at the site to be sourced only from within the Scottish Borders. Members understood the aims of such a restriction in relation to sustainability, reduced transport distances and to relate the facility to local product. However, whilst supportive of limiting the source of timber to the Scottish Borders, Members considered this to be a small and limited area and agreed to a condition which also included the Lothians as well as the Scottish Borders, subject to a condition securing an enforceable verification and monitoring scheme.

The Review Body finally considered other material issues in relation to the timber storage and processing element of the development, including the landscape and visual impact of the proposed bunds under Policies PMD2 and ED7, the impact on existing, and effects of proposed, trees under Policies 6 and EP13 and ecological impacts under Policies 3 and EP1-EP3. Members noted the additional reports submitted by the applicant in relation to these matters, welcoming the proposed new tree planting and the location of the development below the surrounding bunds, to counter the height of the site. Subject to appropriate conditions, the Review Body were satisfied that these matters could be addressed.

Having established that the timber storage and processing development was predominantly forestry operations but that, in any case, represented a development appropriate to the site and the rural character of the area, Members then considered the planning permission in principle element of the application and the proposal for a dwellinghouse and office in the south-western corner of the site. The Review Body accepted the applicant's case for requiring residential and office accommodation on the site, noting that the applicant would accept conditions securing an occupancy link with the business and no commencement of the dwellinghouse/office until the timber storage and processing development was complete and operational. Subject to appropriate conditions, Members considered the site to be justified provision of accommodation on site for a worker in the adjoining business, complying with Clause F of Policy HD2, NPF4 Policy 17 and the Housing in the Countryside SPG.

The Review Body finally considered all other material issues such as external building finishes and development contributions but were of the opinion that appropriate conditions and a legal agreement could address remaining issues satisfactorily.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was consistent with Policies PMD2, ED7, HD2 and HD3 of the Local Development Plan, Policies 14, 23 and 29 of NPF4 and relevant Supplementary Planning Guidance. The development was considered to be an appropriate rural location for a facility which was predominantly a forestry operation and that the residential and environmental impacts could be addressed by appropriate planning conditions. The dwellinghouse/office was also considered to be justified, provided occupancy is tied to the business and the house only commences after the business opens. Consequently, the application was approved subject to conditions and a legal agreement.

CONDITIONS

Timber Storage and Processing Development

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
Reason: To comply with Section 58 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

2. Prior to the commencement of the development hereby approved, a detailed 'Method Statement' in relation to all works within the Root Protection Area (RPA) of retained trees shall be submitted to and approved in writing by the Planning Authority.

Specific issues to be dealt with in the Method Statement:

- a) A scaled plan and section (s), where relevant, showing the position, size, RPA, species and unique identification reference of each retained tree affected by the works and including details of the extent and nature of all works within the RPA of retained trees.
- b) A written statement detailing the proposed works including hand digging, use of filter cloth, timber edging, cellular ground reinforcement, porous surfaces etc. as relevant.
- c) A specification for protective fencing to safeguard trees during both demolition and construction phases and a plan indicating the alignment of the protective fencing.
- d) A specification for ground protection within tree protection zones.
- e) Arboricultural supervision and inspection by a suitably qualified tree specialist.

The development thereafter shall be implemented in strict accordance with the approved details.

Reason: To ensure that the trees to be retained will not be damaged during demolition or construction and to protect and enhance the appearance and character of the site and locality.

3. No development shall take place except in strict accordance with a scheme of soft landscaping works, which shall first have been submitted to and approved in writing by the Planning Authority, and shall include (as appropriate):

- i. indication of existing trees, shrubs and hedges to be removed, those to be retained and, in the case of damage, proposals for their restoration
- ii. location of new trees, shrubs, hedges and grassed areas
- iii. the precise length, height and profile of all screen bunding
- iv. schedule of plants to comprise species, plant sizes and proposed numbers/density; and
- v. programme for completion and subsequent maintenance.

Reason: To enable the proper form and layout of the development and the effective assimilation of the development into its wider surroundings.

4. The development to be restricted to timber storage and timber processing only and for no other use. Any additional works, buildings or alternative usage will require the submission of further planning applications, including any proposals within Classes 5 and 6 of The Town and Country Planning Use Classes (Scotland) Order 1997.

Reason: To control the usage of the site and minimise impacts on nearby residential property.

5. All timber stored and processed at the site to be sourced only from within the Local Authority Areas of the Scottish Borders, City of Edinburgh, Mid Lothian, West Lothian and East Lothian. No development to be commenced until a Scheme of Verification and Monitoring of the source of all incoming timber is submitted to, and approved in writing by, the Planning Authority. The scheme should include details of the form of verification information, the method of enabling inspection of the information by an officer of the Planning Authority and a minimum frequency of inspection.

Reason: To control the usage of the site, minimise travel distances and impacts on nearby residential property.

6. Any chipping of wood only to occur within the relevant approved building on the application site, suitably constructed, insulated and operated in accordance with the mitigation listed in the submitted Environmental Noise Assessment by The Airshed dated 27 January 2023. Wood chipping not to exceed a total of four days per month,

to be carried out only between the hours of 8am and 6pm and no chipping at any time on Saturdays, Sundays or any bank holidays.

Reason: To minimise noise breakout and impacts on nearby residential property.

7. The development to be constructed and operated fully in accordance with the Environmental Noise Assessment by The Airshed dated 27 January 2023, ensuring all mitigation works in Sections 6.1 and 6.2 of the Assessment are completed before operation of the development and maintained thereafter in perpetuity, including no operation of the facility or associated vehicles between the hours of 7pm and 7am and specified insulation/self-closing doors on both chipping and processing buildings.

Reason: To minimise noise breakout and impacts on nearby residential property.

8. No development shall be undertaken during the breeding bird season (March to August), unless in strict compliance with a Species Protection Plan for breeding birds, including provision for pre-development supplementary survey, that shall be submitted to and approved in writing by the Planning Authority.

Reason: To protect the ecological interest in accordance with Local Development Plan policies EP2 and EP3

9. Prior to the commencement of development, the developer shall submit for approval in writing by the Planning Authority, details on the proposed Biodiversity and Habitat enhancement scheme for the site. This shall include a timescale for implementation and measures for its long-term management. Thereafter, no development shall take place except in strict accordance with the approved scheme.

Reason: to meet the requirements of NPF4 policy 3 (Biodiversity)

10. No development to be commenced until a scheme of road improvements along the section of public road between the A703 and the site entrance are submitted to, and approved in writing by, the Planning Authority. Once approved, the development not to become operational until all agreed road improvements, on-site parking and the main access to the site are fully completed in accordance with the approved scheme and Site Plan PEN22S01-01-102D.

Reason: In the interests of road safety

11. No development to be commenced until further details and colours of the external metal and timber cladding for the buildings and cabin on site are submitted to, and approved in writing by, the Planning Authority. The buildings and cabin are then to be finished in the agreed cladding.

Reason: To safeguard the visual amenity of the area.

Dwellinghouse

1. Application for approval of matters specified in the conditions set out in this decision shall be made to the Planning Authority before whichever is the latest of the following:
 - a. the expiration of three years from the date of this permission; or
 - b. the expiration of six months from the date on which an earlier application for approval of matters specified in the conditions set out in this decision notice was refused or dismissed following an appeal.

Only one application may be submitted under paragraph (b) of this condition, where such an application is made later than three years after the date of this consent.

Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

2. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the matters specified in the conditions set out in this decision.
Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.
3. No development shall commence until the details of the layout, siting, design and external appearance of the building(s), the means of access thereto and the landscaping of the site have been submitted to and approved in writing by the Planning Authority. Thereafter the development shall be carried out in accordance with the agreed details.
Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.
4. No development shall commence until all matters specified in conditions have, where required, been submitted to and approved in writing by the Planning Authority. Thereafter the development shall only take place in strict accordance with the details so approved.
Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.
5. No development relating to the dwellinghouse shall commence until the timber processing and storage development has been fully completed in accordance with this consent, conditions and the approved plans, and the use has commenced operation on the site.
Reason: To ensure that the accommodation required for the management of the timber storage and processing business at the site is only provided once the business is operational at the site.
6. The occupation of the dwellinghouse to be restricted to a person employed in the timber storage and processing business established on the site and also to include any spouse, partner and dependants.
Reason: Unrestricted occupation of the dwellinghouse would be contrary to the Council's policies on housing in the countryside.

LEGAL AGREEMENT

The Local Review Body required that a Section 75, or other suitable legal agreement, be entered into to secure developer contributions for Peebles High School. A Section 69 Agreement has now been concluded.

N.B: This permission does not include any consent, approval or licence necessary for the proposed development under the building regulations or any other statutory enactment and the development should not be commenced until all consents are obtained.

Under The Control of Pollution Act 1974, the Council recommends the following hours for noisy construction-related work:

Monday-Friday 0700-1900

Saturday 0800-1300

Sunday and Public Holidays - no permitted work (except by prior agreement with the Council)

Contractors will be expected to adhere to the measures contained in BS 5228:2009 “Code of Practice for Noise and Vibration Control on Construction and Open Sites”.

For more information or to make a request to carry out works outside the above hours, please contact an Environmental Health Officer at the Council.

Notice of Initiation of Development

Section 27 of the Town and Country Planning (Scotland) Act (as amended) requires that any person who has been granted planning permission (including planning permission in principle) and intends to start development must, once they have decided the date they will start work on the development, inform the planning authority of that date as soon as is practicable.

Notice of Completion of Development

Section 27B requires that any person who completes a development for which planning permission (including planning permission in principle) has been given must, as soon as practicable after doing so, give notice of completion to the planning authority.

When planning permission is granted for phased development then under section 27B(2) the permission is to be granted subject to a condition that as soon as practicable after each phase, other than the last, is completed, the person carrying out the development is to give notice of that completion to the planning authority.

In advance of carrying out any works it is recommended that you contact Utility Bodies whose equipment or apparatus may be affected by any works you undertake. Contacts include:

Transco, Susiephone Department, 95 Kilbirnie Street, Glasgow, G5 8JD
Scottish Power, Riccarton Mains Road, Currie, Edinburgh, EH14 5AA
Scottish Water, Developer Services, 419 Balmore Road, Possilpark, Glasgow G22 6NU
British Telecom, National Notice Handling Centre, PP404B Telecom House, Trinity Street, Stoke on Trent, ST1 5ND
Scottish Borders Council, Street Lighting Section, Council HQ, Newtown St Boswells, Melrose, TD6 0SA
Cable & Wireless, 1 Dove Wynd, Strathclyde Business Park, Bellshill, ML4 3AL
BP Chemicals Ltd, PO Box 21, Bo'ness Road, Grangemouth, FK2 9XH
THUS, Susiephone Department, 4th Floor, 75 Waterloo Street, Glasgow, G2 7BD
Susiephone System – **0800 800 333**

If you are in a Coal Authority Area (Carlops or Newcastleton), please contact the Coal Authority at the following address: The Coal Authority 200 Lichfield Lane, Berry Hill, Mansfield, Nottinghamshire NG18 4RG.

Notice Under Regulation 22 of the Town & Country Planning (Schemes of Delegation and Local Review procedure) (Scotland) Regulations 2013.

1. If the applicant is aggrieved by the decision of the planning authority to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant

may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.

2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.
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Signed...Councillor M Douglas
Vice Chairman of the Local Review Body

Date **19 July 2023**