

SCOTTISH BORDERS COUNCIL

**APPLICATION TO BE DETERMINED UNDER POWERS DELEGATED TO
CHIEF PLANNING OFFICER**

PART III REPORT (INCORPORATING REPORT OF HANDLING)

REF : 18/00519/FUL

APPLICANT : Avocet Farms Ltd

AGENT : The Energy Workshop

DEVELOPMENT : Erection of polystructure cattle shed and hydroponics unit and associated groundworks (retrospective)

LOCATION: Land North East Of Alba Cottage
Fishwick
Berwick-Upon-Tweed
Scottish Borders

TYPE : FUL Application

DRAWING NUMBERS:

Plan Ref	Plan Type	Plan Status
JF MCKENNA	Brochures	Refused
P3164 Drawing Register	3D View	Refused
P3164 S107 REV A	3D View	Refused
P3164 S108 REV A	3D View	Refused
P3164 S02 REV B	Proposed Plans	Refused
P3164 S04 REV A	Proposed Roof Plan	Refused
O69-03 REV C	Location Plan	Refused
P3164 S05 REV B	Proposed Elevations	Refused

NUMBER OF REPRESENTATIONS: 4

SUMMARY OF REPRESENTATIONS:

CONSULTATIONS

SBC Contaminated Land: No comments.

SBC Ecology (first response): An ecological impact assessment (EclA) is required.

SBC Ecology (second response): Following the previous Ecology response, an ecological assessment of the site has been provided. The assessment does not include desk top survey or assessment of TWIC wildlife records, referring only to data previously provided by Scottish Borders Council (SBC) in the Ecology response. No Habitat Suitability Index assessment for GCN has been undertaken in relation to the pond, which is located within 500m of the proposed site. An assumption is made that GCN would be unlikely to travel to the site owing to the presence of dense woodland and a minor road. GCN may inhabit or disperse through deciduous woodland with vegetated ground cover and considerable dead wood on the ground. Clarification is required on the construction footprint (see following point).

The ecological assessment states that woodland is out with the construction footprint, however, from the information available on SBC's digital mapping systems, the proposed site appears to incorporate the woodland. The assessment notes that no trees, hedgerows or groundcover are to be removed, but

also states that mitigation in the form of bat surveys will be required if any trees are to be felled. Clarification is required prior to determination on whether or not trees are to be felled, limbed or crowned in relation to the development and the extent of the construction footprint.

No assessment is provided of the suitability of any trees for bats, in terms of any potential roost features (or lack thereof). The ecological assessment reiterates the comments in the Ecology response that there is a tributary stream 60m to the south of the site, which has connectivity to the River Tweed. No comments are made regarding appropriate mitigation to avoid contamination of the water environment, including the designated site. Related to the above point, no clarification on the proposed SUDS system has been made. Care must be taken to comply with SEPA regulatory advice e.g. GPP5. With regard to paragraphs 1.18 and 1.19 of the assessment report, all species of bird are protected during the breeding season. Breeding birds may be present in hedgerows and trees on site and precautionary mitigation is required if any development is proposed within the breeding bird season. Again, clarification of the construction footprint is required, including whether trees are to be removed.

Felling of woodland conflicts with LDP policy EP13 and compensatory re-planting is required if trees are to be felled. The assessment notes that badger would be present in the general area. As a precaution, standard mitigation is required. No consideration of possible cumulative effects in connection with other development applications relating to this site is demonstrated, as requested in the previous Ecology response.

Further information is required to clarify: the construction footprint; whether trees, hedgerows or other vegetation are to be removed, or trees limbed or crowned (in addition to what has already been removed prior to planning permission being granted); and what mitigation is proposed relating to the water environment to avoid contamination and transfer to the River Tweed SAC, including details of SUDS schemes, including consideration of cumulative effects from nearby schemes

SBC Environmental Health: The erection of cattle sheds can give rise to problems of pests and nuisance if food sources and waste are not handled appropriately. A nuisance management plan will enable the applicant to demonstrate that the site will be managed in a such way that will not give rise to nuisance or vermin and hence should not adversely impact the amenity of nearby properties.

The application states that farmyard manure will be stored on fields. The storage of manure can give rise to issues of odour, seepage and insect nuisance to nearby properties. The nuisance management plan should either state locations where manure will be stored or a process that will be used to determine storage location to avoid the above issues - e.g. the proximity to other properties and topography will be considered, etc. This can be covered by condition.

SBC Landscape: The site is a relatively flat field in the Berwickshire Merse. There is a mature woodland strip along the western boundary and a roadside hedge to the south which is the main public viewpoint. The site foundations have been excavated and material has been deposited in a bund along the road side. This has been planted with trees. There is a gap between the end of the bund and the existing woodland allowing some views on to the site. There is also some localised disturbance of tree roots within the woodland strip where drainage has been installed. The proposed structures are large but are reasonably well contained visually. You may wish to consider a condition to protect the screen planting that has already been planted along the southern boundary.

SBC Roads: No objection provided the first 6m of the access from the public road is surfaced to the specification of the Council within 3 months of the date of the consent.

Hutton & Paxton Community Council: Object. The documents submitted are few in number and contain little information. There is no covering statement explaining (i) what the project actually is or (ii) a business statement explaining what the purpose is. The applicant has ticked the box on the application form (Type of Application) covering changes of use, however, unapproved work had already begun no doubt bringing about the retrospective application.

This is a productive field historically used for crops and covered under the planning policy which presumes against using prime agricultural land for any other purpose. Could this be construed as a deliberate attempt to circumvent this policy by starting work before approval?

The polystructures - no specifications provided - are large and as such, will be obtrusive. A consultation document submitted states that they will be "reasonably" well contained visually. Translated this means that they will not be contained visibly in the landscape in spite of a bund and tree planting which will take many years of growth to have an effect, if any. The structures will still be seen and thereby will be a visual intrusion.

Large numbers of cattle contained in a confined space will produce considerable amounts of waste. Liquid waste will have to go somewhere and may well lead to pollution. It is surprising that the officer responsible for contaminated land has declined to comment here. There is a likelihood of water pollution. This has been mentioned to the CC on a number of occasions as we do tend to listen closely to local knowledge.

Confining cattle in a polystructure may well raise animal welfare issues. Has this method been tested over a period of time and proved acceptable to UK animal welfare agencies? No mention/explanation of this is given.

Considerable amounts of cattle manure will accumulate and require to be stored. This will inevitably result in a marked increase in traffic on the adjacent minor road which is also used by local residents but no plan for this is mentioned. It would appear that the roads officer has overlooked this despite residents requiring to know if their continued safe passage would be guaranteed.

Noise, odour, pests and associated nuisances are likely and will affect nearby residences, yet no mention of control and management is made in the submission documents. If it requires an officer to ask for this as a condition from the applicant, what comfort or guarantee is there that this will be followed through? History in the case of this applicant points in the opposite direction.

Hydroponic cattle fodder was developed for use in arid countries, not in the UK. What is the real point of transferring this system to a country which has no real need for it?

For the above reasons the application carries significant inherent risks and the potential for unacceptable adverse effects to the local area.

REPRESENTATIONS

Three objections were received from members of the public, raising the following issues:

- animal welfare/ ethics/ safety
- road safety
- limited information
- noise
- odour
- traffic/ large lorries
- impact on nearby holiday development
- vermin
- nearby road floods
- application is a trojan horse for biofuel production
- the proposed structures would contain large quantities of plastic
- the structures would be ugly and intrusive
- the structures are not appropriate for the housing of cattle

PLANNING CONSIDERATIONS AND POLICIES:

Local Development Plan 2016:

PMD1: Sustainability

PMD2: Quality Standards

ED7: Business, Tourism and Leisure Development in the Countryside

ED10: Protection of Prime Quality Agricultural Land and Carbon Rich Soils

HD3: Protection of Residential Amenity

EP1: International Nature Conservation Sites and Protected Species
EP2: National Nature Conservation Sites and Protected Species
EP3: Local Biodiversity
EP10: Gardens and Designed Landscapes
EP13: Trees, Woodlands and Hedgerows
EP15: Development Affecting the Water Environment
EP16: Air Quality
IS7: Parking Provision and Standards
IS8: Flooding
IS9: Waste Water Treatment and SUDS

Other Considerations:

Biodiversity Supplementary Planning Guidance 2005
Landscape and Development Supplementary Planning Guidance 2008
Trees and Development Supplementary Planning Guidance 2008
Planning Advice Note 39: Farm and forestry buildings
Scottish Planning Policy 2014

Recommendation by - Paul Duncan (Assistant Planning Officer) on 12th January 2021

BACKGROUND

This application sought partially retrospective planning permission for the erection of cattle and hydroponics buildings in a large arable field in Berwickshire. The application also sought retrospective permission for bunding, hardstanding, alterations to an existing field access, and a new car park. The latter works were carried out prior to the submission of the application. The proposals were to form part of a wider demonstration farming development in the surrounding area also comprising wind turbines and an AD plant.

SITE DESCRIPTION

The proposed site is located between Fishwick and Winfield Airfield, around a mile south of Sunwick Farm. It comprises an irregularly shaped flat arable field. The field is bound to the south by the B6461 road, to the north by a local minor road, and to the west by a narrow belt of mature trees. The primary surrounding land use is arable farmland.

PROPOSED DEVELOPMENT

A large detached building was to house cattle (described within the application as a 'cattle palace') and a separate hydroponics unit building was to produce feed for the cattle. The application also sought retrospective permission for bunding, hardstanding, a new access, car park. A portable timber office was also proposed.

ASSESSMENT

Principle

LDP policy ED7 (Business, Tourism and Leisure Development in the Countryside) aims to allow appropriate employment generating development in the countryside whilst protecting the environment and ensuring such developments are appropriate for their location.

These proposals formed part of a wider vision for an ambitious 'circular' farming method which were the subject of several linked applications. The proposed development was to involve the use of new or uncommon farming technologies and the applications generated a lengthy dialogue with those acting for the applicants. Whilst there were a significant number of issues and concerns associated with these proposals, the potential economic benefits were significant, and the applicants have been afforded ample time to demonstrate their proposals could satisfy planning policies.

It was accepted that the proposed development would have been used directly for agricultural uses, which is in principle an acceptable form of rural development. However, Policy ED7 also sets out a number of

additional criteria, relating to the character of the area, the erection of new buildings, the expansion of uses and the siting and design of such development. The landscape and visual impact of the development is considered separately below. In addition to such considerations there were over-riding concerns in relation to the proposal to erect farm buildings on a greenfield site located at a significant distance from any associated existing farm building. Whilst this is unavoidable for certain types of agricultural development, such as free range egg production, cattle shed developments are normally erected within close proximity to an existing farm steading, protecting the character and appearance of undeveloped rural areas from sporadic development.

A statement was provided setting out a justification for this, based on biosecurity, access to outdoor space and other reasoning. The arguments put forward did not adequately justify such a significant departure from development norms. The argument around biodiversity could be used in many circumstances to justify the sporadic erection of farm buildings and the need for such measures, and their effectiveness, was not adequately demonstrated. The statement acknowledged that this parcel of land was outlying, separate from the main ownership block, including the steading complex at Sunwick Farm. As a result, the proposed site is closer still to neighbouring farmland, which must be assumed to give rise to even greater biosecurity concerns.

The statement argued that locating buildings at Sunwick Farm would have resulted in overdevelopment of the main steading. However, this is the standard approach for the siting of modern farm buildings and is supported by planning policy and guidance, including Planning Advice Note 39: Farm and forestry buildings. Clustering farm buildings is preferable to sporadic development. No information was provided to support the claim that the listed farmhouse at Sunwick could not be protected by such development. It is acknowledged that the applicant offered a 20 year temporary approval, but this would have been a significant period of time and would not have justified such a departure from policies and guidance.

Concern was raised by objector that the application was a trojan horse for biofuel production. Biofuel production did not form part of the application proposals and is not a consideration for this application.

Landscape and Visual Impacts

Local Development Plan (LDP) policy PMD2 (Quality Standards) requires all development to be of high quality in accordance with sustainability principles, designed to fit in with Borders townscape and landscape surroundings. Development should be of a scale, massing, height and density appropriate to its surroundings. The policy contains a number of standards that would apply to all development.

Farm buildings within the Scottish Borders countryside are generally fairly standardised in terms of form, massing and materials. Planning Advice Note 39: Farm and forestry buildings provides guidance on achieving the appropriate design and appearance of modern farm buildings.

The proposed development was to vary considerably from the normal appearance of a modern farm building. This has been the subject of extensive discussions during the course of the application. Originally a white PVC type material was to cover the proposed farm building. It is acknowledged that the Landscape Officer expressed little concern in terms of wider landscape impact of this development. However there was considerable concern at the potential closer range visual impact of the development, and how this would affect the more immediate landscape setting of the site. Bunding and tree planting would not have addressed such impacts adequately. A further concern was the potential for an effective precedent to be set in allowing such a material to be used on a large scale in the open countryside. The applicant explored alternative materials and a similar material coloured green was put forward. It was agreed that a smaller demonstration unit could be erected in a more discreet location to demonstrate the appearance of the structure in this material. A considerable period has since passed and this development is not thought to have been completed. Significant concerns at the appearance of these structures remain. It is considered that the proposed development would have an adverse visual impact, to the detriment of the landscape surroundings of the area.

The proposed development would be sufficiently distant from the Hutton Castle Designed Landscape (SBC and HES designations) to avoid any adverse impacts.

Ecology

Ecological assets are protected by Policies EP1-EP3 of the Local Development Plan covering a range of sites and species from international to sites and species of local interest. Of these, Policy EP1 (International Nature Conservation Sites and Protected Species) aims to give designated Natura sites such as SACs protection from potentially adverse development.

The applicant provided an Ecological Impact Assessment, which was reviewed by the Ecology Officer. A number of outstanding issues were identified in terms of incomplete information, a lack of clarity in the scope of potential construction/ development works, and potential impacts on protected species. The Ecology Officer raised concerns regarding potential impacts on badgers, breeding birds, bats, grey-crested newts and potential impacts on the River Tweed SAC via potential connectivity via a tributary stream to the south of the site. The Ecology Officer and Community Council raised the potential issue of pollution. Mitigation was required to ensure pollutants did not reach the SAC via the stream. Information on potential cumulative effects in combination with other development was also requested. No further information was provided to address these concerns.

Given the insufficiency of the ecological information provided to date, and the significance of the outstanding concerns, these are not matters that could be secured by planning condition. Accordingly, the application must be refused as contrary to Local Development Plan policies EP1 (International Nature Conservation Sites and Protected Species), EP2 (National Nature Conservation Sites and Protected Species), EP3 (Local Biodiversity) and EP15 (Development Affecting the Water Environment) in that the development has not demonstrated that unacceptable adverse ecological impacts would not arise.

Had the applicant provided further information in response the outstanding issues, it may have been appropriate to consult SNH and a Habitat Regulations Appraisal may have been required. The proposals were not considered to amount to EIA development.

Trees

Policy EP13 of the Local Development Plan seeks to protect trees from development.

Trees are understood to have been felled or damaged at the access and elsewhere within the proposed site prior to the submission of the application. Insufficient information has been provided to confirm whether the development would harm trees further. Were the application to have been supported, it would have been appropriate to secure tree protection measures and a compensatory planting plan by condition, to ensure Policy EP13 was met.

Residential Amenity

Policy HD3 (Residential Amenity) of the Local Development Plan states that development that is judged to have an adverse impact on the amenity of residential areas will not be permitted.

The nearest residential properties are several hundred metres from the site. A holiday development is also located within the wider vicinity. Manure would be stored on fields. The primary issues associated with this type of development would therefore be odour nuisance, as well as pests/ vermin, seepage and insect nuisance. The proposals were assessed by the Environmental Health team who considered these issues could be adequately addressed by a Nuisance Management Plan, which could be secured and controlled by planning condition. Were the application to be supported, it would be appropriate to attach such a condition.

Vehicular Access and Road Safety

Policy PMD2 requires developments to have no adverse impact on road safety and adequate vehicular access.

The Community Council raised concerns with implied traffic generation resulting from dispersal of manure. The Roads Planning Service did not raise any concerns in this regard and were generally content with potential impacts on the wider public road network, but improvements to the new access were sought via condition. Were the application to be supported, it would be appropriate to attach such a condition.

Parking

Policy IS7 of the Local Development Plan requires that car parking should be provided in accordance with the Council's adopted standards.

A car park was formed close to the minor public road. The proposals were assessed by the Roads Planning Service who expressed no concerns in terms of parking provision.

Prime Quality Agricultural Land

Local Development Plan policy ED10 (Protection of Prime Quality Agricultural Land and Carbon Rich Soils) seeks to ensure our finite agricultural land resource is retained for farming and food production. The policy states that development which results in the permanent loss of prime agricultural land will not be permitted unless the land is allocated for development; the development meets an established need and no other site is available; or the development is small scale and directly related to a rural business.

There is no established need for the proposed development and the site is not allocated for development. However it would be directly related to a rural business, and its scale would be relatively small compared to the scale of the wider resource.

Water Supply

The development was to connect to the public mains water supply. Were the application supported, it would have been appropriate to control the development subject to a planning condition which evidenced the agreement of Scottish Water to this before works recommenced.

Contaminated Land

Policy IS13 advises that where development is proposed on land that is contaminated or suspected of contamination, appropriate site investigation and mitigation will be required.

The Contaminated Land Officer had no comments to make on the proposals.

Other Matters

Considerable concern was expressed around potential animal welfare implications that objectors suggested could arise from this and related developments. Animal welfare/ ethics are not planning matters and would not form a reason for refusing the application.

The refusal of the application leaves the status of the works carried out in advance of the application technically unauthorised (bundling, hardstanding and access upgrade works). The issues associated with these works are less significant, and the damage from tree felling and loss of prime quality farmland are irreversible. The former falls largely outwith the planning process in this instance. Were a standalone application submitted to regularise these works, it would likely be supported. The primary concerns related to the works which were prevented from being carried out.

REASON FOR DECISION :

The development is contrary to Local Development Plan policies EP1 (International Nature Conservation Sites and Protected Species), EP2 (National Nature Conservation Sites and Protected Species), EP3 (Local Biodiversity) and EP15 (Development Affecting the Water Environment) in that the development has not adequately demonstrated that unacceptable adverse ecological impacts would not arise.

The development is contrary to LDP policy ED7 (Business, Tourism and Leisure Development in the Countryside) in that the development would adversely affect the rural character of the area by introducing sporadic new build development to an undeveloped area without adequate justification.

The development would be contrary to Local Development Plan (LDP) policy PMD2 (Quality Standards) in that development would not fit in with Borders landscape surroundings. The proposed materials and the sporadic nature of the development would contribute to an unacceptable appearance giving rise to unacceptable visual impacts, to the detriment of the landscape surroundings of the area.

Recommendation: Refused

- 1 The development is contrary to Local Development Plan policies EP1 (International Nature Conservation Sites and Protected Species), EP2 (National Nature Conservation Sites and Protected Species), EP3 (Local Biodiversity) and EP15 (Development Affecting the Water Environment) in that the development has not adequately demonstrated that unacceptable adverse ecological impacts would not arise.
- 2 The development is contrary to LDP policy ED7 (Business, Tourism and Leisure Development in the Countryside) in that the development would adversely affect the rural character of the area by introducing sporadic new build development to an undeveloped area without adequate justification.
- 3 The development would be contrary to Local Development Plan (LDP) policy PMD2 (Quality Standards) in that development would not fit in with Borders landscape surroundings. The proposed materials would contribute to an unacceptable appearance giving rise to unacceptable visual impacts, to the detriment of the landscape surroundings of the area.

“Photographs taken in connection with the determination of the application and any other associated documentation form part of the Report of Handling”.