

---

## PLANNING APPEALS & REVIEWS

---

### Briefing Note by Chief Planning & Housing Officer

---

## PLANNING AND BUILDING STANDARDS COMMITTEE

4<sup>th</sup> December 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

Nil

- 2.2 Enforcements

Nil

- 2.3 Works to Trees

Nil

### 3 APPEAL DECISIONS RECEIVED

- 3.1 Planning Applications

- 3.1.1 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 & Site Visit

Reporter's Decision: Sustained

Summary of Decision: The Reporter, Rosie Leven, noted that the site is not specifically allocated for housing. While representations suggest it is a valued amenity space, neither the reporters site visit or any detailed evidence presented suggests that the open space has a particular environmental, social or economic value. The Council was minded to grant an application for planning permission in principle on the site in 2019. As the planning obligation was not concluded, permission was not granted. Nevertheless, the reporter has taken account of that decision in the assessment. Representations indicate ongoing concerns over drainage in the area. The proposal includes a soakaway to address surface water runoff. Percolation test results have been provided and an indication given of the size of soakaway required. The reporter stated that the principle of residential use on the site is in line with the LDP policies PMD5 and EP11, and NPF4 policy 16. She considered that the detailed design would be compatible with the surrounding area and preserve the character of the conservation area, in line with the relevant aspects of LDP policies PMD2, PMD5 and EP9 and NPF4 policy 7, and that there would be no significant loss of daylight, sunlight or privacy as set out in policy PMD5. The reporter concluded that the proposed development accords overall with the development plan and that there are no material considerations which would justify refusing to grant planning permission, subject to conditions and a legal agreement.

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

- 3.1.2 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 & Site Visit

Reporter's Decision: Sustained

Summary of Decision: The Reporter, Trudi Craggs, noted that the appellants landscape and visual impact assessment was not before the Council at the time of determining this application, however, it was submitted as part of the appeal and the Council has had an opportunity to comment on it. Following the site inspection, the reporter did not feel that the mast, once operational, would be visible in some views, given the vastness and scale of the landscape and the expansive open views across it. The hard standing, equipment cabinet and fencing would be partially screened by woodland, vegetation and topography. The upper part of the mast would be clearly visible, breaking the skyline. In the Reporter's view, the integrity of the Tweedsmuir Uplands special landscape area and its landscape quality would not be significantly adversely affected. The Reporter was also satisfied that the appellants had demonstrated there is no suitable alternative location. On the site inspection the reporter noted that mobile reception in the area was patchy and at times non-existent. This is reflected in the Tweedsmuir Community Action Plan 2023-2028. The reporter considers that the key policies against which this proposal should be assessed are policies 1, 3, 4, 24 and 25 of the NPF4 and policies IS15, ED6 and EP5 of the local development plan. The reporter therefore concluded that the proposed development accords overall with the relevant provisions of the development plan and that there are no material considerations which would justify refusing to grant planning permission. [Please see the DPEA Website for the full Appeal Decision Notice](#)

### 3.2 Enforcements

Nil

### 3.3 Works to Trees

#### 4 APPEALS OUTSTANDING

4.1 There remained 2 appeals previously reported on which decisions were still awaited when this report was prepared on 23<sup>rd</sup> November 2023. This relates to sites at:

• Land East of Kirkwell House, Preston Road, Duns	• 2 Gladstone Street, Hawick
---	------------------------------

#### 5 REVIEW REQUESTS RECEIVED

5.1 Reference: 23/00262/FUL  
 Proposal: Change of use of derelict agricultural building and extension to form dwellinghouse and erection of 17.8m high wind turbine (tip height)  
 Site: The Blue House Near Swansfield Farm, Reston, Eyemouth  
 Appellant: Mr Graeme Forsyth

Reason for Refusal: The proposed dwellinghouse would be contrary to Policy HD2 (C - Conversions) of the Local Development Plan 2016 in that the proposed conversion and extension would not be in keeping with the scale and character of the existing building. The new extension would dominate the more subservient conversion of the existing building in height and footprint resulting in the appearance of a new build dwellinghouse in the open countryside extending off a more subservient old stone outbuilding. The development would contribute to the sense of sporadic residential development in the countryside, to the detriment of the character of the existing building, and the surrounding area. Other material considerations have been accounted for but they do not outweigh the harm that would result from the development.

5.2 Reference: 23/00492/PPP  
 Proposal: Erection of dwellinghouse  
 Site: Land North of Ivanhoe, Dingleton Road, Melrose  
 Appellant: Rivertree Residential Ltd

Reason for Refusal: The development would be contrary to policy 6 of the National Planning Framework 4 and policies EP10 and EP13 of the Scottish Borders Local Development Plan 2016 and SBC Supplementary Planning Guidance: Trees and Development 2020 in that there would be an unacceptable loss of protected trees, which would undermine the value of the site as a historic orchard of amenity value, compromising the character and amenity of the local area, the setting of the Dingleton Hospital redevelopment and the integrity of the Dingleton Designed Landscape, prejudicing the health and future retention of the remaining trees whilst allowing insufficient space for adequate compensatory planting. Furthermore, it has not been demonstrated that the public benefit of the development would outweigh the loss of, and impacts on, the protected trees.

5.3 Reference: 23/00684/FUL  
 Proposal: Change of use from amenity land to garden ground  
 Site: 58 Waldie Griffiths Drive, Kelso

Appellant: M&J Ballantyne Ltd

Reason for Refusal: The proposal would be contrary to Policy 20 of National Planning Framework 4 and Policies PMD2 and EP11 of the Local Development Plan 2016 and the Supplementary Planning Guidance on Placemaking and Design 2010 in that it would result in the loss of public open space that would be out of character with the existing and proposed development pattern to the detriment of the visual amenity and character of the surrounding area. In addition, it has not been demonstrated that there is a social, economic or community benefit for the loss of open space or that the need for development outweighs the need to retain the space. No comparable or enhancement of existing open space has been provided to mitigate the potential loss.

5.4 Reference: 23/00844/FUL  
Proposal: Erection of dwellinghouse  
Site: Land South of 1 Old Edinburgh Road, Eddleston  
Appellant: Mr Francis Gilhooley

Reasons for Refusal: 1. The development would be contrary to policies PMD2, PMD5 and HD3 of the Local Development Plan 2016 and NPF4 policies 14 and 16 together with Placemaking and Design and; Privacy and Sunlight guidance in that the scale and form of the development would not fit within the existing pattern of development in the area, the proposal would be over-development of the site and the design would have a undue visual impact on the area, the existing property to the north and on the approach to and exit from the village. In addition, the fenestration layout, siting of the house and its orientation in relation to the properties to the east would lead to an unacceptable adverse impact on the privacy of the proposed house through overlooking. No overriding case for the development as proposed has been substantiated. This conflict with the development plan is not overridden by other material considerations. 2. The development would be contrary to policy EP13 of the Local Development Plan 2016 and NPF4 policy 6 together with Trees and Development guidance in that no account has been taken of the tree within the site. No overriding case for the development as proposed has been substantiated. This conflict with the development plan is not overridden by other material considerations. 3. The development would be contrary to policies PMD2 and IS9 of the Local Development Plan 2016 and NPF4 policy 22 together with Sustainable Urban Drainage Systems and Waste Management guidance in that the proposed surface water drainage is unlikely to be able to be provided within the site and there is not adequate provision for waste and recycling containers away from the elevation of the building which faces the public road. No overriding case for the development as proposed has been substantiated. This conflict with the development plan is not overridden by other material considerations.

5.5 Reference: 23/00847/FUL  
Proposal: Erection of boundary fence (retrospective)  
Site: 24 - 1 Ettrick Terrace, Hawick  
Appellant: Mr Gary Johnstone

Reason for Refusal: The development would be contrary to Policy PMD2 of the Scottish Borders Local Development Plan 2016 and Policy 14 of NPF4 in that it would constitute a prominent and incongruous form of development that would have an adverse impact on the character and appearance of the surrounding area.

- 5.6 Reference: 23/01014/FUL  
Proposal: Erection of dwellinghouse  
Site: Garden Ground of Glenbield, Redpath  
Appellant: Mr Keith Robertson

Reasons for Refusal: 1. The proposed development would fail to comply with Policy 14 of National Planning Framework 4 and Policies PMD2 and PMD5 of Scottish Borders Local Development Plan 2016 and the Council's Supplementary Planning Guidance Placemaking and Design 2010 in that, due to the small size of the site and its narrow nature, the proposal would constitute overdevelopment that would not respect the character of the area or existing pattern of development in Redpath. 2. The proposed development would fail to comply with Policies 7 and 14 of National Planning Framework 4 and Policies PMD2, PMD5 and EP9 of the Local Development Plan 2016 and the Council's Supplementary Planning Guidance Placemaking and Design 2010 in that the orientation, layout and density of the proposal would be out of keeping with the established character and pattern of the street scene resulting in adverse impacts on the character and appearance of the Conservation Area. 3. The proposed development would fail to comply with Policies 7 and 14 of National Planning Framework 4 and Policies PMD2, PMD5 and EP9 of Scottish Borders Local Development Plan 2016 and the Council's Supplementary Planning Guidance Placemaking and Design 2010 in that the proposed dwellinghouse is poorly designed, detrimental to the surrounding area, adversely affecting the character and appearance of the Conservation Area. 4. The proposed development would not comply with Policies PMD2 and IS7 of the Scottish Borders Local Development Plan 2016 in that the layout and car parking proposed would not operate adequately due to the constrained nature of the layout and site resulting in vehicular access and parking to the detriment of road safety.

## 6 REVIEWS DETERMINED

- 6.1 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.

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

Review Decision: Decision of Appointed Officer Upheld

- 6.2 Reference: 23/00553/FUL  
Proposal: Change of use from agricultural land to lorry storage yard and erection of building

Site: Land East of Unit 3 Croft Park Industrial Estate,  
Morebattle, Kelso  
Appellant: James Y Burn Haulage

Conditions Imposed: 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. 2. The development hereby permitted shall not be carried out otherwise than in complete accordance with the plans and specifications approved by the Planning Authority. Reason: To ensure that the development is carried out in accordance with the approved details. 3. No development of the shed (hereby approved on site plan 102 Rev B) shall be commenced until the following precise details: i. Proposed plans and elevations of the building; ii. Full details of the external materials, including colour, to be used in the construction of the building; iii. The finished floor levels of the building hereby approved; have been submitted submitted to and approved in writing by the Planning Authority. Thereafter development to be completed in accordance with the approved details. Reason: To protect the character and amenity of the area. 4. The site and building hereby approved shall only be used for Class 4 (office, research and development or light industry), Class 5 (general industry) or Class 6, (storage and distribution) of Schedule of The Town and Country Planning (Use Classes) (Scotland) Order 1997, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order. Reason: To ensure that the use remains compatible within the site. 5. No septic tank, washbay or building hereby approved may be developed before fully detailed design proposals for foul and surface water drainage, demonstrating that there will be no negative impact to public health, the environment or the quality of watercourses or ground water, have been submitted to and approved in writing by the Planning Authority. Thereafter development to be undertaken in accordance with these details. Reason: The Planning Authority requires consideration of full details of surface water drainage (SUDS), foul water connections and/or any private systems proposed. 6. No development shall be commenced until the precise construction details of the bell mouth and pavement (and precise streetlighting details, if required) shown on site plan, 102 Rev B, has been submitted to and approved in writing by the Planning Authority. Thereafter the bell mouth and pavement to be completed in accordance with these details before the site is brought in to use, or a timescale which has been prior agreed with the Planning Authority. Reason: To ensure the development hereby approved is served by an appropriate form of access, in the interests of road safety. 7. No development shall commence until precise details of: i. location of new trees, shrubs, hedges and grassed areas; ii. schedule of plants to comprise species, plant sizes and proposed numbers/density; iii. programme for completion and subsequent maintenance. of the proposed tree and hedge planting shown on Site Plan 102 Rev B have been submitted to and approved in writing by the Planning Authority. Thereafter this scheme shall be carried out in the first planting and seeding seasons following the site coming in to use, and shall be maintained thereafter and replaced as may be necessary for a period of two years from the date of completion of the planting, seeding or turfing. Reason: To ensure that the proposed landscaping is carried out as approved. 8. Before any part of the permitted development is commenced, the hedge to be retained on the site shall be protected by a fence 1.5 metres high placed at a minimum distance of 2.0 metres from the edge of the hedge, and the fencing shall be removed only when the development has been completed. During the period of construction of the development the

existing soil levels around the boles of the hedges so retained shall not be altered. Reason: In the interests of preserving the hedges which contribute to the visual amenity of the area. 9. The visibility splay (2.4m x 160m) as shown on Site Plan, 102 Rev B must be provided on site before the site is brought in to use and retained free of visual obstruction (when viewed from drivers eye height of 1.05m) in perpetuity. Reason: To ensure adequate drivers visibility for access and egress to the B-classified road. 10. No external flood lighting of the site is permitted except in accordance with an exterior lighting plan which shall first have been submitted to and approved in writing by the Planning Authority. The lighting plan shall be designed in accordance with the guidance produced by The Institution of Lighting Professionals and the Bat Conservation Trust, Aug 2018 (as outlined: Guidance Note 8/18 (2018): Bats and artificial lighting in the UK). Thereafter no development shall take place except in strict accordance with the approved lighting plan. All lights shall be suitably shuttered/shielded and directed to prevent unwanted light flood. Reason: In the interests of protecting bats, biodiversity, residential amenity and the character of the predominantly rural area.

Method of Review: Review of Papers

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

6.3 Reference: 23/00716/FUL  
 Proposal: Erection of dwellinghouse  
 Site: Garden Ground of Cheviot View, Eden Road, Gordon  
 Appellant: Mr Nigel Carey

Reason for Refusal: The proposed development is contrary to policies PMD2 and PMD5 of the Local Development Plan 2016 and the Council's Supplementary Planning Guidance on Placemaking and Design 2010, in that the small size of the site and cramped layout would constitute overdevelopment that fails to respect or respond to the character or density of the surrounding area resulting in adverse impacts on the character and amenity of the surrounding area. The proposed development is contrary to policy HD2 of the Local Development Plan 2016 and Supplementary Planning Guidance on Householder Development in that the small size of the site would result in the proposed dwellinghouse being positioned in close proximity to the new house being built to the east, harming the residential amenities of future occupants of the new house in terms of light, privacy and outlook.

Method of Review: Review of Papers

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

## 7 REVIEWS OUTSTANDING

7.1 There remained One review previously reported on which a decision was still awaited when this report was prepared on 23<sup>rd</sup> November 2023. This relates to a site at:

- |   |   |
|---|---|
| • U-Stor Business Units, Spylaw Road, Kelso | • |
|---|---|



## 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 23<sup>rd</sup> November 2023. This relates to a site at:

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

### Approved by

**Ian Aikman**  
**Chief Planning & Housing Officer**

**Signature .....**

### Author(s)

Name	Designation and Contact Number
Laura Wemyss	Administrative Assistant (Regulatory) 01835 824000 Ext 5409

**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.

Contact us at Place, Scottish Borders Council, Council Headquarters, Newtown St Boswells, Melrose, TD6 0SA. Tel. No. 01835 825431 Fax No. 01835 825071  
Email: PLACetransrequest@scotborders.gov.uk