



Community Council of the Royal Burgh of Peebles & District

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By email

cc Michael Marshall – Planning Convener PCC
Tweeddale Community Council Chairman
Tweeddale Councillors

Dear David

Planning

At our last community council meeting I identified that I had received concern from the public over the planning process. This was generated by a recent decision made by the Planning Committee regarding development at South Parks, Peebles. There followed a discussion that resulted in my being asked to write to you. This is not a letter of complaint; it is a letter of observation and advice, however we would appreciate working with you on a review of the issues set out below.

Firstly, let us set aside the decision itself. Whilst many disagree with the result, there are also those who are in favour of the committee's decision and no one can argue that committee members have the right to decide their position as an individual, hopefully based upon a reasoned study of the information provided. In relation to that latter point I do understand that some planning applications generate a significant amount of documentation, that on occasion will be impossible to assimilate. However, we would still expect that the main items would be studied.

Both some of my colleagues and I have attended planning committee meetings. In my case now five, and three of these have highlighted concerns. Before I identify the specific concerns, I think it worthwhile noting that planning



committees provide a highly visible interface with the public and thus have the potential to enhance or detract from the council's reputation. We think it has negative potential as it stands.

The specific issues of concern noted include a councilor a few years ago noting that he had no difficulty with Caledonian Road in Peebles and found it entirely satisfactory as he used it to go to Peebles Mart. What he didn't say was that he was a little out of date, the mart having been flattened 25 years previously and turned into housing. Now, you may remember that one, as I reported it to the Ombudsman who ruled in the favour of SBC, "that it was his opinion, and he was entitled to it". Personally, I find that iniquitous but anyway let us park it for now. On 09 December last year (24/00030/FUL) a decision was made in favour of objectors. However, it was a close call. Whilst applauding the decision, we again have serious concerns about the workings of the committee. Following the various presentations and some of the discussions a committee member attended on Microsoft Teams, her opener was "What do you want me to do"? and after the explanation the follow up was "I don't understand any of this". I didn't observe this personally, but apparently one committee member at that point put his head in his hands. Subsequently, I understand that the poor lady wasn't well. However, that isn't the point, she voted in favour of the development. Surely, the Chairman of the committee should have politely recommended her to recuse herself. In the previous instance, I found it difficult to believe that at least one member of the committee did not know that the members' intervention was completely vacuous. For all we know, his intervention swung the decision.

The third example (24/01016/FUL) giving rise to concern elicited the following comments from committee members, amongst others. "I am not familiar with the area" and "It's on the LDP, so it is an easy approval". Another committee member asked questions that had already been answered, both in documentation and around the table thus showing either inattention or lack of preparation or both. More importantly, though, our Planning Convener in his objection presentation identified that the applicant had not satisfied all legal requirements. He also identified that not all reports provided to the Planning Officer were available to the public and direct consultees (Appendix 1).

I think you will find it hard not to agree that the provision of information decades out of date is morally wrong and that it should have been challenged. Again, is



it acceptable for a committee member to register a vote after informing her colleagues that her understanding of the arguments was in fact zero?

Our difficulties and hence this communication lie not with the decisions themselves but with the process that leads to them. This process is highly visible to the public and as noted previously reflects upon the council's reputation with that public. Having spent 30 years in management, mostly at a senior level, my perception is that the committee operates demonstrably at an amateur level, not as a visibly professional body. In the first example, when information was presented that was clearly 25 years out of date, it should have been challenged. Is it reasonable to believe that not one person was aware that the councilor had not visited the mart for more than two decades? In the second example, the committee Chair has a responsibility to keep order, to ensure that all parties are treated fairly and that the law is complied with. In this case where a councilor admits to having no understanding of the issues, the Chair should politely request that the person does not vote. In the last example, where the public have identified that all legal requirements have not been met by a developer, this should not be swept under the carpet and ignored. It must be seen to be addressed. Again, in the absence of another committee member raising the point, then the Chair should. It is a simple matter for the Planning Officer to be required to confirm or deny that the public view is correct or not. If there is a lack of compliance, then the application should be deferred until that lack of compliance has been addressed. If the Planning Officer is wrong, then at least it is a matter of record. Similarly, where it is raised that documentation, that the law says should be in the public domain, is not in the public domain, surely the committee cannot ignore this but must challenge the Planning Officer. If nothing else, for the sake of the public record.

One member of the public, writing to PCC, made an extremely important observation. He noted that the approval of a planning application is for all time, it therefore behoves one to treat it with the seriousness and professionalism that it deserves. Perhaps there is a training issue for both the Planning Officers and Planning Committee or a gap in the training provided. Is training provided? Please also confirm that SBC will in future publish all reports and consultation responses relating to the environment received by the Council in respect of all current live and future planning applications; and to assist us, please provide a copy of the written summary of the rights of members of the public to attend council meetings and to inspect, copy and be furnished with the relevant



documents relating to those meetings, as required by S50G(3) of the Local Government (Scotland) Act 1973.

We hope that this letter is viewed as it is intended as an aide to future improvements, and we would very much appreciate the opportunity to meet with SBC and to participate in a review to work through these issues. We would anticipate that such a review would result in improvements to SBC policy that would include but not be limited to:

- An updated policy on redaction of environmental reports, i.e.
 - Redaction only of precise location data for protected species.
 - Training to ensure reports and consultee comments are otherwise publicly available in full.
- Training for officers and committee members to ensure that legal requirements outlined in SBC's technical advice notes are followed in respect of European Protected Species
- Training and reporting on improvement outcomes mandated by NPF4
 - The requirement for biodiversity enhancement – not mitigation
 - The requirement for applicants to *demonstrate* such enhancement (not for planners to *infer* such enhancements)

Yours Sincerely

Peter Maudsley
Chair



Appendix 1. Peebles Community Council Planning Convenor's observations 24/01016/FUL

There appear to be several legal deficiencies in the recommendation and decision in respect of 24/01016/FUL, which were outlined in the presentation to the Planning Committee on Mon 3 Feb 2025.

The primary concern is the absence of the ecological reports and the ecologist's consultation reply. Those reports are required by law (see appendix 2) to be available, with only the precise location of protected species requiring redaction. Without that information we were unable to properly represent the interests of the numerous residents who had asked our community council for help.

Unfortunately, given the quasi-judicial role of the planning committee, there is no way to challenge defects in the decision-making process other than judicial review which many public bodies rely on to be too expensive for the public to pursue. Whilst we are hopeful that Scotland will soon meet its obligations under the Aarhus Convention to provide affordable access to environmental justice, we are in the meantime left with our only option appearing to raise these issues directly with SBC.

To outline our concerns, the planning committee did not appear to understand the legal implications of the presence of European Protected Species on site, evidence of which was projected on screen for the committee during the presentation and in several objections tabled by the public. For example, the committee did not discuss the three tests in respect of an EPS license, which is one of the legal requirements outlined in the first few paragraphs of SBC's August 2024 Technical Advice Note (bats).

It appeared that neither the committee, nor the planners advising them, understood that the very wide latitude granted to the committee in respect of interpreting the development plan has its legal basis in S.37 of the Town and Country Planning (Scotland) Act 1997 (the "TCPA"). Whereas the duties in respect of European Protected Species derive from The Conservation (Natural Habitats, &c.) Regulations 1994 (the "Conservation Regulations") afford the planning committee none of the latitude they enjoy under the TCPA. For



example, S.48(3) required appropriate nature conservation body to be consulted and yet no such consultation was before the committee. It is relevant to note that this argument was set out in a letter from the chief planner to local authorities almost 20 years ago.

Appendix 2.

The Council's duties to publish planning documents

1.1 Local Government (Scotland) Act 1973

Section 50B of the Local Government (Scotland) Act 1973 requires the publication of agendas and any connected reports for local authority meetings (this is relevant where a planning application is considered at a planning committee meeting). Local authorities must make those documents open to inspection by members of the public at least three days before meetings.

Section 50G(3) of the 1973 Act requires local authorities to keep a written summary of the following rights at their offices:

(a) to attend meetings of the authority and of committees and sub-committees of the authority, and (b) to inspect and copy documents and to be furnished with documents,

1.2 Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Schedule 2 of the 2013 DMPR Regulations specifies what documents planning authorities must publish in their registers of planning applications (i.e. the planning portal). In relation to planning application 24/01016/FUL, two provisions of Schedule 2 are relevant.

Schedule 2, paragraph 4(b) requires that reports of handling must contain, "details of the authorities and persons consulted by the planning authority in respect of the application and a summary of the responses made by such authorities or persons". The Council's Ecology officer was consulted. However, all that is written about the ecology officer's response, is "No objection, subject



to conditions" (page 3) and "The reports and submissions were assessed by the Council's Ecology Officer and found to be acceptable" (page 5 – referring to the developer's reports and submissions). The above quotations are not sufficient to amount to a 'summary' of the ecology officer's response. The report of handling fails to explain why the ecology officer reached their view or what conditions they suggested.

Schedule 2, paragraph 4(c)(iv) requires that, if there is "any report on the impact or potential impact of the proposed development... which was submitted in connection with the application", the report of handling must include "a summary of the main issues raised by such... report". The report of handling states that, "the applicant has submitted an ecological appraisal (Report 1)" (page 5). The report of handling contains some discussion of the environmental impacts of the proposed development (under the ecology heading at pages 5-6), but it does not summarise the main issues raised by report 1.