



Planning Department
Scottish Borders Council

██████████@scottishborders.gov.uk

by email

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██████████ Jones Lang LaSalle Ltd

7 Exchange Street,
Conference Square,
Edinburgh EH3 8LL
██████████

jll.co.uk

Direct Dial: ██████████

Mobile: ██████████
██████████

Dear Sirs

**Scottish Borders Local Development Plan 2 – Consultation on Main Issues Report
Response from ██████████**

JLL is instructed by ██████████ with regard to their interest at Tweedbank in the Scottish Borders. ██████████ has an extensive riparian title to both banks of the River Tweed. These fishing rights adjoin the boundary of what is known as the “Tweedbank site” that was allocated for housing development in the SBC Local Development Plan (LDP) Supplementary Guidance (SG). The site is referenced in the Main Issues Report (MIR) and clearly engages housing land supply and environmental matters – both of which are key issues explored in the MIR document.

It is acknowledged that the MIR is an early stage opportunity for interested parties to comment upon the key issues facing the Scottish Borders leading up to the potential adoption of LDP2.

Paragraph 2.24 of the MIR sets out that the Development Plan process seeks to ensure “*the right development takes place in the right place*” and that a balance is struck between supporting sustainable economic growth and protecting the landscape and environment. It adds that the Council places “*very strong emphasis on place making and design principles when assessing new development proposals*”.

It should be noted that within the formal MIR/LDP process, ██████████ has made a number of representations to SBC with regard to what they consider is an inappropriate development approach to the Tweedbank housing allocation. These previous representations have included a report entitled ‘Response to the Tweedbank Masterplan’ (March 2018) prepared by JLL with input from various specialist engineering, landscape and environmental consultants, which has been furnished to officials within SBC (hereafter referred to as “the JLL Report”). As yet, disappointingly, there has been no response whatsoever from SBC to the important issues raised in that report.

A further SG Development Brief for the Tweedbank site has been promised by SBC for consultation purposes but has as yet to materialise. It is understood that the draft Brief will be subject to formal public consultation. However, the MIR provides an important statutory step and is an important vehicle for ██████████ to engage with and to further express its serious reservation with regards to the approach to residential development at Tweedbank.

At places within this MIR response, the JLL report is referred to. In short, [REDACTED] takes the view that the scale of development proposed at Tweedbank does not represent “*the right development in the right place*” and it cuts across the key objective of SBC – namely, to strike a balance between supporting sustainable growth and protecting the landscape and environment. There is a very strong evidential position to support this stance as set out in the JLL report – it is clear that the objectives and guiding principles set for the Tweedbank Masterplan (as set out in the SBC Brief to Turner Townsend / Proctor Mathews Architects) have not been met by the indicative Masterplan proposals. A major shortcoming was the lack of any commercial viability input to the masterplan. That matter has only been very belatedly addressed retrospectively by way of the SBC Ryden Report dated 23 May 2018. Furthermore, the various development principles and “*site requirements*” laid out in the SG that formalised the allocation for Tweedbank have not been satisfied.

After a very lengthy delay and disappointingly only after the progression of a formal Freedom of Information request, SBC has provided JLL and [REDACTED] legal advisors (DLA Piper) with a copy of a report it commissioned from Ryden entitled ‘Strategic Advice and Appraisal in Respect of Tweedbank Expansion, Melrose, Scottish Borders’ dated 23 May 2018. This report is extremely heavily redacted. Nevertheless, having reviewed the report and making reasonable assessments of its content beyond the redacted sections, it is evident that this report raises further serious question marks on the deliverability of the Tweedbank site, for the level of development set in the SG. Further comment is set out below on this particular matter with regard to the set consultation questions contained within the MIR.

The structure of this response by [REDACTED] to the MIR follows the chapter headings and relevant questions set within the MIR document.

Vision, Aims and Spatial Strategy

At page 20, the MIR sets out that LDP2 must incorporate a generous supply of housing land, but it acknowledges that there has been a limited annual completion rate for mainstream housing and limited take up of allocated housing sites. This illustrates some of the endemic housing market failure issues with in the Scottish Borders and further underlines why sites such as Tweedbank, which clearly will have high abnormal costs to enable development, are likely to remain undeveloped and will not drive the sales values to deliver commercially viable development, high quality public realm and necessary environmental mitigation.

Growing our Economy

Section 4.3 of the MIR makes reference to the Blueprint for the Border Railway and acknowledges that a Masterplan has been prepared for Tweedbank including the Lowood Estate site (the focus of [REDACTED] interest as part of the wider “Tweedbank Site”) to the north of Tweed Bank Railway Station. It states “*the Lowood site offers a range of uses and has excellent development opportunities given its attractive setting, its proximity to the railway station and its location within an area with a proven housing market demand*”. There is then reference to the initial ideas that have been prepared through the Masterplan and that they will be “*developed further and involve extensive public consultation*”.

The reference to the Tweedbank site with regard to “*excellent development opportunities*” and being in an area “*with a proven housing market demand*” is misleading. As noted above the JLL Report highlights the housing market value and demand constraints that are present. Moreover, to some extent, the Ryden report fairly seems to indicate that the housing market at this location faces extremely challenging issues which are likely to be a serious barrier to future

development especially when considered against the expected development costs and relatively low values driven by housing development at this location.

The JLL Report provides details which should be referred to with regard to the various constraints (in addition to the housing market issues) and two notable ones will be the need to be addressed adequately relate to protected habitats and the challenges with regard to the presence of functional flood plain. In addition, a fundamental point is the scale of development and its potential impact on the environment and how this is likely to be influenced by commercial viability matters.

Planning for Housing

Section 5 of the MIR deals specifically with 'Planning for Housing' and references the need for the Council to maintain a five-year supply of effective housing at all times. It adds an important reference that "*a site is only considered to be effective where it can be demonstrated that within five years it will be free of constraints and can be developed for housing*". For the reasons set out and in the supporting report prepared by JLL it is considered that the Lowood site is not effective.

Section 5.3 of the MIR references the LDP Examination of 2016 and the housing land shortfall of 916 units identified by the Reporter. With regard to the Tweedbank site, it is the largest proposed housing allocation at some 300 units making up some 37% of the overall housing land requirement addressed in the SG - it was intended to deliver 300 units within the current LDP period of 2016-21.

Although the site is formally allocated within the LDP, and now forms part of the Council's established housing land supply, for the reasons set out in this response there are serious question marks over the effectiveness of the site. Notwithstanding the fact that the Council seems to have purchased the Lowood Estate on an unconditional basis, there is, it is considered, strong justification for removing the allocation and pursuing more deliverable and effective housing land opportunities that can represent the right development in the right place in line with the Council's overarching aims and objectives.

Section 5.11 of the MIR sets out that "*to ensure an adequate and effective housing land supply there is a requirement to ensure that there is a likelihood that sites allocated within the LDP will be developed. If any sites have been allocated within the LDP for a significant period of time with no development interest from either the land owner or the development industry then the site should be considered for removal*".

Section 5.12 refers to main issues and sets out that given the established housing land supply in the LDP and low completion rates, together with low housing land requirements within the proposed SESPlan, it is anticipated that the LDP2 is unlikely to require a significant number of new housing allocations. Nevertheless, the Council has proposed additional sites and has through the Call for Sites exercise a range of opportunities which it is considered present much more effective and environmentally acceptable housing land solutions than pursuing over-development at the highly sensitive Tweedbank site.

Question 9 in the MIR is entitled 'Removal of Allocated Sites' and it states **“Do you agree with the proposed existing housing allocated to be removed from the LDP? Are there any other sites you suggest should be de-allocated?”**

For the reasons set out above, and as further explained below, [REDACTED] is of the firm view that the housing allocation in the SG entitled MTWEE002 Lowood cannot be allocated as an effective housing site and therefore should not form an allocation in LDP2 – it can only be a long-term opportunity.

Planning Policy Issues

Section 10 of the MIR refers to overall planning policy issues and Question 19 relates to 'any other comments' and states **“Are there any other main issues which you feel should be addressed within LDP2? Please confirm these and explain how these could be addressed”**.

In terms of the Lowood site (MTWEE002) which has been referenced above, SBC will be fully aware of the necessary environmental guidance and “requirements” set out for the specific allocation in the SG and these relate to a broad range of constraints related to:

- **Flood risk** – including reference to the site being constrained due to flood risk: consideration needing to be given to bridge and culvert structures within the site, the likelihood of flooding issues within the site, the site not being currently within the sewered catchment, the site in part being shown to be at flood risk within the 1 in 200 year indicative flood map and the requirement for a flood risk assessment.

SPP advocates flood avoidance by safeguarding flood storage and conveying capacity and locating development away from functional flood plains. SPP advises that for planning purposes an area of land will be deemed to form part of a functional flood plain and thus remain free from development, save in exceptional circumstances, if it is shown that it will generally have a greater than 0.5% (1:200) probability of flooding in any year.

SEPA's Technical Flood Risk Guidance for Stakeholders (Version 10 July 2018) at section 5.2, however, advises that for locations at or near to "hydraulic structures" (ie bridges and culverts) a sensitivity analysis has to be applied to the modelling to take account of the fact that such structures may be subject to blockage. At such locations SEPA's "long help position" is that the "0.5% 1:200 + blockage scenario" should be deemed to represent the extent of the functional floodplain.

In terms of SEPA Planning Information Notice No. 4, in assessing whether a site is at high risk of flooding, no account can be taken of informal flood defences such as embankments.

SPP advises planning authorities to promote flood avoidance: by safeguarding flood storage and conveying capacity, and locating development away from functional flood plains and medium to high risk areas

Against that policy framework the SG advises that a flood risk assessment (FRA) is required as the site is identified as being at risk from a 1:200 year flood event from fluvial and surface water flooding. The SG further advises that the FRA will require to assess the flood risk from the River Tweed and demonstrate how the risk from surface water would be mitigated. It also provides that consideration will need to be given in the FRA to bridge and culvert structures within and adjacent to the site.

Taken together, it is self-evident that in the absence of a properly modelled FRA which includes a sensitivity analysis carried out in relation to the hydraulic structures that the SG confirms are located within and adjacent to the site, the Council has no idea of the extent to which the Tweedbank site falls to be regarded as forming part of a functional floodplain. This in turn undermines assumptions made about net developable areas and housing numbers.

- **Sustainability & SAC / Habitats Regulatory Assessment**– considerable requirement to safeguard trees and mitigation is required to ensure no significant adverse effects on the integrity of the River Tweed Special Area of Conservation (SAC), the need to maintain and safeguard mature parkland trees and woodland and the need for an appropriate buffer to the River Tweed SAC and Site of Special Scientific Interest (SSSI).

The Habitats Appraisal Record produced by the Council confirms that housing development on the Tweedbank site is likely to have a significant effect on the conservation objectives of the River Tweed SAC. In April 2018, the European Court of Justice (ECJ) issued its decision in the case of *People Over Wind, Peter Sweetman v Coillte Teoranta* (C-323/17). The ruling confirmed that proposed mitigation measures cannot be taken into account for the purposes of screening under the UK Habitats Regulations, which give effect to the EU Habitats Directive (92/43/EEC). The judgement also confirmed that "any plan or project that has a LSE, and which requires mitigation measures to avoid or reduce its harmful effects must be taken forward to an [appropriate assessment (AA)]. At the AA stage the competent authority should still assess whether mitigation is needed to avoid an adverse effect on site integrity or not; and if so, set out the mitigation measure(s) needed to ensure it." (Quote taken from SNH Guidance issued following the Sweetman judgement)

The HRA (released to us under the EIR request to the Council) was dated August 2017 so pre-dates the Sweetman judgement. It confirmed as set out below, that housing development at Lowood would be likely to have a significant effect on the SAC's conservation objectives (thereby triggering the need for an appropriate assessment of the proposed plan to allocate the site for housing to be carried out) but then concluded that there would be no significant impact because unspecified mitigation measures would be put in place to offset the risk of what is then described as "potential minor effects".

It is self-evident from the foregoing, that the Council has failed to carry out an AA and as part of that process set out the mitigation measures that would be needed to ensure that an adverse effect on the River Tweed SAC did not occur. The Council consequently also failed to consider whether the implementation of mitigation measures would impact on our client's riparian interest. Critically, in terms of its assessment of the effectiveness of the site (both in terms of site capacity and additional infrastructure cost), it has no information before it which would allow it to conclude that there would be no HRA obstacle to planning permission for housing development on the site being granted. Without information on whether the anticipated adverse impact can be properly mitigated, it follows in turn that the Council is currently unable to assess the cost involved in providing the appropriate level of mitigation and the impact which that additional cost may have on the overall viability of the site. This may include the payment of compensation.

These issues will require to be addressed as part of the LDP review process.

- **Landscape Assessment and Principles** – the SG makes it clear that development in the "policies and parkland" characteristic is "severely constrained by the quality and integrity of the designed landscape associated with Lowood". This important point has been further confirmed in the landscape review undertaken by landscape architects Horner & MacLennan for [REDACTED] and as set out in the JLL Report. This states that there are clear indications of a designed landscape and much of the woodland structure has a potential Tree Preservation Order (TPO) quality and there is a need to protect the secluded quality and setting of the River Tweed.

Reference is also made to the exceptional quality of the parkland area and it is explicitly stated that any mundane development would constitute a wasted opportunity and would likely cause “*environmental degradation*”. Note this is the SBC position. This is a very important point as it is clear from even the non-redacted sections of the Ryden Report referred to above, that because of the severe commercial viability issues facing the Lowood site, the consultants seem to be pointing to the need to pursue much more standard housing development types and higher densities which would cut across this important environmental objective and “requirements” as set out in the original SG for the Lowood allocation. This unacceptable proposition is set out explicitly in the Ryden report, which states at paragraph 2.14.20 that with regard to the current 300 unit allocation for Lowood “...it represents a low density position and one where we would expect the market to try and increase the number of units delivered in the medium to longer term”.

The Report adds at paragraph 2.14.23 “*we would have expected the market to strive for a higher density proposal going forwards, quite possibly closer to 25 to 30 units per hectare (10/12 units per acres)...this would suggest the potential for up to 375 to 450 residential units being delivered [at Lowood] in the long term*”.

Such an increase in housing numbers to improve the viability of the site’s development can only negatively impact on the site planning and environmental principles set out in the SG, increase infrastructure costs and environmental impact. This is not an acceptable approach and underlines the non-effectiveness of the site on the basis of what is proposed in the SG.

Related to this type of approach, the Council’s aspiration for a form of boutique hotel at Lowood (using the existing country house) if surrounded by a high density volume housebuilder estate of up to 450 housing units would seem highly unrealistic.

- **Planning Infrastructure** – opportunity and possible need to provide a new bridge across the Tweed to replace the existing bridge – and clearly if housing numbers are to increase which as noted above in our view would be environmentally unacceptable, this is going to drive the need for greater infrastructure provision.
- **Education** – extension required to primary school provision.
- **Waste Water Treatment Works** – No gravity solution available. Any upgrade to the WWTW will need growth criteria, furthermore there may be local network issues that need to be addressed and funded by any developer to enable connections.

Therefore, it is clear from the above, that as set out in the SG, there are a wide range of specific sensitivities and considerable constraints identified by consultees that would need to be taken into account with regard to the development of the Lowood site. Whilst the Council points to further consideration of these matters in a Development Brief that is yet to be consulted upon, it is our considered view that the scale of the issues presented by the Lowood site combined with a very poorly performing housing market, clearly indicate that the scale and quality of development envisaged in the Masterplan report is undeliverable and the site in that regard is ineffective as this justifies de-allocation and the pursuance of much more suitable opportunities which can allow the Scottish Borders to provide deliverable and effective housing land opportunities. To fail to take that approach means a social and economic opportunity cost for the SBC area and will likely require much more substantive public-sector funding.

In addition, from our review of the SBC Brief for the Tweedbank Masterplan – clear aims are set out for the Masterplan with regard to place making environmental considerations and principal aims require that:

- Clear guidance is provided on the delivery mechanism for the development of the site;

- A scale and mix of uses is proposed that are deliverable in the context of the prevailing and anticipated market conditions and that;
- The Masterplan needs to be comprehensive and cohesive based on a place making approach that is viable, sustainable and deliverable.

From our review of the Masterplan (as set out in the JLL Report) we have been very clear in our conclusions that the process that has been followed and the outcome that is expressed in the overall Masterplan documentation contains inadequate information on these matters and what is demonstrated is that there are very considerable constraints present that will prevent these aims and objectives from being achieved. In addition, a fundamental point is that because the development as set out in the masterplan is commercially unviable, there will not be any private sector contributions to infrastructure provision and as such development, certainly at the scale envisaged in the SG, would need to be dependent upon very substantive public-sector grants and significant pump priming.

Our overall conclusion remains, as set out in the JLL Report of March 2018, that the Council now has an opportunity to address this serious matter with regard to Lowood, by acknowledging at this stage that the site's proximity to sensitive national and European environmental designations, combined with the commercial viability and deliverability issues, all set against a very weak housing market dynamic, provide justification for not allocating the site an effective allocation in LDP2, in favour of more sustainable and deliverable alternatives.

We trust this representation will be given full and detailed consideration in the LDP process. Should you require clarification on any matter raised or require any additional information please do not hesitate to contact the undersigned.

Yours sincerely



David C Bell
Director & Head of Planning

Direct line 

Mobile 



For and on behalf of Jones Lang LaSalle Limited

cc Sandy Telfer, DLA Piper