

# Public Document Pack

## SCOTTISH BORDERS COUNCIL LOCAL REVIEW BODY

MINUTE of Meeting of the LOCAL REVIEW BODY held in the Council Chamber, Council Headquarters, Newtown St Boswells, TD6 0SA on Monday, 20 March 2017 at 10.00 am

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Present:- Councillors R. Smith (Chairman), M. Ballantyne, J. Campbell, J. A. Fullarton, I. Gillespie, D. Moffat, S. Mountford and B White

In Attendance:- Chief Planning Officer, Managing Solicitor – Property and Licensing, Democratic Services Team Leader, Democratic Services Officer (F. Walling).

1. **DECLARATIONS OF INTEREST.**

In terms of Section 5 of the Councillors Code of Conduct, Councillor Mountford declared an interest in Item 4 of the agenda (application 16/01425/PPP) and Councillor Gillespie declared an interest in Item 6 of the agenda (application 16/01536/PPP). The Councillors left the meeting during consideration of these respective reviews.

2. **REVIEW OF 16/01425/PPP**

There had been circulated copies of the request from Mr & Mrs Brian Soar, per Aitken Turnbull Architects Ltd, 9 Bridge Place, Galashiels, to review the decision to refuse the planning application in respect of the erection of a dwellinghouse on land east of Keleden, Ednam. The supporting papers included the Decision Notice; Notice of Review; officer's report; papers referred to in the report; consultations; an objection; and a list of relevant policies. Members noted that the site proposed for development lay outside the settlement boundary of Ednam, as defined in the Local Development Plan. In recognising this, Members also referred to the fact that the Development Plan had been approved recently and had been subject to public consultation. They also made reference to the decision of a previous Local Review Body which determined that the two houses on the opposite side of the road from the development were clearly linked to the Cliftonhill building group. Members' ensuing discussion therefore explored whether or not there were any exceptional circumstances which would justify approval of the application. There was particular focus on the question as to whether there was any economic justification for the erection of a house on this site.

VOTE

*Councillor Campbell, seconded by Councillor White, moved that the decision to refuse the application be upheld.*

*Councillor Fullarton, seconded by Councillor Gillespie, moved as an amendment that consideration of the application be continued for further procedure in the form of a request for written submissions in respect of economic justification for the development.*

*Councillor Ballantyne moved as a further amendment that the decision to refuse the application be reversed and the application approved. However this amendment was not seconded.*

*On a show of hands Members voted as follows:-*

*Motion* - 4 votes

*Amendment* - 3 votes

*The motion was accordingly carried.*

#### **DECISION**

##### **DECIDED that:-**

- (a) **the request for a review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;**
- (b) **the review could be considered without the need for any further procedure on the basis of the papers submitted;**
- (c) **the proposal would be contrary to the Development Plan and that there were no other material considerations that would justify departure from the Development Plan; and**
- (d) **the officer's decision to refuse the application be upheld for the reasons detailed in Appendix I to this Minute.**

#### **3. REVIEW OF 16/01422/FUL**

There had been circulated copies of the request from Cleek Poultry Ltd, The Tractor Shed, Kirkburn, Cardrona, to review the decision to refuse the planning application in respect of erection of a cattle building with accommodation in Field No 0328, Kirkburn, Cardrona. Included in the supporting papers were the Decision Notice; Notice of Review; officer's report; papers referred to in the report; consultations; and a list of relevant policies. A business plan submitted by the applicant had also been circulated but Members were concerned at the lack of information it contained and did not believe it provided economic justification of a building of this scale in this location. In their discussion Members considered the potential impact of the development on the adjacent archaeological site, on the character and quality of the landscape and in particular the proximity of the proposed cattle shed to the existing approved application for holiday lodges. With reference to the planning history associated with this piece of land, Members emphasised again the need for an overall masterplan for the site.

#### **DECISION**

##### **AGREED that:-**

- (a) **the request for a review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;**
- (b) **the review could be considered without the need for any further procedure on the basis of the papers submitted;**
- (c) **the proposal would be contrary to the Development Plan and that there were no other material considerations that would justify departure from the Development Plan; and**
- (d) **the officer's decision to refuse the application be upheld for the reasons detailed in Appendix II to this Minute.**

#### **4. REVIEW OF 16/01536/PPP**

There had been circulated copies of the request from Miss Kerrie Johnston, of 47 Curror Street, Selkirk, to review the decision to refuse the planning application in respect of the erection of a dwellinghouse on land east of Highland Brae, Lilliesleaf. The supporting papers included the Decision Notice; Notice of Review; officer's report; papers referred to

in the report; consultations; and a list of relevant policies. In their initial discussion of the proposed development site Members noted that this was outside the settlement boundary of Lilliesleaf and that a building group did not exist. Members agreed that the proposal would be contrary to the development plan but after further lengthy debate came to the conclusion that there were exceptional circumstances to justify the erection of a dwellinghouse at this site.

## **DECISION**

### **AGREED that:-**

- (a) the request for a review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;**
- (b) the review could be considered without the need for any further procedure on the basis of the papers submitted;**
- (c) the proposal was contrary to the Development Plan but that there were other material considerations that would justify departure from the Development Plan; and**
- (d) the decision of the appointed officer to refuse the application be reversed and the application for planning permission be granted, subject to conditions and a legal agreement, for the reasons given in Appendix III to this Minute.**

*The meeting concluded at 11.55 am*

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**APPENDIX I**

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

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**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**

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**Local Review Reference:** 17/00001/RREF

**Planning Application Reference:** 16/01425/PPP

**Development Proposal:** Erection of dwellinghouse

**Location:** Land East of Keleden, Ednam

**Applicant:** Mr & Mrs Brian Soar

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**DECISION**

The Local Review Body (LRB) upholds the decision of the appointed officer and refuses planning permission for the reasons set out in this decision notice on the following grounds:

- 1 The proposals would be contrary to Policy PMD4 of the Scottish Borders Local Development Plan 2016 in that the erection of a dwellinghouse on this site would result in development outwith the development boundary of the village as defined on the settlement profile map for Ednam, leading to unjustified encroachment into the open countryside and coalescence with the Cliftonhill building group. The proposed dwelling is not a job generating development in the countryside that has economic justification under Policy ED7 or HD2; it is not an affordable housing development that can be justified in terms of Policy HD1; a shortfall in the provision of an effective 5 year land supply has not been identified and it is not a development that would offer significant community benefits that would outweigh the need to protect the development boundary.

**DEVELOPMENT PROPOSAL**

The application relates to the erection of a dwellinghouse on land East of Keleden, Ednam. The application drawings consisted of the following drawings:

**Plan Type**

**Plan Reference No.**

**PRELIMINARY MATTERS**

The Local Review Body considered the review, which had been competently made, under section 43A (8) of the Town & Country Planning (Scotland) Act 1997 at its meeting on 20<sup>th</sup> March 2017.

After examining the review documentation at that meeting, which included: a) Notice of Review; b) Officer's Report; c) Papers referred to in Report; d) Consultations ; e) Objection and f) List of policies, the LRB concluded that it had sufficient information to determine the review and proceeded to consider the case. In coming to its conclusion the LRB considered the request from the applicant for further procedure in the form of a site visit.

**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: SESplan Strategic Development Plan 2013 and the Scottish Borders Local Development Plan 2016. The LRB considered that the most relevant of the listed policies were:

- Local Development Plan policies: HD3, PMD4, ED10, HD2, IS2, IS5 and IS7

**Other Material Considerations**

- Scottish Planning Policy
- SBC Supplementary Planning Guidance on Development Contributions 2015
- SBC Supplementary Planning Guidance on New Housing in the Borders Countryside 2008
- SBC Supplementary Planning Guidance on Placemaking & Design 2010
- SBC Supplementary Planning Guidance on Householder Development 2006

The Local Review Body noted that the application site lay outwith, but adjoining, the settlement boundary of Ednam, as defined in the Local Development Plan. Members acknowledged that the boundary defined the extent a settlement should grow within a Local Plan period and that the proposed development could only be approved in the exceptional circumstances set out in Policy PMD4.

The Review Body then proceeded to test the proposal against the four qualifying criteria set out in Policy PMD4, namely: a) whether it was a job-generating development in the countryside that had an economic justification; b) whether it is for affordable housing; c) whether there is a shortfall identified in the housing land supply for this area; and d) whether it would offer significant community benefits that outweighed the need to protect the Development Boundary.

In respect of a), Members noted that the building of the new house would release the applicants existing residence "Oaklands" for holiday lets, expanding their existing tourism business in the village. After debating the matter, the Review Body came to the conclusion that, in the absence of a sufficiently persuasive business case, the

proposals did not meet the policy test and an economic justification had not been proven.

The Review Body concluded that no case had been made that the house would meet the terms of the Council's affordable housing policy. The development did not comply with policy criteria b) of Policy PMD4.

Members were satisfied that the current Housing Land Audit identified sufficient housing land for this Housing Market Area. There was no shortfall that would permit the release of the site. The proposal could not be justified under criteria c) of Policy PMD4.

Members considered the potential community benefits that may arise from the development, especially the enhancement of the tourism offer in the area, but again did not feel that a persuasive case had been met the policy test. The proposal could not be justified under criteria d) of Policy PMD4.

In coming to their conclusion on these matters, Members gave weight to the fact the Development Boundary had only been adopted relatively recently and had been subject to public consultation. They also noted that there was other land allocated and available for housing within the village, so there was no overriding need to release this site for development.

The Review Body acknowledged that the construction of the two houses to the western edge of the Cliftonhill building group had reduced the distance between it and the edge of the settlement. However, they agreed with the previous Review Body's assertion that it:

*"...would not result in coalescence with Ednam or constitute inappropriate ribbon form of development... the degree of separation from the village and the nature of the existing topography and vegetation, the development was clearly related to the Cliftonhall building group."*

In Members view, the erection of the proposed house would bridge this gap and result in coalescence.

The Local Review Body felt the future development potential of the area should be considered as part of the review of the Local Development Plan. This would allow consideration of the extent to which the village should expand in the future and would take into account the need for improvements such as road widening, footpath links and street lighting. This would also allow for full consultation and engagement with the local community in this decision.

## **CONCLUSION**

After considering all relevant information, the Local Review Body concluded that the development was contrary to the Development Plan and that there were no other material considerations that would justify departure from the Development Plan. Consequently, the application was refused.

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## **Notice Under Section 21 of the Town & Country Planning (Schemes of Delegation and Local Review procedure) (Scotland) Regulations 2008.**

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 R Smith  
Chairman of the Local Review Body

**Date.....**23 March 2017





**APPENDIX II**

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

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**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**

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**Local Review Reference:** 17/00004/RREF

**Planning Application Reference:** 16/01422/FUL

**Development Proposal:** Erection of cattle building with welfare accommodation

**Location:** Field No 0328 Kirkburn, Cardrona

**Applicant:** Cleek Poultry Ltd

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**DECISION**

The Local Review Body (LRB) upholds the decision of the appointed officer and refuses planning permission for the reasons set out in this decision notice and on the following grounds:

- 1 The application is contrary to Policies PMD2, EP5 and ED7 of the Scottish Borders Local Development Plan 2016 and Supplementary Planning Policies relating to Special Landscape Area 2-Tweed Valley in that the proposed building will be prominent in height, elevation and visibility within the landscape and will have a significant detrimental impact on the character and quality of the designated landscape.
- 2 The application is contrary to Policies PMD2 and ED7 of the Scottish Borders Local Development Plan 2016 in that it has not been adequately demonstrated that there is an overriding justification for the proposed building that would justify an exceptional permission for it in this rural location and, therefore, the development would appear as unwarranted development in the open countryside. The proposed building is not of a design or scale that appears suited either to the proposed use for which it is intended or the size of the holding on which it would be situated, which further undermines the case for justification in this location.
- 3 The application is contrary to Policy EP8 of the Scottish Borders Local Development Plan 2016 in that it has not been adequately demonstrated that

the building would not have an adverse impact on the setting of the archaeological site of Our Lady's Church and Churchyard adjoining the application site.

- 4 The application is contrary to Policy ED7 of the Scottish Borders Local Development Plan 2016 in that it has not been adequately demonstrated that any traffic generated by the proposal can access the site without detriment to road safety.

## **DEVELOPMENT PROPOSAL**

The application relates to the erection of a cattle building with welfare accommodation at Kirkburn, Cardrona. The application drawings consisted of the following drawings:

<b>Plan Type</b>	<b>Plan Reference No.</b>
Site Plan	19670
General Arrangement	19671

## **PRELIMINARY MATTERS**

The Local Review Body considered the review, which had been competently made, under section 43A (8) of the Town & Country Planning (Scotland) Act 1997 at its meeting on 20<sup>th</sup> March 2017.

After examining the review documentation at that meeting, which included: a) Notice of Review; b) Officer's Report; c) Papers referred to in Report; d) Consultations and e) List of policies, the LRB concluded that it had sufficient information to determine the review and proceeded to consider the case. In coming to its conclusion the LRB considered the request from the applicant for further written submissions and one or more hearing session.

## **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: SESplan Strategic Development Plan 2013 and the Scottish Borders Local Development Plan 2016. The LRB considered that the most relevant of the listed policies were:

- Local Development Plan policies: PMD2, EP5, EP8 and ED7.

Other Material Considerations

- Scottish Planning Policy
- SBC Supplementary Planning Guidance on Local Landscape Designations 2012

The Review Body noted that the proposal was to erect a large cattle building on an elevated site within the applicant's land holding at Kirkburn. They accepted that

existing roadside trees would afford a degree of screening of the site and the building from the B7062 road but they were concerned that it would be prominent from more distant views across the valley. In considering the extent of visual and landscape impact, Members gave great weight to the views of the landscape architect and they agreed that the impact of the new building was harmful and therefore unacceptable. They concluded that it would constitute a prominent feature on an elevated site, which would detract from the intrinsic qualities of the Tweed Valley Special Landscape Area.

The Review Body noted that the application for the cattle building was supported by a business plan but they were not convinced that it outlined a viable or sustainable economic justification for the building to set aside the strong landscape objections to the development.

The Review Body were conscious of the sensitivities in terms of the building's relationship to the archaeological site of Our Lady's Church and churchyard. Members did not feel that this had been adequately taken into account or resolved by the applicant.

There is an extensive planning history associated with the landholding and a number of applications have been considered for the application site itself. Members were concerned about how the proposal would relate to all of those, how compatible they would be with one another and whether there would be conflict between the uses on such a limited area of land. In particular, they were concerned about how the cattle shed and the business would relate to the holiday development approved on this and the adjoining plot.

The Review Body reiterated their request that the applicant submit a business case/masterplan for the landholding that would set out clearly the objectives for the landholding.

Members noted the comments of the Roads Planning officer and agreed that the application was deficient in term of the required traffic study to enable a full assessment of the road safety implications of the development to be undertaken.

## **CONCLUSION**

After considering all relevant information, the Local Review Body concluded that the development was contrary to the Development Plan and that there were no other material considerations that would justify departure from the Development Plan. Consequently, the application was refused.

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### **Notice Under Section 21 of the Town & Country Planning (Schemes of Delegation and Local Review procedure) (Scotland) Regulations 2008.**

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 R. Smith  
Chairman of the Local Review Body

**Date.....**30 March 2017



**APPENDIX III**

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

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**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**

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**Local Review Reference:** 17/00006/RREF

**Planning Application Reference:** 16/01536/PPP

**Development Proposal:** Erection of dwellinghouse

**Location:** Land East of Highland Brae, Lilliesleaf

**Applicant:** Miss Kerrie Johnston

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**DECISION**

The Local Review Body (LRB) reverses the decision of the appointed officer and indicates that it intends to grant planning permission for the reasons set out in this decision notice subject to conditions and the conclusion of a legal agreement as set out below.

**DEVELOPMENT PROPOSAL**

The application relates to the erection of a dwellinghouse on land east of Highland Brae, Lilliesleaf. The application drawings consisted of the following drawings:

<b>Plan Type</b>	<b>Plan Reference No.</b>
Location Plan	OS EXTRACT

**PRELIMINARY MATTERS**

The Local Review Body considered the review, which had been competently made, under section 43A (8) of the Town & Country Planning (Scotland) Act 1997 at its meeting on 20<sup>th</sup> March 2017.

After examining the review documentation at that meeting, which included: a) Notice of Review; b) Officer's Report; c) Papers referred to in Report; d) Consultations and

e) List of policies, the LRB concluded that it had sufficient information to determine the review and proceeded to consider 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: SESplan Strategic Development Plan 2013 and the Scottish Borders Local Development Plan 2016. The LRB considered that the most relevant of the listed policies were:

- Local Development Plan policies: HD3, PMD1, PMD2, IS2, IS3, HD2, IS7, EP13 and IS9

#### Other Material Considerations

- Scottish Planning Policy
- SBC Supplementary Planning Guidance on Development Contributions 2015
- SBC Supplementary Planning Guidance on New Housing in the Borders Countryside 2008
- SBC Supplementary Planning Guidance on Placemaking & Design 2010
- SBC Supplementary Planning Guidance on Householder Development 2006
- SBC Supplementary Planning Guidance on Trees and Development 2008
- SBC Supplementary Planning Guidance on Landscape and Development 2008

The Local Review Body noted that, as the site lay out with the settlement boundary of Lilliesleaf, the application fell to be determined within the terms of the Council's Housing in the Countryside policies.

After considering the evidence before them and the slide presentation, the Review Body concluded that a building group, as defined in Policy HD2 of the Local Development Plan, did not exist at the locus. There was only one house, Highland Brae, and the existing barn associated with the house was neither capable nor suitable for conversion to residential use. In any event, to count towards a building group, the conversion of the barn to residential use would have had to have been granted and implemented. No such permission had been sought and granted. There was therefore, no realistic prospect of three residential units being formed at the site. Members agreed that the development was contrary to Part A of Policy HD2.

The Review Body then debated whether, in terms of Part (F) of Policy HD2, a direct operational need or requirement for a new house could be substantiated on economic grounds. After debating the issue, Members concluded that no such case had been made and that there was no economic justification for a new house. The development was therefore contrary to Part F of Policy HD2.

The Review Body came to the conclusion that the proposal was contrary to Policy HD2 of the development plan.

Members then considered whether, within the terms of the Section 25 of the Act, there were material considerations that they should take into account that would override the presumption to determine the case in accordance with the Development

Plan. In this regard, Members gave weight to the personal circumstances of the applicant and in particular, the need for her to live near her parents to provide for their care and health needs and also the lack of availability of alternative affordable housing in the locality to enable her to do this. They also took into account the recent decision for a new house at Easter Lilliesleaf House (13/00104/PPP) where the health requirements of the applicant's family were material to the granting of planning permission. In their view, there were exceptional circumstances in this case to justify granting consent.

Members were content that this decision would not set a precedent for further houses at the locality, as the erection of the new house would not trigger the formation of a building group at the site that could be added to.

In terms of the development of the site, Members wanted to ensure a satisfactory relationship between the new house and Highland Brae. In their view, the new house should be located to the north eastern side of the application site to allow for a degree of separation between the properties and they asked that a condition be imposed to that effect. This would also allow for sufficient landscaping between the properties. They requested that the access arrangements for the site also be designed to ensure this separation between the properties.

## **CONCLUSION**

After considering all relevant information, the Local Review Body concluded that whilst the development was contrary to the Development Plan there were exceptional circumstances that were material to justify a departure from the Development Plan. Consequently, the application was approved.

## **DIRECTIONS**

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.

## **CONDITIONS**

1. 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.

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. 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 except 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.

3. The means of surface water and foul drainage to be submitted to and approved in writing by the Planning Authority before the development is commenced. The development then to be implemented in accordance with the approved details.

Reason: To ensure that the site is adequately serviced.

4. No development shall take place except in strict accordance with a scheme of hard and soft landscaping works, which has first been submitted to and approved in writing by the planning authority. Details of the scheme shall include (as appropriate):

- i. existing and finished ground levels in relation to a fixed datum preferably ordnance
- ii. measures to protect existing trees and hedgerows along the northern and western boundaries of the site during the construction phase and to ensure their retention thereafter and, in the case of damage, restored
- iii. details of a substantial shelter belt to be planted to the eastern boundary of the site
- iv. location and design, including materials, of walls, fences and gates
- v. soft and hard landscaping works
- vi. existing and proposed services such as cables, pipelines, sub-stations
- vii. other artefacts and structures such as street furniture, play equipment
- viii. A programme for the implementation and completion of the scheme of landscape works and subsequent maintenance thereof.

Reason: To ensure the satisfactory form, layout and assimilation of the development into the landscape and to ensure a degree of separation between the new dwelling house and the property known as Highland Brae.

5. The proposed new dwellinghouse to be located to the north eastern side of the application site.

Reason: To ensure the satisfactory form, layout and assimilation of the development into the landscape and to ensure a degree of separation between the new dwelling house and the property known as Highland Brae.

6. Prior to the occupation of the dwellinghouse, hereby approved, details of the new access to the site and the parking and turning for a minimum of two vehicles, excluding any garages, within the application site shall be submitted to and approved by the Planning Authority. The new access shall be designed in a manner to allow separation from the access into



Highland Brae. The parking and turning area should be retained for this use thereafter.

Reason: In the interests of road safety to ensure the satisfactory access, off road parking and turning for vehicles is provided at the site. In addition, so that the form and layout of the access road assists in ensuring a degree of separation between the new dwelling house and the property known as Highland Brae.

## **LEGAL AGREEMENT**

The Local Review Body required that a Section 75 Agreement, or other suitable legal agreement, be entered into regarding the payment of a financial contribution towards education provision in the locality and the Borders Railway.

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### **Notice Under Section 21 of the Town & Country Planning (Schemes of Delegation and Local Review procedure) (Scotland) Regulations 2008.**

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 R. Smith  
Chairman of the Local Review Body

**Date.....**23 March 2017

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