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Notice of Review

Chief Executive

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Democracy's Directorate

**NOTICE OF REVIEW**

UNDER SECTION 43A(8) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED) IN RESPECT OF DECISIONS ON LOCAL DEVELOPMENTS

THE TOWN AND COUNTRY PLANNING (SCHEMES OF DELEGATION AND LOCAL REVIEW PROCEDURE) (SCOTLAND) REGULATIONS 2008

THE TOWN AND COUNTRY PLANNING (APPEALS) (SCOTLAND) REGULATIONS 2008

**IMPORTANT: Failure to supply all the relevant information could invalidate your notice of review.**

Use **BLOCK CAPITALS** if completing in manuscript

**Applicant(s)**

**Agent (if any)**

Name **MR & MRS D GOLD**

Name **KANAK BOSE**

Address **JUNIPER COTTAGE, MACBIEHILL**

Address **OGSCASTLE, CARNWATH, LANARK**

Postcode **EH46 7AZ**

Postcode **ML11 8NE**

Contact Telephone 1

Contact Telephone 1

Contact Telephone 2

Contact Telephone 2

Fax No

Fax No

E-mail\*

E-mail\*

Mark this box to confirm all contact should be through this representative:

\* Do you agree to correspondence regarding your review being sent by e-mail?  Yes  No

Planning authority **SCOTTISH BORDERS COUNCIL**

Planning authority's application reference number **17/00530/FUL**

Site address **LAND TO NORTH-WEST OF ALDERBANK, MACBIEHILL, WEST LINTON**

Description of proposed development **ERECTION OF SINGLE STOREY DWELLINGHOUSE WITH ATTACHED GARAGE AND WORKSHOP**

Date of application **7TH APRIL 2017** Date of decision (if any) **14 JUNE 2017**

Note. This notice must be served on the planning authority within three months of the date of the decision notice or from the date of expiry of the period allowed for determining the application.

**Nature of application**

- 1. Application for planning permission (including householder application)
- 2. Application for planning permission in principle
- 3. Further application (including development that has not yet commenced and where a time limit has been imposed; renewal of planning permission; and/or modification, variation or removal of a planning condition)
- 4. Application for approval of matters specified in conditions

**Reasons for seeking review**

- 1. Refusal of application by appointed officer
- 2. Failure by appointed officer to determine the application within the period allowed for determination of the application
- 3. Conditions imposed on consent by appointed officer

**Review procedure**

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may tick more than one box if you wish the review to be conducted by a combination of procedures.

- 1. Further written submissions
- 2. One or more hearing sessions
- 3. Site inspection
- 4. Assessment of review documents only, with no further procedure

If you have marked box 1 or 2, please explain here which of the matters (as set out in your statement below) you believe ought to be subject of that procedure, and why you consider further submissions or a hearing are necessary:

**Site inspection**

In the event that the Local Review Body decides to inspect the review site, in your opinion:

- |  | Yes                                 | No                                  |
|--|-------------------------------------|-------------------------------------|
| 1. Can the site be viewed entirely from public land?                                 | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| 2. Is it possible for the site to be accessed safely, and without barriers to entry? | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |

If there are reasons why you think the Local Review Body would be unable to undertake an unaccompanied site inspection, please explain here:

**Statement**

You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. Note: you may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

If the Local Review Body issues a notice requesting further information from any other person or body, you will have a period of 14 days in which to comment on any additional matter which has been raised by that person or body.

State here the reasons for your notice of review and all matters you wish to raise. If necessary, this can be continued or provided in full in a separate document. You may also submit additional documentation with this form.

SEE ATTACHED STATEMENT FOR NOTICE OF REVIEW DATED 29TH JUNE 2017 (4 PAGES)

Have you raised any matters which were not before the appointed officer at the time the determination on your application was made?

Yes  No

If yes, you should explain in the box below, why you are raising new material, why it was not raised with the appointed officer before your application was determined and why you consider it should now be considered in your review.

MORE FACTUAL INFORMATION CONCERNING EXISTING AND PROPOSED GROUND LEVELS.

**List of documents and evidence**

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review.

FORM FOR NOTICE OF REVIEW  
 STATEMENT FOR NOTICE OF REVIEW (4 PAGES)  
 PRODUCTIONS 1-7 INCLUSIVE  
 DOCUMENTS 1-5 INCLUSIVE

Note. The planning authority will make a copy of the notice of review, the review documents and any notice of the procedure of the review available for inspection at an office of the planning authority until such time as the review is determined. It may also be available on the planning authority website.

**Checklist**

Please mark the appropriate boxes to confirm you have provided all supporting documents and evidence relevant to your review:

- Full completion of all parts of this form
- Statement of your reasons for requiring a review
- All documents, materials and evidence which you intend to rely on (e.g. plans and drawings or other documents) which are now the subject of this review.

Note. Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice from that earlier consent.

**Declaration**

I the applicant/agent [delete as appropriate] hereby serve notice on the planning authority to review the application as set out on this form and in the supporting documents.

Signed

[Redacted Signature Box]

Date

29.6.2017

**The Completed form should be returned to the Head of Corporate Administration, Scottish Borders Council, Council Headquarters, Newtown St. Boswells TD6 0SA.**

Mr & Mrs D Gold

ERECTION OF DWELLINGHOUSE WITH ATTACHED GARAGE AND WORKSHOP

Land to Northwest of Alderbank, Macbiehill, West Linton

Statement for Notice of Review – Refusal Notice 17/00530/FUL

**The grounds for refusal are**

The proposals do not comply with Local Development Plan Policy HD2 and Supplementary Planning Guidance on New Housing in the Borders Countryside as the site is located outwith, and not well related to, the recognised boundary of the existing building group at Macbiehill which is the natural slope between the site and Alderbank, breaking into an undeveloped field at a higher level.

The proposals do not comply with the Local Development Plan Policy HD3 and Supplementary Planning Guidance on Privacy and Sunlight in that the proximity and change in levels in relation to “Alderbank” would result in significant adverse effects on the residential amenity enjoyed by that property, creating an overbearing impression.

**Argument in the cause of review**

In the recommendations contained in the Part III report by the planning officer the following points are noted :

It is agreed the site is undeveloped ground with some planting. Indeed it is vacant ground and has no agricultural land use, the farming activities at Macbiehill now having ended. The ground is in poor condition and not prime arable. There existed a small quarry for stone for dyking/tracks to the NW corner of the site. The ground historically has not been used for agricultural use and indeed fell within the policies of the original Macbiehill Estate (see production No 1). At that time it was planted as woodland and bounded along its north western boundary by a mature tree belt. It will never be suitable or indeed viable for agricultural use as it has limited access.

It is noted that the planning officer agrees that the style of house as designed is relevant with that of the rest of the steading and in particular, “Alderbank”. Some renewables are proposed and a multifuel stove is also to be installed. Cognisance will be paid at detailed design stage to the inclusion of renewables and sustainability within design.

It is further noted (although this has been previously argued) the planning officer still feels the proposed house is out-with the settlement envelope. That the ground in question formed part of the estate and the boundaries for the estate can be seen clearly on the 1<sup>st</sup> edition OS map (see production 1 again) seems not enough to demonstrate this. The mansion at Macbiehill was demolished in the 1950's and constructed around 1835. The house and policies of the estate were clearly demarcated from the working agricultural ground. The application site falls within the demarcation of the estate policies and not within the outlying farmed areas.

It is noted that the local plan (current) can support two further houses at Macbiehill at the current time. These are represented by an application in the walled garden area (I believe to be currently being considered) and the refusal notice under this review.

The planning officer refers to the small slope along the north western boundary of Alderbank as being the natural boundary. He also refers to Alderbank as being 'located in a small hollow' which indeed is man-made as is the banking to the north-west, the latter emphasised as a result of scraping back the ground to form a level area in which Alderbank has been placed (see production 2).

### **Historical Applications**

The writer cannot comment on the applications for consent prior to that of 14/00994/FUL as these were prior to appointment. It is understood that at the time of the design of "Alderbank" there was considerable discourse between the client, agent and Planning Department. The overall result is a successful solution of a modern house in a rural setting (production 3 – this also helps to see the density of the planting to the North-East boundary of the site).

Leading up to the current refusal, the agent and the applicants had a number of meetings with the planning officer who has now since retired. She explained to us that policy could not support the application 14/00994 hence our decision to withdraw the application. She also believed that policy would change with the acceptance of the new local plan and she suggested we wait for that change to occur, and then re-apply.

Over the ensuing 18 months the policy was amended with the onset of the new local plan and we were informed that policy for rural housing could now support 2 further houses at Macbiehill. We made the application 16/00835/FUL which was based on a 'high end' design - a similar house-type features on the front cover of 'New Housing in the Borders Countryside' (designed by the writer – see production 4).

Despite the high-end nature of the design, we were advised that again this would not be supported so a more conventional design was submitted following withdrawal of the application. All of this with discussion and debate with the acting planning-officer.

Prior to her retirement, Mrs Aymes had a discussion with the agent and it seemed that the mass of the 1.5 storey nature of the building was the most significant issue that would result in refusal of 16/01319/FUL. The rather subjective view of the interpretation of a defined boundary was still felt to be an arguable and a serious debate. As such we were in agreement with the 1.5 storey house being too high. It was decided that to appeal the decision was inappropriate and it would be better to reconsider the entire design aspect and resubmit.

This is where we are today. A house-design based on the acceptable principles already set down in the application 2011 was adopted, although altogether a much smaller footprint and a much simpler solution.

## Client Matters

In addition to the above, the applicant has made some comments which they wish to be noted. I attach their own notes (document 1) in this respect, however I summarise the points relevant to this argument :

- 1 Following the adoption of the new local plan at no time did the planning officer lead the applicant to think that an application on this site for a single house would be wholly unsuccessful, despite a number of meetings, a site meeting and various pre-application discussions.
- 2 There now being no facility for pre-application discussions, the current refusal was unable to be discussed with the Planning Department prior to submission. Pre-application advice was sought but rejected (document 2 – no advice forthcoming).
- 3 The planting plan for Alderbank is felt to be complete and at no time has question been raised about its inappropriateness despite a number of visits by the former Planning Officer. It has been suggested that this is sparse in the current part III report. The granting of the current refusal by review would enable the landscaping to be revisited and a more robust scheme designed and put in place. Again, it is stressed there have been no formal complaints about the existing planting and to our knowledge no formal inspection to ascertain acceptance and compliance of the planting in respect of 11/00197/FUL has ever taken place.
- 4 There is already a shelterbelt and privacy planting screen between Alderbank and the new site which can be strengthened should this review be successful.
- 5 The current application under review exceeded a two-month decision period.

## Summary

The refusal of this consent hinges on two factors – (1) the subjective interpretation of the robust boundaries around the building group and (2) the possible over-bearing of the new house over “Alderbank”.

The *robust boundary* is clear for all to see. It was designated before 1850 as can be seen on the Ordnance Survey maps for Macbiehill Estate (production 5, the site is marked by a green spot, the robust boundaries by a blue hatching). The boundary not only was a tree belt, it also has a ditch and fence line. It ought to be considered as an indisputable and historical boundary of substantial significance.

I have attached a summary taken by GPS of the heights of the site in relation to “Alderbank” ( see production 2 again). It is clear by interpreting the contours that the ground has been ‘scooped out’ to the North-west corner of “Alderbank” to create the level platform for “Alderbank”. This spoil was pulled back and used to form the level plateau at the turning area on the track (approx height 254.4) and also used to emphasise and steepen the banking between the review site and “Alderbank”.  
*Man-made and not natural as stated in the planning officer’s report.*

No floor levels or site sections were included in the application being reviewed (see production 6-submission drawings) and as such any interpretation made within the report is *hypothetical and without substance*. **At no time were floor levels and site sections requested.**



Notwithstanding that, if the new house were to be built I would propose a similar exercise of earthworks as with "Alderbank" to establish the level of the new house, creating a finished ground level of around 251.75m – the eaves height therefore around 1.5m (half a storey) above "Alderbank".

The new house lies behind "Alderbank" (as you approach along the driveway) and will have little or no impact on "Alderbank". The sight line from eye-level over the "Alderbank" ridge will hide the new house.

As there are no habitable windows looking toward "Alderbank" there are no privacy issues (accepted in the Planning Officer's report) (production 6 – floor plans of Alderbank).

The house being on a South-East to North-West access, and sited to the North West of "Alderbank" make it a *physical impossibility* to preclude sunlight from "Alderbank" and the new property being 13m from Alderbank render loss of light a weak if not flawed argument (there is one kitchen window and two garage windows facing the proposed house site).

#### **To Finish**

The granting of this consent by review enables the council to insist on natural landscaping that would preclude any further development in the paddock to the North-West of the site and this could be conditioned to guarantee longevity. If properly thought through and well-executed the landscaping could result in a high-quality long-term planting solution.

Heights and level adaptations on the site could also be conditioned (*these should have been requested during the application process if they were considered to be fundamental*)

It is understood that personal circumstances should not be taken into account but these were clearly mapped in my original design statement (production 7). If this review is unsuccessful the appellants will have to move from Macbiehill.

They will then be forced to consider their right to serve a purchase notice on the Planning Authority as the ground would be considered to be incapable of reasonably beneficial use to the appellant.

I would hope that my arguments enable the council to reconsider and overturn the decision made to refuse the planning consent for this house.

**Kanak Bose B Arch (hons) Dip Architecture**

29<sup>th</sup> June 2017

#### **Additional documents**

- Document 1 Applicants' notes dated 24.6.2017
- Document 2 Pre-application to Planning Officer dated 20.1.2017
- Document 3 Planning Refusal Notice
- Document 4 Part III report by planning officer
- Document 5 Submitted Drawing OGS 173 30



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**PRODUCTIONS 1-7 INCL.**

17/00530/FUL

Notice of review to Scottish Borders Council  
Land to North-West of Alderbank, Macbiehill, West Linton

