

APPENDIX III

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

**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**

Local Review Reference: 17/00023/RREF

Planning Application Reference: 17/00005/PPP

Development Proposal: Erection of dwellinghouse

Location: Land south of Balmerino, Ashkirk

Applicant: Ms Gillian MacKay

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 proposed development would be contrary to Policy PMD4 of the Scottish Borders Local Development Plan 2016, in that the proposed development would be located outwith the Ashkirk Development Boundary, and insufficient reason and justification for an exceptional approval has been advanced. Other material considerations do not justify a departure from the Development Plan in this case.

DEVELOPMENT PROPOSAL

The application relates to the erection of a dwellinghouse on land south of Balmerino, Ashkirk. The application drawings consisted of the following drawings:

Plan Type	Plan Reference No.
Location Plan	161520/LOC
Site Plan	161520/PL/01

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 21st August 2017.

After examining the review documentation at that meeting, which included: a) Notice of Review; b) Decision Notice c) Officer's Report; d) Consultations; e) Objections; f) Additional representation and g) 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 relevant listed policies were:

- Local Development Plan policies: PMD1, PMD2, PMD4, HD2, HD3, EP3, EP10, EP13, IS2, IS3, IS7 and IS9.

Other Material Considerations

- Scottish Planning Policy
- 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 Development Contributions 2011
- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006
- SBC Supplementary Planning Guidance on Trees and Development 2008
- SBC Supplementary Planning Guidance on Landscape and Development 2008
- SBC Supplementary Planning Guidance on Waste Management 2015

The Review Body noted that the proposal was submitted for Planning Permission in Principle to erect a dwellinghouse on ground within the ownership of "Woodlands", adjoining houses known as "Balmerino" and "The Floss" in Ashkirk. It was noted that an indicative design and siting of house had been provided in support of the application, showing a one-and-a-half storey house in a relatively central position within the site.

The Review Body determined that the most relevant Local Development Plan Policy was PMD4 which controlled settlement expansion to within the defined Development Boundary. Members noted that the application site lay immediately outwith Ashkirk settlement boundary as defined in the Local Development Plan and that the application was contrary to the key provision of this policy.

The Review Body then considered whether there were exceptional grounds for allowing the development. Members had some sympathy with the applicant's

assertions regarding the development meeting local needs and rounding off of boundaries, but critically were not satisfied that the application met any of the four qualifying criteria under Policy PMD4, which would have allowed an exceptional approval and expansion outwith the settlement boundary. The Review Body concluded that there were already opportunities within Ashkirk for new housing inside the settlement boundary, the proposal was not for an affordable unit, there was no economic justification and no community benefits that would outweigh the need to maintain the settlement boundary in this instance. As none of these qualifying criteria were met, the Review Body considered that the secondary criteria could not be applied nor given any weight in the decision.

In reaching their decision, the Review Body also noted that other issues relating to the proposals appeared unresolved, especially the improvement of the access and the need to connect to drainage to the satisfaction of SEPA.

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.

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.

Signed...Councillor T. Miers
Chairman of the Local Review Body

Date.....29 August 2017