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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, 21 August 2017 at
10.00 am

Present:- Councillors T. Miers (Chairman), S. Aitchison, A. Anderson, S. Hamilton,
H. Laing, C. Ramage and E. Small

Apologies:- Councillors J. A. Fullarton and S. Mountford

In Attendance:- Chief Planning Officer, Lead Planning Officer, Chief Legal Officer, Solicitor
(E. Moir), Democratic Services Team Leader, Democratic Services Officer
(F. Walling).

MEMBER

Councillor Ramage had not been present at the site visit and previous meeting in respect of the undernoted application and was therefore unable to participate in the further consideration. Councillor Ramage withdrew from the Chamber for this part of the meeting.

1. **CONTINUATION: REVIEW OF 16/01174/PPP**

With reference to paragraph 5 of the Minute of 19 June 2017 and paragraph 2 of the meeting of 17 July 2017, Members continued consideration of the request from GS Chapman Vehicle Body Repairs, per Ericht Planning & Property Consultants, Gifford House, Bonnington Road, Peebles, to review the decision to refuse the planning application in respect of the erection of a vehicle body repair workshop and associated parking on land north west of Dunrig, Spylaw Farm, Lamancha, West Linton. In response to the request by the Local Review Body for additional information, there had been circulated a statement and associated documents, provided by the applicant, and a response from the appointed planning officer. The papers which accompanied the request for review had also been re-circulated. Members agreed that the site visit and additional information provided had been helpful in their consideration of the application. They recognised the strong economic case for supporting the business and that efforts had been made by the applicant to identify alternative sites. There followed a lengthy debate which focused on the suitability of the proposed site for this development.

VOTE

Councillor Aitchison, seconded by Councillor Miers, moved that the decision to refuse the application be upheld.

Councillor Hamilton, seconded by Councillor Anderson, moved as an amendment that the decision to refuse the application be reversed and the application approved.

On a show of hands Members voted as follows:-

*Motion - 1 vote
Amendment - 4 votes*

The amendment was accordingly carried.

DECISION

DECIDED that:-

- (a) the review could be determined without further procedure on the basis of the papers submitted, the unaccompanied site visit and additional information provided by the applicants;**
- (b) the development was consistent with the development plan and there were no other material considerations that would justify departure from the Development Plan; and**
- (c) the decision of the appointed planning officer to refuse the application be reversed and the application for planning permission be granted, subject to conditions, for the reasons given in Appendix I to this Minute.**

2. REVIEW OF REFUSAL OF 17/00118/FUL

There had been circulated copies of the request from Roxburghe Estates, per Ferguson Planning, 54 Island Street, Galashiels, to review the decision to refuse the planning application in respect of change of use of redundant steading and alterations to form dwellinghouse with associated parking and infrastructure works North West of Pots Close Cottage, Kelso. Included in the supporting papers were the Notice of Review (including the Decision Notice and Officer's Report); consultations; and a list of relevant policies. Members considered the appearance and proportion of new-build in the proposed development. They debated at length whether the proposal was an acceptable conversion of an existing building or was in effect a new-build dwellinghouse.

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.**

3. REVIEW OF REFUSAL OF 17/00005/PPP

There had been circulated copies of the request from Ms Gillian Mackay, Woodlands, The Woll, Ashkirk, to review the decision to refuse the planning application in respect of the erection of a dwellinghouse on land South of Balmerino, Ashkirk. Presented in the supporting papers were the Notice of Review; Decision Notice; Officer's Report; consultations; objections; additional representation; and a list of relevant policies. Members noted that the application site lay outside the development boundary for the village of Ashkirk. Their discussion therefore focused on whether there were any exceptional grounds for allowing the development.

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 III to this Minute.**

4. **REVIEW OF REFUSAL OF 17/00530/FUL**

There had been circulated copies of the request from Mr and Mrs D. Gold, per Kanak Bose Ltd, Ogcastle, Roman Road, Carnwarth, to review the decision to refuse the planning application in respect of erection of a dwellinghouse with attached garage and workshop on land North West of Alderbank, Macbiehill, West Linton. Included in the supporting papers were the Notice of Review (including the Decision Notice and Officer's Report); papers referred to in the report; consultations; and a list of relevant policies. Having agreed that there was a building group at Macbiehill, Members' initial discussion focused on whether the site for the proposed development was a suitable addition to the group. Their attention then moved to consider the relationship of the proposed dwellinghouse with the adjoining property "Alderbank".

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 varied and the application refused for the reasons detailed in Appendix IV to this Minute.**

5. **REVIEW OF REFUSAL OF 17/00257/FUL**

There had been circulated copies of the request from Mr David and Mrs Jane Gordon, per David Jane Architects, 5 High Street, Innerleithen, to review the decision to refuse the planning application in respect of erection of replacement windows and installation of chimney flue at 5 High Street, Innerleithen. Included in the supporting papers were the Notice of Review; Decision Notice; Officer's Report; papers referred to in the report; consultations; and a list of relevant policies. The Chief Planning Officer advised that planning consent had been given for the replacement windows in an earlier application. The appeal therefore related just to the installation of the chimney flue. After initial discussion of the application Members referred to the complexity of the technical information provided and decided that they would like further explanation about how the ABCAT flue gas filter reduced flue emissions and the reasons for the objections to the flue by the Environmental Health Officer. It was therefore agreed to undertake further procedure in the form of a hearing and that this should also include consideration of: the nuisance issues associated with the flue and implications of the increase in length of the flue as well as the technical issues associated with the ABCAT gas filter.

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 not be considered without further procedure in the form of a hearing session; and**
- (c) that the applicant, Environmental Health Officer and Planning Officer be invited to attend a hearing to provide information on: the technical elements regarding the use of a chimney flue, specifically in relation to the proposed use of an ABCAT flue gas filter; nuisance issues associated with the proposed chimney flue; and the implications of the increase in length of the flue.**

The meeting concluded at 12.35 pm



APPENDIX I

**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: 17/00015/RREF

Planning Application Reference: 16/01174/PPP

Development Proposal: Erection of vehicle body repair workshop and associated parking

Location: Land North West of Dunrig, Spylaw Farm, Lamancha, West Linton

Applicant: GS Chapman Vehicle Body Repairs

DECISION

The Local Review Body (LRB) reverses the decision of the appointed officer and grants planning permission for the reasons set out in this decision notice and subject to the conditions set out below.

DEVELOPMENT PROPOSAL

The application for planning permission in principle relates to the erection of a vehicle body repair workshop and associated parking on land north west of Dunrig, Spylaw Farm Lamancha, West Linton. The application drawings consisted of the following drawings:

Plan Type	Plan Reference No.
Location Plan	OS extract
<u>Indicative Plans</u>	
Sketch Plans & Elevations of New Workshop	2016/13/102
Site Plan	2016/13/101A

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 initial meeting on 19th June 2017.

After examining the review documentation at that meeting, which included: a) Notice of Review (including the Decision Notice); b) officer's report; c) papers referred to in report; d) Consultations and e) List of policies, the LRB concluded that it did not have sufficient information to determine the review and that further procedure in the form of a site visit was necessary. The site visit was held on the 3rd July and the case was then reported back to the Review Body at its next meeting on 17th July 2017. Following further debate it was determined that additional information was required in the form of written submissions in respect of the following matters:

1. What consideration had been given to siting the proposed development within or near to the currently existing farm building group.
2. Whether a legal agreement tying the new business to the land holding was achievable.

Submissions in respect to these matters were received from the applicant and the appointed officer and these were presented to the Local Review Body at its meeting on 21st August 2017. On receipt of this information, the Review Body proceeded to determine the case.

The Review Body noted that there was new information submitted with the review papers in respect of letters from two neighbouring landowners, Mr J Dyke and Mr A Laird and an email from the Community Council, that were not before the appointed officer when the decision was issued. Members decided that this evidence did not meet the tests set out in Section 43B of the Town & Country Planning (Scotland) Act 1997 and they proceeded to determine the case without reference to this information.

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, ED7, EP13, EP16, IS7 & IS9

The Review Body debated the application at some length and acknowledged that this was a particularly challenging case. Members appreciated the additional information provided to them through further procedure and that this had been of great assistance to their deliberations on this case.

In considering the suitability of the site for this business use, Members discussed the terms of Policy ED7 in detail. The policy requires that there be an economic and/or operational need for the particular countryside location, and that it can be proven that the development could not be reasonably accommodated within the Development Boundary of a settlement.

The Review Body noted that the “body repair” business was currently operating from a building leased from the owners of Sunnyside Farm and that this arrangement was due to expire in April 2018. They also noted that the existing facilities were not suitable for the current use and that as Sunnyside Farm had just been sold, the continuation of such a lease arrangement was in doubt.

Members noted that this was an established business serving a client base within the West Linton area. The Review Body was satisfied a strong economic case had been made for supporting the business. They also accepted that operationally a location within the northern part of the Borders was necessary to enable the business to continue operating effectively and potentially expand. The fact that the business currently operated from a rural location in this area was an important factor, which had to be taken into account.

The Review Body acknowledged the efforts made by the applicant to secure alternative sites for the business in Peebles and West Linton and with landowners in the West Linton area but that no such sites were available. They debated, at length, whether the current site was suitable for the proposed use and whether there were alternative locations for the building within the applicant’s landholding. They accepted the problems in re-siting the proposed building closer to the southern part of the site and that the existing buildings next to Dunrig were not capable or available for this use. Ultimately, the LRB was satisfied that this was an appropriate site for the business.

In terms of Policy ED7 they were content that there was both an operational and economic need for the business to be in this location and that it could not be reasonably located within the Development Boundary of a settlement. In coming to their conclusion in these matters, the LRB gave great weight to the views and support of the Economic Development Section for the development.

In terms of the developmental criteria within Policy ED7, the Local Review Body was satisfied that the building could be developed in a way that respected the character and amenity of the area. They did not accept that the building would be unduly visible or strident in the landscape. The indicative plans submitted with the application illustrated a building similar in form to a modest agricultural building in the landscape. Members accepted that conditions regarding material and landscaping, with a substantial planted buffer along the eastern boundary, could be imposed that would allow a suitable development to be achieved. The restriction of external storage, along with a restriction on the proposed use, would also help retain the rural character of the locality. In addition, they were satisfied that there would be no impact on neighbouring properties.

The Review Body was content that additional matters relating to access, parking, turning facilities, water supply and drainage could be covered by suitably worded conditions.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was consistent with the Development Plan and that there were no other material considerations that would justify 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. No development shall be commenced until precise details of the materials to be used in the construction of the external walls and roofs of the building have been submitted to and approved in writing by the Local Planning Authority, and thereafter no development shall take place except in strict accordance with those details.

Reason: The materials require further consideration to ensure a satisfactory form of development, which contributes appropriately to its setting.
4. 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.

5. No development is to commence until a report, by a suitably qualified person, has been submitted to and approved in writing by the Planning Authority, demonstrating the provision of an adequate water supply to the development in terms of quality, quantity and the impacts of this proposed supply on surrounding supplies or properties. The provisions of the approved report shall be implemented prior to the occupation of the building(s)/dwellinghouse(s) hereby approved.

Reason: To ensure that the development is adequately serviced with water without a detrimental effect on the water supplies of surrounding properties.

6. 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.

7. Prior to the commencement of the operation of the business, hereby approved, details of the new access to the site and the parking and turning, within the application site shall be submitted to and approved by the Planning Authority. 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.

8. The premises shall be used for a body repair workshop only and for no other purpose (including any other purpose in Class 5 of the Schedule to The Town and Country Planning (Use Classes) (Scotland) Order 1997, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order).

Reason: To ensure that the use remains compatible within the site.

9. No open storage of material or equipment associated with the body repair business shall take place within the curtilage of the site without the prior written permission of the Local Planning Authority.

Reason: To safeguard the visual appearance of the area.

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.....5 September 2017



APPENDIX II

**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: 17/00024/RREF

Planning Application Reference: 17/00118/FUL

Development Proposal: Change of use of redundant steading and alterations to form dwellinghouse with associated parking and infrastructure works

Location: Redundant steading, North West of Pots Close Cottages, Kelso

Applicant: Roxburghe Estates

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 proposal is contrary to Policy HD2 of the Local Development Plan 2016 and the advice of Supplementary Planning Guidance - New Housing in the Borders Countryside (December 2008), in that:
 - i. the proposal does not appropriately constitute a conversion in that it is not physically capable of conversion;
 - ii. the building is not worthy of conversion in terms of its architectural or historic merit;
 - iii.) the site lies outwith any recognised settlement or building group and the need for a new dwellinghouse on this site has not been adequately substantiated.

- 2 The proposal is contrary to PMD2 of the Local Development Plan 2016 and the advice contained within Supplementary Planning Guidance - New Housing in the Borders Countryside (December 2008) and Supplementary Planning Guidance - Placemaking and Design (January 2010), in that the resulting building would not be in keeping with the design and character of the existing building.

- 3 The proposal is contrary to policies EP2 and EP3 of the Local Development Plan 2016 in that the potential impact on local biodiversity and protected species is unknown as surveys of the surrounding buildings and trees have not been carried out, informed by a Preliminary Roost Assessment.

DEVELOPMENT PROPOSAL

The application relates to the change of use and alterations of a redundant steading building north-west of Pots Close Cottages, Kelso. The application drawings consisted of the following drawings:

Plan Type	Plan Reference No.
Location Plan	1175 PO3 A
Block Plan	1175 PO1 B
Planning Layout	1175 PO2 A

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, including the Decision Notice and Officer's Report; b) Consultations; and c) 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, HD2, HD3, EP2, EP3, EP8, EP12, EP13, IS2, IS7, IS9 and IS13

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

The Review Body noted that the application was for a conversion but that only the side walls and front returns were being used as walls for the new building itself and that there would be problems with trees had the northern wall also been proposed as a wall of the actual building. The proposal was to use the existing brick walls of the building and add new internal walls together with new walls to link each outer section together. They understood that the retained walls would be clad on the outside with stonework and a new roof erected, a section of existing wall and returns being kept to the north as a courtyard enclosure.

In considering the evidence of the presentation slides and the indicative drawings for the building they concluded that the proportion of new-build addition was greater than that being kept and that on balance, the proposal did not properly constitute an acceptable conversion but had to be considered as a new-build dwellinghouse. As the site was not part of a building group and the need for a new dwellinghouse had not been adequately substantiated it was not in compliance with Local Development Policy HD2

The Review Body noted that the building offered limited visual appeal and that, whilst an argument could be made around architectural or historic merit, the submitted drawings and information did not convince them that the proposals would retain any merit sufficiently. The Review Body formed the view that the external concealment of the existing brick and the proposed pattern and style of windows and doors were inappropriate interventions.

Members indicated that it may be possible to design a scheme with a more appropriate architectural and historical treatment, including external brick retention. Any changed and improved scheme of external treatment would need to be weighed against the concerns over the proportion of the original building that was evident in any conversion.

The Review Body noted the comments of the Ecology Officer on biodiversity and acknowledged that the applicant would have been prepared to carry out the relevant surveys. They accepted that a Preliminary Roost Assessment would need to be carried out pre-determination and could not be reserved as a condition. They also noted that other matters could have been addressed by condition, including the watching brief required to safeguard archaeological interest at the site.

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

Date.....29 August 2017



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

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APPENDIX IV

**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: 17/00027/RREF

Planning Application Reference: 17/00530/FUL

Development Proposal: Erection of dwellinghouse with attached garage and workshop

Location: Land North West of Alderbank, Macbiehill, West Linton

Applicant: Mr & Mrs D Gold

DECISION

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

1. The proposals do not comply with Local Development Plan Policy HD3 and the 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.

DEVELOPMENT PROPOSAL

The full application relates to the erection of dwellinghouse with attached garage and workshop at land north west of Alderbank, Macbiehill, West Linton. The application drawings consisted of the following drawings:

Plan Type	Plan Reference No.
Site Plan	Document 1
Location Plan	Document 2
General	Document 3
General	OGS 173 30

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 (including the Decision Notice and Officer's Report); b) Papers referred to in Report; c) Consultations; and d) List of policies, the LRB concluded that it had sufficient information to determine the review and proceeded to consider the case. In coming to this decision Members considered the applicants' request for further procedure in the form of a site visit and one or more hearing sessions.

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: PMD1, PMD2, HD2, HD3, EP13, IS2 & IS7

Other Material Considerations

- 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

The Local Review Body was satisfied there was a building group at Macbiehill, as defined in Local Plan Policy HD2 and in the approved Supplementary Planning Guidance on New Housing in the Borders Countryside.

The Review Body then turned its attention to whether the site was a suitable addition to the group. They considered the site to be well related to the pattern of development at Macbiehill and that it was contained by the existing landscape setting of the building group. Members noted that there was a difference in level between the site and the adjoining property "Alderbank" which had been accentuated through the creation of the development platform for that property. They also noted that there had been some tree planting along the south eastern boundary of the site between it and Alderbank. In their view this did not constitute a substantial boundary or edge to the building group. Consequently, it was concluded that the site in question was within the development envelope of the building group.

In terms of the number of residential units proposed, this was within the limits set by Policy HD2 of 2 or 30% within a Local Plan period.

The Review Body was content with the design and appearance of the new house but felt that its relationship to Alderbank was unacceptable and harmful. In their view the new house would have an overbearing and dominating impact on the existing property due to its proximity and elevation. The proposal was therefore contrary to Policy HD3 and the second ground for the appointed officer's decision was upheld.

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

Date...30 August 2017

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