

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: 17/00040/RREF

Planning Application Reference: 17/00308/FUL

Development Proposal: Erection of boundary fence (retrospective)

Location: 33 Justice Park, Oxton

Applicant: Mr Marc Ridgway

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 PMD2 of the Scottish Borders Local Development Plan 2016 in that it is not compatible with, and does not respect, the open plan nature and character of the surrounding area, in that it is overbearing relative to the adjacent public footway, and is an incongruous form of development within the context of the wider street scene.

DEVELOPMENT PROPOSAL

The application relates to the erection of a boundary fence, seeking retention of part of the fence already erected and proposing changes to the remaining section. The application drawings consisted of the following:

Plan Type	Plan Reference No.
Location Plan	
Site Plan	
Photograph	
Specification letter	

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 20th November 2017.

After examining the review documentation at that meeting, which included: a) Notice of Review; b) Decision Notice; c) Officer's Report; d) Papers referred to in report; e) Consultation; and f) 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, and HD3

The Review Body noted that the proposal was for the retention of a section of 1.82m high fence as shown in orange on the submitted plans, the erection of a new matching section as shown in green and the reduction of an existing section of fence to one metre height as shown in blue.

The Review Body noted that the proposal to reduce the section in blue had resolved any issues in terms of road and pedestrian safety and that SBC Roads Planning Service had no objections to the proposal.

The Review Body considered that the principle issues were ones of visual impact and dominance on what they considered to be an attractive housing development with an open plan nature on existing street frontages. Members noted that the height of the fence and location immediately adjoining the roadway created a significant and dominant impact on the streetscape and had a detrimental effect on residential amenity in the development.

Whilst Members noted the nature and scale of other fences in the vicinity, they felt that these were in character and contributed to the sense of place. The proposed fencing would be out of character and would not allow for any softening with landscaping, given the positioning immediately behind the kerb. Whilst Members noted that the Appointed Officer had discussed possible revisions to enable intervening planting, the proposal did not provide for this and the Review had to be determined on the basis of the proposal as it stands.

The Review Body also noted that the fencing was required for securing dogs and that there had been no objections received from the local community. Nevertheless, these were not considerations that outweighed the detrimental visual effects caused by the proposal.

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.....24 November 2017