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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, 12 March 2018 at 10.00 am

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

Apologies:- Councillors J. A. Fullarton, T. Miers and S. Mountford.

In Attendance:- Principal Planning Officer (C. Miller), Chief Legal Officer, Democratic Services Team Leader, Democratic Services Officer (F. Walling).

### **CHAIRMAN**

In the absence of the Chairman the meeting was chaired by Vice Chairman Councillor Scott Hamilton.

### **MEMBER**

Councillor Small had not been present at the initial consideration in respect of the undernoted application and was therefore unable to participate in the further consideration. The Member withdrew from the Chamber for this part of the meeting.

### 1. **CONTINUATION OF REVIEW OF 17/00479/FUL**

With reference to paragraph 6 of the Minute of 16 October 2017 and paragraph 1 of the Minute of 22 January 2018, the Local Review Body continued their consideration of the request to review the refusal of planning permission in respect of erection of a dwellinghouse on land North East of and incorporating J. Rutherford Workshop, Rhymers Mill, Mill Road, Earlston. In response to the request by the Local Review Body for additional information, there had been circulated a written statement, maps and an amended drawing from the applicant and responses to the further information from the Council's Flood Risk Officer and Planning Officer. Also circulated were copies of all the original papers that accompanied the review. In their initial discussion Members recognised that the applicant appeared to have addressed the issues raised in terms of flood risk by amending the design and layout of the development and noted that the Flood Risk Officer had removed objection on the basis of the revised plans submitted. Members accepted the principle of a dwellinghouse on the proposed site but opinion was divided about the impact on the surrounding area of the raised ridge height and repositioning of the house as shown in the amended drawings. Concern was expressed that neighbours had not had an opportunity to comment on the revised design and concern remained about access and accommodation for parking.

### VOTE

*Councillor Laing, seconded by Councillor Ramage, moved that the decision to refuse the application be varied and the application refused.*

*Councillor Aitchison, seconded by Councillor Hamilton, moved as an amendment that the decision to refuse the application be reversed and the application approved subject to the development proceeding in accordance with the amended plan submitted to address flood risk.*

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

*Motion* - 3 votes

*Amendment* - 2 votes

*The motion was accordingly carried and the application refused.*

## **DECISION**

### **AGREED that:-**

- (a) **the review could be determined without further procedure on the basis of the papers submitted, the hearing session and the further written submissions;**
- (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 I to this Minute.**

## **2. REVIEW OF 17/01230/FUL**

There had been circulated copies of the request from Mr Greg Blacklock, 1 Eildon Terrace, Newtown St Boswells, to review the decision to refuse the planning application in respect of erection of boundary fence and formation of parking area (retrospective) at 1 Eildon Terrace, Newtown St Boswells. Included in the supporting papers were the Notice of Review; Decision Notice; officer's report; papers referred to in the officer's report; consultation; and a list of relevant policies. Noting the reasons given by the applicant for the erection of the fencing, Members discussed the visual impact of the fence on the local amenity in comparison with a fence also fronting Bowden Road which had previously received planning permission. Members considered whether there was justification for the higher section of the fence at the front of the property. They were concerned over its prominence and dominance but noted that the height of the fence could be reduced by condition. Members also looked at the road and pedestrian safety impact of the short section of fence adjoining the car park entrance.

## **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 in keeping with the Development Plan; and**
- (d) **the officer's decision to refuse the application be reversed and planning permission be granted subject to conditions for the reasons detailed in Appendix II to this Minute.**

*The meeting concluded at 11.25 am*



## 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:** 17/00037/RREF

**Planning Application Reference:** 17/00479/FUL

**Development Proposal:** Erection of dwellinghouse

**Location:** Land North East of and incorporating J Rutherford Workshop, Rhymer's Mill, Mill Road, Earlston

**Applicant:** Austin Travel

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## DECISION

The Local Review Body (LRB) varies the decision of the appointed officer and refuses planning permission as explained in this decision notice and on the following grounds:

1. The proposal does not comply with Adopted Local Development Plan Policies PMD2, PMD5 and HD3 in that it has not been adequately demonstrated that the height and design amendments resulting from the submissions aimed at addressing flood risk would not have adverse impacts on residential amenity or be sympathetic to the character of the surrounding area.
2. The proposal in the positioning of the dwellinghouse and the overall site layout, does not comply with Adopted Local Development Plan Policies PMD2 and PMD5 in that it would not respect the character of the surrounding area and neighbouring built form.
3. The proposal does not comply with Adopted Local Development Plan Policies PMD2 and IS7 in that the access arrangements are unsuitable to serve the development and inadequate provision has been made for the accommodation of the parking of two vehicles within the curtilage of the site, such that there would be adverse impacts upon road safety.

## **DEVELOPMENT PROPOSAL**

The application relates to the erection of a dwellinghouse. The application drawings and documentation consisted of the following:

<b>Plan Type</b>	<b>Plan Reference No.</b>
Location Plan	LOC-01A
Elevations	PP-01B

## **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 16 October 2017.

After examining the review documentation at that meeting, which included a) Notice of Review (including Decision Notice); b) Officer's Report; c) Consultations; and d) List of Policies, the LRB concluded that it did not have sufficient information to determine the review and that it required Further Procedure in the form of an oral hearing.

Members considered a hearing necessary to allow the applicant, Flood Risk Officer and Planning Officer to provide information on discrepancies between the assessments of flood risk to the site and the finished floor level required for the proposed dwellinghouse to mitigate against a 1 in 200 year flood event and blockage of the Clatteringford Bridge.

The hearing was held at 10am on 22 January 2018, after which the Review Body reconvened to consider the case. Following the hearing, Members agreed that it had been useful in providing further information about the degree of potential flood risk and proposed mitigation measures in the event of flooding. However, as the information was based on new data in the form of the recently completed Earlston Flood Study and despite the technical detail supplied, they remained unclear about the actual floor level required to mitigate against flood risk in the light of that new data and, if this resulted in a change in the ridge height of the house, any impact this may have on neighbourhood amenity. They also required further information about proposals for compensatory storage or alternative method of mitigation for any water flow over the site. After further discussion Members concluded that they could not make a determination without further procedure in the form of written submissions from the applicant to clarify these matters.

The Review was, therefore, continued to the Local Review Body meeting on 12 March 2018 where written submissions from the applicant were considered together with responses from the Flood Risk Officer and Planning Officer. The Review Body then proceeded to determine 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, PMD5, EP16, HD3, IS2, IS7, IS8 and IS9

#### Other Material Considerations

- SBC Supplementary Planning Guidance on Placemaking and Design 2010
- SBC Supplementary Planning Guidance on Householder Development 2006
- SBC Supplementary Planning Guidance on Development Contributions 2011
- Scottish Planning Policy

The Review Body accepted that the site was an infill site within the settlement of Earlston and had no objections to the principle of a dwellinghouse on the site under Infill Policy PMD5. They also noted that the additional flood study information, floor levels and flow routes seemed to have resolved the issues of flood risk and the proposal's compliance with Policy IS8, in that the Council's Flood Risk Officer had removed objection to the proposal on the basis of the additional information submitted on floor and ground levels. The Review Body noted, in reaching that conclusion, that SEPA had not responded to the additional information and that their objection was still outstanding.

Members noted that there was mixed architecture and ridge heights in the area. However, they also agreed with the Planning Officer's concerns over the lack of detail on floor and site levels on the application drawings, what these levels were related to and how they would be enforced. Given this, the Review Body was concerned at the scale and degree of changes required to ensure the house was free from flood risk and noted that this would result in a floor and ridge increase of a metre. They also noted changes to the design of the lower floor of the house and the repositioning of it towards Mill Road.

The Review Body considered that, whilst such changes may have been necessary to attempt to address flood risk issues, subsequent impacts on residential amenity and sympathy of design within the surrounding area had not been adequately demonstrated given the significance of the potential changes. They considered that impacts could only be properly considered within a fully detailed resubmission, and noted this would provide neighbouring proprietors with the opportunity to assess and comment on any revised design and siting.

Consequently, whilst acknowledging that information had been submitted that suggested flood risk could be satisfactorily addressed, the Review Body were not in a position to support the development.

The Review Body also considered that the reasons for refusal relating to sympathetic layout and access/parking would be impacted by the flood mitigation proposals and could not be considered to have been satisfactorily addressed by the proposals. They agreed with the original reasons for refusal on these matters.

The Review Body also discussed the reason for refusal relating to residential amenity impacts from the adjoining workshop. They considered that the presence of the workshop on the site would be known to any occupant of the proposed dwellinghouse who would be aware of potential impacts. Consequently, they did not consider that the existing workshop represented a reason to oppose the application.

## **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 S Hamilton  
Chairman of the Local Review Body

**Date...**19 March 2018

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**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:** 18/00003/RREF

**Planning Application Reference:** 17/01230/FUL

**Development Proposal:** Erection of boundary fence and formation of parking area (retrospective)

**Location:** 1 Eildon Terrace, Newtown St Boswells

**Applicant:** Mr Greg Blacklock

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**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 and informative set out below.

**DEVELOPMENT PROPOSAL**

The application relates to the erection of fencing and formation of a parking area. The application drawings and documentation consisted of the following:

<b>Plan Type</b>	<b>Plan Reference No.</b>
Location Plan	
Site Plan	
Photos	

**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 12<sup>th</sup> March 2018.

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 Officer's Report; e) Consultation; and

e) List of Policies, the LRB concluded that it had sufficient information to determine the review and proceeded to consider the case. They noted the applicant's request for further procedure in the form of written submissions, a Hearing and a site inspection but felt that none of these were necessary after viewing photographs and plans of the site and surroundings.

## **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, HD3 and IS7

### Other Material Considerations

- SBC Supplementary Planning Guidance on Placemaking and Design 2010
- SBC Supplementary Planning Guidance on Householder Development 2006

The Review Body noted that the proposal was for a series of fences around the boundaries of the property, of the same close-boarded design with varying height. They also noted that the fencing bordered the off-street parking area and that much of the work had already been carried out, the application being submitted retrospectively.

The Review Body acknowledged the comments from the applicant with regard to security reasons for the fencing but did not feel that this justified fencing of the height erected along the Bowden Road frontage. They also noted the comparisons with fencing erected at 29 Bowden Road in the vicinity of the application site but felt that fencing was lower, had an element of transparency and was consequently of lesser impact and dominance than the highest section of fence fronting Bowden Road at the application site

The Review Body agreed with the Appointed Officer that the roadside section of fence was too high and prominent in the street scene, to the detriment of local visual amenity. They also agreed with the Appointed Officer that all other sections of fencing were acceptable.

Members also noted and accepted the comments of Roads Planning in relation to the potential road and pedestrian safety impacts of the short section of fence adjoining the car park entrance and considered this needed to be removed back to the first fence post nearest the road.

Members considered if this was done and if this roadside section of the fence was lowered to exactly match in height and design with the side section on the junction with Bowden Road and Eildon Terrace, the fence would be acceptable. They considered these matters could be achieved through the imposition of conditions. On this basis, the Review Body agreed to reverse the decision of the Appointed Officer.

Regarding the off-street parking area the Review Body agreed that there was a need for the footpath crossing and kerbs to be completed in accordance with the Council's required standards.



**CONCLUSION**

After considering all relevant information, the Local Review Body concluded that, with conditions, 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 subject to conditions and an informative.

**CONDITIONS**

- 1. Within three months of the date of this consent, the full section of fence fronting Bowden Road to be lowered to match exactly the height and cap rail of the immediately adjoining section on the corner of Bowden Road and Eildon Terrace.  
Reason: To safeguard the visual amenity of the area.
- 2. Within three months of the date of this consent, the section of fence adjoining the car park access to be removed between Bowden Road and the first fence post in from the road.  
Reason: In the interests of road and pedestrian safety.
- 3. The off-street parking area not to be used until a footway crossing and dropped kerb are completed in full accordance with Council specifications.  
Reason: In the interests of road and pedestrian safety.

**INFORMATIVE**

- 1. In relation to Condition 3, any contractor working within public road must be on the Council approved list.

**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 S Hamilton  
Chairman of the Local Review Body

**Date**...19 March 2018

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