

## **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:** 17/00053/RREF

**Planning Application Reference:** 17/01008/FUL

**Development Proposal:** Erection of replacement dwellinghouse

**Location:** Derelict dwelling, Land West of Glenkinnon Lodge, Peelburnfoot, Clovenfords

**Applicant:** Mr Adam Elder

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## **DECISION**

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

1. The proposed development is contrary to policy EP13 (Trees, Woodland and Hedgerows) of the Scottish Borders Local Development Plan (2016), and contrary to adopted supplementary guidance on Trees and Development in that the development will result in significant removal of trees subject to Tree Preservation Order which provide a positive landscape contribution. Furthermore, the proposed development would lead to increased pressure to remove further trees in the future.
2. The proposed development is contrary to policy HD2 of the Scottish Borders Local Development Plan (2016), in that the proposed development would not sympathetically relate to the existing building group in terms of siting, scale, form or design. The existence of a building on site is inadequate justification for the proposed development.

## **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	9303.0.01
Site Plan - existing	9303.1.01
Site Plan – proposed	9303.1.02 Rev B
Elevations	9303.1.04
Sections	9303.1.03
Sections	9303.1.05 A-A
Sections	9303.1.06 B-B

## **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 19<sup>th</sup> February 2018.

After examining the review documentation at that meeting, which included a) Notice of Review (including Decision Notice); b) Officer's Report; c) Papers referred to in report; d) Consultations; e) Objections; f) General comment; g) Further representations in response to appeal; h) Response from applicant to further representations; and i) List of Policies, the LRB considered whether certain matters included in the review documents constituted new evidence under Section 43B of the Act and whether or not this evidence could be referred to in their deliberations. Members decided that the applicant's offers relating to community benefits, an affordable house unit (to be provided once the applicant no longer lived in the property) and business intentions did not meet the test and therefore could not be considered in their deliberations. However, the amended plan (reference 9303.1.02 B) did meet the Section 43B test and was material to their consideration. In order to allow the Appointed Officer, Landscape Officer, Ecology Officer and objectors to submit their views on the amended drawing, they requested further procedure in the form of written submissions. Members also asked for the applicant to have the opportunity of commenting on the responses received.

The LRB reconvened to consider the Review, following further procedure, at its meeting on 16<sup>th</sup> April 2018. After examining the review documentation at that meeting, which included Written Submissions relating to the amended site plan 9303.1.02 B from a) Ecology Officer; b) Landscape Officer; c) Planning Officer; d) Objectors; and e) Response by applicant, together with f) Review Papers (including the Decision Notice and Officer's Report), the LRB considered whether certain further matters included in the review documents constituted new evidence under Section 43B of the Act and whether or not this evidence could be referred to in their deliberations.

The LRB decided that the applicant's explanation of the reason for difference in the Valuation Roll extracts was not material to their consideration in that it was accepted that the verified extract had been provided by an objector. The LRB also decided that the newspaper article raised by two objectors in relation to a development by the applicant in East Lothian did not raise any material planning considerations and was, therefore, not material to the case or their deliberations. Finally, the LRB decided that the two tree reports submitted by the applicant in response to the comments received during further procedure did not meet the tests set out in Section 43B of the Act, in that they could have been submitted before the application was determined by the Appointed Officer and that there were no exceptional circumstances why they could not have been lodged before that time. The Review Body 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 relevant listed policies were:

- Local Development Plan policies: PMD1, PMD2, HD2, HD3, EP1, EP2, EP3, EP5, EP8, EP13, IS2, IS5, IS7 and IS9

### Other Material Considerations

- SBC Supplementary Planning Guidance on Placemaking and Design 2010
- SBC Supplementary Planning Guidance on New Housing in the Borders Countryside 2008
- SBC Supplementary Planning Guidance on Trees and Development 2008
- SBC Supplementary Planning Guidance on Placemaking and Design 2010
- SBC Supplementary Planning Guidance on Local Landscape Designations 2012
- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006
- Scottish Planning Policy

The Review Body noted that the proposal was to remove an existing building and build a dwellinghouse on an enlarged footprint using reclaimed stone with timber clad walls, a slate roof and measuring approximately 14m by 7m. It was noted that the dwellinghouse would be set down on the site compared to adjoining land with a ridge height of 9.26m and that some trees would be removed for the new house. Members also noted that a vehicular access and parking would be taken from the public road to the western end of the site with a footpath linking the house to the access and parking.

The Review Body firstly considered whether the proposal represented the replacement of an existing or former dwellinghouse under LDP Policy HD2. They concluded that there was evidence it had been a kennels building but no evidence that it had been a dwellinghouse. They considered that any incidental residence in relation to the use of the building as kennels had not been proven and, in any case, would not define that the building was an existing house, nor indeed, a former house. They concluded that the proposal was, therefore, contrary to Policy HD2 (E) Replacement Dwellings and HD2 (D) Restoration of Houses relating to redevelopment of existing and former houses.

The Review Body then considered Policy HD2 (C) in relation to Conversions of Buildings to a House. They did not consider that the proposal constituted a conversion as the application was for demolition of the existing building, therefore, the proposed development did not comply with Policy HD2(C). The Review Body also considered Policy HD2(A) in relation to Building Groups. They did not consider that the proposal was well related to an established building group, therefore, the proposed development did not comply with HD2(A). Finally, the Review Body considered Policy HD2(F) Economic Requirement. They did not consider that a business case had been put forward to justify the siting of this development in the proposed location. They felt that the argument advanced by the applicant, that it would be difficult to manage the woodland when not resident on the site, was not sufficient to justify

the erection of a house. As such, the proposed development did not comply with HD2(F). As none of the relevant sections of Policy HD2 were complied with, the Review Body could not support the development. Members did express some sympathy with the design approach, albeit this did not outweigh the lack of compliance with any part of the principal Policy HD2. There was also some concern at the actual visual impact on the area as a result of the development which had a larger footprint than the existing building.

The Review Body also considered the issue relating to the identified impacts on preserved trees. They acknowledged that there was conflicting evidence on the number of trees that could be lost or detrimentally impacted by the house and access. The Review Body accepted the advice of the Planning and Landscape Officers that it was likely more trees would be adversely impacted by the construction and occupation of the dwellinghouse than those identified in the revised plan 9303.1.02 B. They considered that this impact would be unacceptable on trees contained within a Tree Preservation Order and was, therefore, contrary to Policy EP13.

## **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 T Miers  
Chairman of the Local Review Body

**Date.....**19 April 2018

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