

APPENDIX IV

SCOTTISH BORDERS COUNCIL LOCAL REVIEW BODY INTENTIONS 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: 18/00006/RREF

Planning Application Reference: 17/01572/PPP

Development Proposal: Erection of dwellinghouse

Location: Land South East of Beckhope, Kailzie, Peebles

Applicant: Mrs Anne McKelvey

DECISION

The Local Review Body reverses the decision of the appointed officer and grants planning permission for the reasons set out in this decision notice subject to conditions, informatives and the applicant entering into a Section 75 agreement as set out below.

DEVELOPMENT PROPOSAL

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

Plan Type	Plan Reference No.
Location Plan	2017/50/101
Proposed Site Plan	2017/50/102

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 16th April 2018.

After examining the review documentation at that meeting, which included: a) Notice of Review (including Decision Notice and Officer's Report); b) Papers referred to in Officer's Report; c) Consultations; and d) List of Policies, the Review Body considered whether new

information included by the agent within the review documents constituted new evidence under Section 43B of the Act. This related to further justification and a quote from a farm building supplier to extend farm buildings onto one of the sites discounted for development in the sequential test submitted with the application. Given the date on the quote, the Review Body considered that the information could not have been submitted before the application was determined by the Appointed Officer and that there were exceptional circumstances why the information could not have been lodged before that time. The information was, therefore, admitted and 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: PMD2, HD2, HD3, EP5, EP10, EP13, IS2, 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 Development Contributions 2011
- SBC Supplementary Planning Guidance on Trees and Development 2008
- SBC Supplementary Planning Guidance on Local Landscape Designations 2012
- SBC Supplementary Planning Guidance on Landscape and Development 2008
- Peter McGowan's Survey of Designed Landscapes 2008

The Review Body noted that the proposal was for planning permission in principle to erect a dwellinghouse on a plot to the south-east of a property known as Beckhope, Kailzie, Peebles. The plot was shown in more detail on plan 2017/50/102 indicating a house position and access to the northern corner from the farm access road.

The Review Body noted the planning history in relation to the approvals for a dwellinghouse on land immediately to the south of the application site and that, due to woodland establishing on that site since the earlier approvals, there was a recent unsuccessful application to renew consent on that site by the same applicant. Members attached some weight to this history, the fact there had been a single house approved before on adjoining land and the woodland being a significant reason why that consent was not renewed.

In noting that the application was submitted and determined on the basis of addition to, and relationship with, the building group, the Members considered firstly, whether a building group was present to which addition would be possible. They noted that there were three existing houses and other farm buildings present and that this both met the minimum threshold for definition of a building group under Policy HD2 and that the Appointed Officer had accepted this. They also noted that in terms of scale of addition, the proposal was within the maximum permitted addition of two dwellinghouses to the group.

The Review Body then considered whether the site was within the boundaries and sense of place of the building group, taking into account the advice within Supplementary Planning Guidance on New Housing in the Countryside. Whilst they noted that the Appointed Officer considered the combination of the ditch, farm road and trees to be a definable boundary beyond which development into an undeveloped field should not occur, Members did not feel that the boundary was as significant a visual feature. The road was man-made and the ditch was relatively insignificant.

In terms of the site being separated from the building group by trees, Members considered that the stronger boundary was the woodland surrounding the group and to the south of the site that was previously an approved house plot. They noted that the application site did not breach that establishing woodland and that there was sufficient space for the existing roadside trees to be unaffected by the development. They concluded that with new boundary planting to define the plot boundary, it could be seen as a well-related addition to the group within the natural sense of place and not representative of ribbon development. In coming to this conclusion, they were also mindful of the plot's location immediately adjoining the farm road, within close proximity to the existing houses and that the plot boundary to the north-east would broadly align with that to Beckhope House.

The Review Body then considered the scale of the plot in relation to other plots within the group. After debate on both this issue and that of the site's location within an undeveloped field, they concluded that the plot was not out of character with existing house plots and amenity space within the group, both taking into account other informal areas of open space present and the fact that the plot allowed house positioning that would minimise potential conflict with agricultural uses and traffic. They did consider, however, that it was important that a house of sympathetic design, scale and siting was developed on the site to respect the attractive rural vernacular of the group and its position within the Tweed Valley Special Landscape Area. This could be addressed fully at the next planning submission stage but should also be indicated to the applicant by means of an Informative Note.

The Review Body also noted the agent's sequential assessment of other opportunities within the group and, whilst appreciating that this was not a Policy requirement, accepted there would be less conflict between the application site and the working farm than would be the case with other plots assessed.

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. Thereafter the development shall be carried out in accordance with the agreed details.

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 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 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. existing landscaping features and trees to be retained, protected and, in the case of damage, restored
- iii. location and design, including materials, of walls, fences and gates
- iv. soft and hard landscaping works including establishment of firm planted boundaries to the plot
- v. existing and proposed services such as cables, pipelines, sub-stations
- vi. A programme for completion and subsequent maintenance.

Reason: To ensure the satisfactory form, layout and assimilation of the development.

4. No development shall commence until the details of the access and the parking and turning facilities within the site have been submitted to and approved by the Planning Authority. Thereafter, the works shall be implemented in accordance with the agreed details and within an agreed timescale.

Reason: To ensure the site is adequately serviced.

5. No development to commence until further details of the provision foul and surface water drainage are submitted to, and approved by, the Planning Authority. The details should include evidence that arrangements are in place to ensure that the private drainage system will be maintained in a serviceable condition. The development then to proceed in accordance with the approved details.

Reason: To ensure that satisfactory arrangements are made for the disposal of surface and foul water.

6. No development is to commence until a report 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 and quantity. The report must also detail all mitigation measures to be delivered to secure the quality, quantity and continuity of water supplies to properties in the locality which are served by private water supplies and which may be affected by the development. The provisions of the approved report shall be implemented prior to the occupation of the building(s) hereby approved.
- Reason: To ensure that the development is adequately serviced with a sufficient supply of wholesome water and there are no unacceptable impacts upon the amenity of any neighbouring properties.

INFORMATIVES

With regard to Condition 1, the Review Body were of the opinion that the development should be of a quality and design in sympathy with the attractive rural and vernacular surroundings of the site, utilising the guidance contained within Policy PMD2 of the Local Development Plan and the relevant Council Supplementary Planning Guidance on Placemaking and Design and New Housing in the Countryside.

With regard to Condition 5, the Environmental Health Service advise the following:

Private drainage systems often cause public health problems when no clear responsibility or access rights exist for maintaining the system in a working condition.

Problems can also arise when new properties connect into an existing system and the rights and duties have not been set down in law.

To discharge the Condition relating to the private drainage arrangements, the Applicant should produce documentary evidence that the maintenance duties on each dwelling served by the system have been clearly established by way of a binding legal agreement. Access rights should also be specified.

With regard to Condition 6, the Environmental Health Service advise the following:

To fulfil this Condition, the following information should be provided -

1. A description of the source(s) / type of the supply – i.e. whether the supply is taken from a watercourse, loch, spring, well or borehole, or any other source or combination of sources.
2. The location of the source(s) of the supply – i.e. the appropriate eight figure Ordnance Survey National Grid Reference(s).
3. The name and address of every relevant person in relation to the supply.
NB. A “relevant person”, in relation to a private water supply, means a person (or persons) who: (a) provide the supply; (b) occupy the land from, or on which, the supply is obtained or located; or (c) exercise powers of management or control in relation to the supply.
4. The estimated maximum average volume of water provided by the proposed supply, in cubic metres per day (m³/day), and the details of any pump tests/flow rate tests undertaken to determine this estimate.

NB. For boreholes/wells refer to BS ISO 14686:2003 "Hydrometric determinations – Pumping tests for water wells – Considerations and guidelines for design, performance and use".

5. Any water treatment that is intended to be carried out in relation to the proposed supply for the development.
6. Where there are existing users of the proposed supply, the addresses of all such properties.
7. Where there are existing users of the proposed supply, the existing and proposed occupancy levels of all such properties, as far as is reasonably practicable.

NB. As a minimum, the provision of the number of bedrooms per property will allow an estimate to be made of occupancy levels.

8. Where there are existing users of the proposed supply and / or there are other properties' private water supplies in the vicinity of the development that may be affected thereby (e.g. neighbouring boreholes, wells, springs, etc.), information advising if and how the proposed development will impact on the existing users and / or the other properties' supplies.
9. If the development is to be used for commercial purposes and / or members of the public will use / consume the water, the private water supply will be classed as a Type A supply. This will mean that it will require to be sampled / monitored by the local authority on at least an annual basis and a risk assessment of the supply will also be required. As such, prior to commencement of the commercial / public activity, the applicant should contact the Environmental Health Department of Scottish Borders Council to ensure that compliance with the legislative provisions is able to be secured.

For clarification, the minimum daily volume of water that requires to be supplied by a private water supply must be equivalent to 200 litres of water per person per day who will be using the supply. A reserve storage capacity of three days' supply should be provided. Also, the quality of the water throughout the building(s) must conform to the requirements of The Private Water Supplies (Scotland) Regulations 2006 in order for it to be classed as wholesome.

As the Development may result in the general public consuming the water from the private water supply, the supply will be classed as a Type A. This will mean that the supply will be subjected to annual water testing and a risk assessment of the supply. The applicant should contact an Environmental Health Officer before becoming operational to discuss testing of the water.

LEGAL AGREEMENT

The Local Review Body required that a Section 75 Agreement, or other suitable legal agreement, be entered into regarding the payment of a financial contribution towards education facilities in the locality.

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