

# Public Document Pack

## 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, 16 April 2018 at 10.00 am

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

Apologies:- Councillor C. Ramage.

In Attendance:- Principal Planning Officer – Major Applications/Local Review, Solicitor (E. Moir), Democratic Services Team Leader, Democratic Services Officer (F. Walling).

### MEMBERS

Councillor Aitchison and Councillor Small were not present at the beginning of the meeting for consideration of the undernoted application as Councillor Aitchison had declared an interest and Councillor Small had been absent when the initial consideration had taken place.

#### 1. CONTINUATION OF REVIEW OF 17/01008/FUL

With reference to paragraph 3 of the Minute of 19 February 2018 the Local Review Body continued their consideration of the request to review the decision to refuse the planning application in respect of erection of replacement dwellinghouse on land west of Glenkinnon Lodge, Peelburnfoot, Clovenfords. In response to the request by the Local Review Body for further procedure in the form of written submissions, in respect of the amended site plan (reference 9303.1.02 B), there had been circulated copies of submissions from the Council's ecology officer; landscape officer; planning officer; objectors; and a response to the submissions from the applicant. Also circulated were copies of all the original papers that accompanied the review. With guidance from the Legal Advisor, Members considered whether certain further matters included in the review documents and certain documents submitted as part of the further procedure constituted new evidence. For the reasons set out in Appendix I to this Minute, Members concluded that the applicant's explanation of the difference in the Valuation Roll extracts, the newspaper article submitted by two objectors and the two additional tree reports presented by the applicant were pieces of new evidence that did not meet the test under Section 43B of the Town and Country Planning (Scotland) Act 1997. These matters were therefore not referred to in their deliberations. Members' discussion focussed firstly on whether there was any evidence that the existing building, which it was proposed to replace, had been a dwellinghouse and secondly whether the proposal constituted a conversion. Consideration was then given to whether the proposal was related to a building group and whether there was an economic requirement for the development. Finally Members considered the impact of the proposal on the surrounding woodland amenity and in particular on the trees contained within a Tree Preservation Order.

### DECISION

#### AGREED that:-

- (a) **the review could now be determined without further procedure on the basis of the papers submitted and the further written submissions;**

- (b) in accordance with Section 43B of the Town and Country Planning (Scotland) Act 1997 the review be determined without reference to the new evidence outlined in the paragraph above;**
- (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 and the application refused for the reasons detailed in Appendix I to this Minute.**

## **MEMBERS**

Councillors Aitchison and Small joined the meeting.

### **2. REVIEW OF 17/01613/PPP**

There had been circulated copies of the request from Mr and Mrs B. Soar, per Aitken Turnbull Architects Ltd, 9 Bridge Place, Galashiels, to review the decision to refuse the planning application in respect of erection of dwellinghouse on land east of Keleden, Ednam. The supporting papers included the Notice of Review (including the Decision Notice); officer's report; papers referred to in the officer's report; consultations; support comments; objections; general comments; further representation and response from applicant; and a list of relevant policies. Members noted that the application site was outwith but adjoining the settlement boundary of Ednam as defined in the Local Development Plan. Their ensuing discussion therefore focussed on whether there were strong reasons for an exceptional approval. They attached significant weight to the recent erection of two dwellinghouses on the northern side of the road, which reduced the gap between the settlements of Ednam and Cliftonhill, and to the field boundary of the site which they considered represented a more logical boundary to Ednam than the current development boundary.

## **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 and a legal agreement, for the reasons detailed in Appendix II to this Minute.**

### **3. REVIEW OF 17/01409/FUL**

There had been circulated copies of the request from Mr Harry Thomson, 16 Craig Brown Avenue, Selkirk, to review the decision to refuse the planning application in respect of an extension to form a new living room at 16 Craig Brown Avenue, Selkirk. The supporting papers included the Notice of Review; Decision Notice; officer's report; papers referred to in the officer's report; consultations; objections; general comment; and a list of relevant policies. In their deliberations, Members referred to the original planning consent for the single storey house at 16 Craig Brown Avenue, which included a condition requiring two off-street parking spaces. They also noted that permitted development rights had been removed when the development was approved; the implication being that an extension would cause overdevelopment of the site. Whilst expressing sympathy with the applicant's wish to extend his living space, Members considered the effect of the loss of a

parking space within the site and the impact of the proposed extension on the adjoining properties and in particular on a proposed dwellinghouse on adjoining land, which had recently received planning approval.

## **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 17/01572/PPP**

There had been circulated copies of the request from Mrs Anne McKelvey, per Ferguson Planning, 54 Island Street, Galashiels, to review the decision to refuse the planning application in respect of the erection of a dwellinghouse on land south east of Beckhope, Kailzie, Peebles. Included in the supporting papers were the Notice of Review (including the Decision Notice and officer's report); papers referred to in the officer's report; consultations; and a list of relevant policies. The Local Review Body considered a piece of new evidence that had been submitted with the Notice of Review as detailed in Appendix IV to this Minute. After applying the test under Section 43B of the Town and Country Planning (Scotland) Act 1997 Members concluded, for the reasons given, that reference could be made to this new evidence as part of the determination of the review. Having agreed that there was a building group in the vicinity of the site Members noted that there had been a previous approval for a dwellinghouse on land to the south of the application site but that, due to woodland being established on the site a recent application to renew consent had been unsuccessful. Members' attention focussed on whether the alternative application site now proposed related well to the existing building group in terms of its location, character and scale. Consideration was also given to the fact that the site was located within a previously undeveloped field. After a lengthy debate Members' opinion remained divided on these issues.

### VOTE

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

*Councillor Mountford, seconded by Councillor Fullarton, 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 - 2 votes  
Amendment - 6 votes*

*The amendment was accordingly carried and the application approved.*

## **DECISION**

### **DECIDED 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) **in accordance with Section 43B of the Town and Country Planning (Scotland) Act 1997 the review could be determined with reference to the new evidence submitted with the Notice of Review documentation;**
- (c) **the review could be considered without the need for any further procedure on the basis of the papers submitted;**
- (d) **the proposal would be in keeping with the Development Plan; and**
- (e) **the officer's decision to refuse the application be reversed and planning permission be granted subject to conditions and a legal agreement, for the reasons detailed in Appendix IV to this Minute.**

**5. REVIEW OF 17/01704/FUL.**

There had been circulated copies of the request from Mr S. Wilson, 10 Springfield Square, St Boswells, to review the decision to refuse the planning application in respect of change of use from retail to dog grooming practice. The supporting papers included the Notice of Review (including the Decision Notice); officer's report; papers referred to in the officer's report; consultations; and a list of relevant policies. Members noted that the social media comments submitted by the applicant with the Notice of Review constituted new evidence as these had not been lodged with the appointed planning officer when the application was determined. They agreed that as this evidence did not meet the tests set out in Section 43B of the Town and Country Planning (Scotland) Act 1997 they would proceed to consider the case without reference to this information. Members noted that the application was for a Class 2 use and that the site, formerly a retail unit and now vacant, was within the Core Activity Area in Galashiels where policy normally opposed any uses other than Classes 1 and 3 at ground floor level. In the ensuing discussion Members discussed the nature of the business that was proposed for the premises, recognising that a dog grooming practice represented a niche service for which there was likely to be a demand. They noted that visits to the premises were likely to be associated with linked shopping trips, thereby increasing footfall in the town centre. In view of the pressure on small scale units within the town centre and the presence of large supermarkets Members considered the need for flexibility to provide a variety of different small units in Bank Street. The majority of Members indicated support of the application subject to the use of the premises being restricted to the dog grooming practice and not for any other Class 2 use. Councillor Small was opposed to this view and moved that the officer's decision to refuse the application be upheld but there was no seconder to this motion.

**DECISION**

**DECIDED 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) **in accordance with Section 43B of the Town and Country Planning (Scotland) Act 1997 the review be determined without reference to the new evidence submitted with the Notice of Review documentation;**
- (c) **the review could be considered without the need for any further procedure on the basis of the papers submitted;**
- (d) **the proposal would be in keeping with the Development Plan; and**

- (e) the officer's decision to refuse the application be reversed and planning permission be granted subject to conditions and an informative for the reasons detailed in Appendix V to this Minute.**

*The meeting concluded at 1.00 pm*

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## **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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**APPENDIX II**

**SCOTTISH BORDERS COUNCIL  
LOCAL REVIEW BODY INTENTIONS 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:** 18/00004/RREF

**Planning Application Reference:** 17/01613/PPP

**Development Proposal:** Erection of dwellinghouse

**Location:** Land East of Keleden, Ednam, Kelso

**Applicant:** Mr & Mrs Brian Soar

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**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:

<b>Plan Type</b>	<b>Plan Reference No.</b>
Location Plan	AT3007 PP-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 16<sup>th</sup> April 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 Officer's Report; d) Consultations; e) Support comments; f) Objections; g) General comments; h) Further representations and response from applicant; and i) List of Policies, the Review

Body proceeded to determine the case. They also noted the applicant's request for further procedure in the form of a site visit but did not consider this necessary after considering the case and 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, PMD4, ED10, HD2, HD3, IS2, IS5, IS7 and IS9

### Other Material Considerations

- SBC Supplementary Planning Guidance on New Housing in the Borders Countryside 2008
- SBC Supplementary Planning Guidance on Placemaking and Design 2010
- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006
- SBC Supplementary Planning Guidance on Development Contributions 2011

The Review Body noted that the proposal was for planning permission in principle to erect a dwellinghouse on a plot to the eastern edge of Ednam, east of a property known as Keleden, and west of Cliftonhill Farm. Access would be taken off the public road to Cliftonhill.

Members noted that the application site was outwith but adjoining the settlement boundary of Ednam as defined in the Local Development Plan. From the supporting papers and the site photographs, they also had regard to the recent erection of two dwellinghouses on the northern side of the road, close to the plot. These houses were consented by the Review Body in relation to an application for planning permission in principle in 2011, followed up by the detailed house designs. The Review Body gave significant weight to the presence of these houses in assessment of the proposal. The Review Body also noted the planning history on the site including previous refusals and rejection at Local Review.

Members considered the proposal principally against Policy PMD4 of the Local Development Plan and, firstly, against each of the four exception criteria. Whilst it was accepted that the proposal was not justified on an economic basis nor represented an affordable housing proposal, the Review Body did note the local support for the proposal and the contribution another house would make to the community and local facilities, accepting that there was a local need for housing. They, therefore, felt that two of the exception criteria were met by the proposal.

The Review Body then considered the secondary criteria under Policy PMD4 and accepted that they were met by the proposal, especially in relation to the site representing a logical extension to the settlement edge of Ednam. Members considered that with the current field edge to Cliftonhill being augmented by the planting that has been carried out, this was a more defined visible boundary to Ednam than the current boundary. This could be further augmented by planting through a planning condition.

The Review Body also considered that there was a significant impact created by the two new houses north of the public road that were added to the Cliftonhill building group, diminishing the gap between Ednam and Cliftonhill to the extent that there was less justification in retaining the application site as a remaining gap, the stronger and more natural boundary being the field boundary to the eastern edge of the site.

It was also considered that the two new houses would have more visual impact on the landscape than development of the application site, subject to precise design and siting agreed at the next planning stage. Members were also mindful of the fact that the site and other land north of the Cliftonhill road had been submitted by land owners as part of the Local Development Plan Review and that there was development pressure at this side of Ednam, albeit this could not be given any weight in the final decision as submissions were still being considered.

The Review Body then considered other matters including surface water drainage, boundary planting and road access. It was noted that drainage and planting works had already been undertaken and that further details of these matters, together with road access, could be addressed by planning 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. 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 planting to be retained 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 roadside treatment
- 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 serving the site, which shall include a service lay-by and interceptive drainage measures, 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 of water, foul and surface water drainage are submitted to, and approved by, the Planning Authority. The development then to proceed in accordance with the approved details.

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

## **INFORMATIVES**

With regards to Condition 2, the Roads Planning Service advises that the access should be no steeper than 1 in 15 for the initial 5m and that the service lay-by should be designed as per SBC specification DC-3. Only contractors approved by the Council may work within public road boundary.

## **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.

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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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**APPENDIX III**

**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:** 18/00005/RREF

**Planning Application Reference:** 17/01409/FUL

**Development Proposal:** Extension to form new living room

**Location:** 16 Craig Brown Avenue, Selkirk

**Applicant:** Mr Harry Thomson

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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 extension would reduce the available off-street parking below the minimum standard specified in the Local Development Plan 2016. The extension would also not relate well to the adjoining proposed property to the north east, and would be potentially detrimental to its amenity. The development is, therefore, contrary to Policies PMD2, HD3 and IS7 of the Local Development Plan 2016.

**DEVELOPMENT PROPOSAL**

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

<b>Plan Type</b>	<b>Plan Reference No.</b>
Location Plan Elevations	HT/EX/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 16<sup>th</sup> April 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) Consultations; f) Objections; g) general Comment; and h) 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 suggestion for a site visit but did not consider this 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: PMD2, HD3, EP7, and IS7.

### **Other Material Considerations**

- SBC Supplementary Planning Guidance on Placemaking and Design 2010
- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006

The Review Body noted that the proposal was to erect an extension to the front of the dwellinghouse to form a living room, creating an additional 28 square metres of floorspace and occupying an area currently used for off-street car parking. It was noted that the extension would be single storey to match with the existing dwellinghouse and that one car parking space would be removed as a result.

Members were also made aware of the details of the proposed dwellinghouse on adjoining land at 3 Tait's Hill (application reference 17/01308/FUL) which was approved under delegated powers by the Appointed Officer on 7<sup>th</sup> December 2017, subject to conclusion of a legal agreement.

The Review Body firstly considered the issue of loss of a parking space as a result of the extension. They noted the planning history of the site and the fact that two off-street parking spaces met with Council standards and were required to be provided and maintained by planning condition on the original approval for the existing house. Whilst they considered the applicant's comments about the nature of the cul-de-sac and neighbouring parking provision, they agreed with the Appointed Officer that the removal of one parking space would contravene the Council's established standards that require two off-street parking spaces for a new house. Members also considered that the amenity of adjoining properties would be adversely affected through the loss of the parking space, given the nature of the surrounding area.

The Review Body then considered the impacts of the extension on adjoining properties, paying particular regard to both the history of the site itself and also the details of the dwellinghouse to be erected on land adjoining to the rear of 3 Tait's Hill. They noted that permitted development rights had been removed when the house on the application site was originally approved, reflecting the concern that the house could cause issues of overdevelopment if enlarged. They considered that the extension would represent overdevelopment of the site, causing not only detrimental impacts on the street scene when viewed from the cul-de-sac but also residential amenity impacts in relation to the proposed house on the land adjoining the site. Whilst they understood privacy impacts could be partly addressed through window repositioning, reflecting the comments of the owner of the adjoining site, they still considered the extension would cause problems of proximity to the proposed house with insufficient space for satisfactory screening.

The Review Body, therefore, agreed with the Appointed Officer that the extension represented overdevelopment of the site to the detriment of the amenity of adjoining property.

## **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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**APPENDIX IV**

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

**Planning Application Reference:** 17/01572/PPP

**Development Proposal:** Erection of dwellinghouse

**Location:** Land South East of Beckhope, Kailzie, Peebles

**Applicant:** Mrs Anne McKelvey

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**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:

<b>Plan Type</b>	<b>Plan Reference No.</b>
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 16<sup>th</sup> 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 (m<sup>3</sup>/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.

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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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**APPENDIX V**

**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:** 18/00007/RREF

**Planning Application Reference:** 17/01704/FUL

**Development Proposal:** Change of use from retail to dog grooming practice

**Location:** 38 Bank Street, Galashiels

**Applicant:** Mr S Wilson

---

**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 and an informative as set out below.

**DEVELOPMENT PROPOSAL**

The application relates to the change of use from retail to a dog grooming practice. The application drawings and documentation consisted of the following:

<b>Plan Type</b>	<b>Plan Reference No.</b>
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Location Plan	
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**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<sup>th</sup> April 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 Officer's Report; d) Consultations; and e) List of Policies, the LRB considered whether the social media comments submitted by the applicant 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 comments could have been provided and been in front of the Appointed Officer before the application was determined and that there were no exceptional circumstances that meant they could not have been provided at that time. The Review Body proceeded to determine the case without reference to this information. They also noted the applicant's request for further procedure in the form of a site visit and hearing but did not consider this necessary after considering the case and 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: PMD2, PMD5, ED3, ED4, HD3, EP7, EP9, IS2, IS7, IS8 and IS9

Other Material Considerations

- Scottish Planning Policy 2014

The Review Body noted that the proposal was to change the use of a former retail unit into a dog grooming practice and that this would constitute Class 2 Use under Town and Country Planning (Use Classes) (Scotland) Order 1997. They noted the proposal was for change of use only and that there were no alterations proposed to the shopfront.

Members principally considered the application against Policy ED4, noting that the application site was within the defined Core Activity Area in Galashiels, the Policy normally opposing uses other than Classes 1 and 3 at ground floor level within the Area. As the proposed use fell within Use Class 2, Members then considered the potential contribution of the proposed use to the retail function of Galashiels, using the criteria listed in the justification for Policy ED4 in the Local Development Plan.

In doing so, they noted the consultation response from Economic Development which supported the proposed use, whilst also accepting the point made by Forward Planning that it would not be the case that "any use is better than no use". Members were particularly influenced by the specific nature of the proposal for a dog grooming business, believing that this was a specialist service that would be likely to generate linked shopping trips associated with visiting the use, additional footfall and provide diversity and the type of niche small scale unit that should be encouraged in the retail centre. This would integrate with the variety of different small units in Bank Street, some of them non-retail.

Members considered that there needed to be some flexibility when it related to small scale units, given the pressures within the town centre and the presence of larger stores. Whilst noting that the shop had not been vacant for long, Members considered it important that the proposed use would allow the unit to be occupied, to the benefit of the retail centre. It was

also noted that there would be some ancillary sales of products within the unit and that the shopfront would be unaltered.

Having considered the contribution of the proposed use against the relevant criteria under Policy ED4, the Review Body considered that there would be a positive contribution and that the change of use could be supported. Members then discussed issues relating to length of consent and other uses within Use Class 2. They concluded that there was no justification for a temporary period of consent but that it would be necessary to limit the use to that applied for, rather than allowing any other use within Use Class 2. Members also required an Informative note added to the consent to advise the applicant on the potential need for consent in relation to any new signage or shopfront alteration.

## **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.

## **DIRECTION**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with Section 58 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

## **CONDITION**

1. The premises shall be used for a dog grooming practice only and for no other purpose (including any other purpose in Class 2 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 is restricted to that applied for.

## **INFORMATIVE**

1. Please note that as the property is within a Conservation Area, any alterations to the shopfront, including changes in colour, are likely to need the submission of a separate planning application. Advertisement Consent may also be necessary for any new signage proposals.

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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