

**SCOTTISH BORDERS COUNCIL**  
**LOCAL REVIEW BODY**

MINUTE of MEETING of the LOCAL  
REVIEW BODY held in the Council  
Headquarters, Newtown St. Boswells  
on 21 September 2015 at 10.00 a.m.

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Present:- Councillors J. Brown (Chairman), M. Ballantyne, J. Campbell,  
J. Fullarton, I. Gillespie, S. Mountford, B. White.  
Apologies:- Councillor D. Moffat, R. Smith.  
In Attendance:- Lead Officer Plans and Research, Chief Legal Officer, Democratic  
Services Team Leader, Democratic Services Officer (F. Walling).

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**DECLARATIONS OF INTEREST**

1. In terms of Section 5 of the Councillors Code of Conduct, Councillor White declared an interest in Item 4 of the agenda (paragraph 2), Councillor Gillespie declared an interest in Items 4 and 5 (paragraphs 2 and 3) and Councillor Fullarton declared an interest in Item 5 (paragraph 3). The Councillors left the meeting during consideration of these respective reviews.

**REVIEW OF APPLICATION 15/00511/FUL**

2. There had been circulated copies of the request from Mr Peter Smillie, per Mac Brown, Mill Cottage, Annay Road, Melrose, to review the decision to refuse the retrospective planning application in respect of the erection of decking and balustrade at 12 Todburn Way, Clovenfords. Included in the supporting papers were the decision notice, Notice of Review, officer's report of handling, location plan, comment from Community Council, objections and a list of relevant policies. In considering the review, Members noted three actions the appellant had proposed in response to concerns expressed by the appointed officer. Two of these proposals were minor changes which, it was concluded, could be attached to conditions should consent be granted and if considered appropriate. In a lengthy debate about the degree of impact of the development in terms of the effect on amenity and privacy of neighbouring properties, Members noted that overlooking from the appellant's house was already an issue. It was also felt that the building of a deck, even within the scale of permitted development rights, would result in a degree of overlooking into neighbouring properties.

**VOTE**

*Councillor Fullarton, seconded by Councillor Brown, moved that the decision to refuse the application be upheld.*

*Councillor Mountford, seconded by Councillor Ballantyne, moved as an amendment that the decision should be overturned and the application approved, subject to conditions requiring the adoption of the appellant's Option 1 and planting being carried out to soften the mass and visual appearance of the deck.*

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

*Motion* - 2 votes  
*Amendment* - 3 votes

*The amendment was accordingly carried.*

**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) **the review could be determined without further procedure on the basis of the papers submitted;**
- (c) **subject to the amendments noted above, the development was consistent with the Development Plan and there were no other material considerations that would justify departure from the Development Plan; and**
- (d) **the decision of the appointed officer to refuse the application be reversed and the application for planning permission be granted, subject to conditions, as detailed in Appendix I to this Minute.**

**REVIEW OF APPLICATION 15/00179/FUL**

3. There had been circulated copies of the request from Mr Alex Wilson per VG Energy, Thainstone Agricultural Centre, Inverurie, to review the decision to refuse the planning application in respect of the erection of a wind turbine 34.4m high to tip and associated infrastructure on land south west of Clackmae Farmhouse, Earlston. The supporting papers included the decision notice, Notice of Review, officer's report of handling, consultations, additional representation and a list of relevant policies. The Local Review Body considered new evidence that had been submitted with the Notice of Review. In terms of Section 43B of the Act, Members concluded that this material had not been properly raised and proceeded to determine the case without reference to this evidence. After due consideration Members concluded that although there would be a visual impact of the turbine, particularly from receptors in parts of Earlston, any adverse impact would be outweighed by the potential economic benefits of the development.

**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) **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 development was consistent with the Development Plan and there were no other material considerations that would justify departure from the Development Plan; and**
- (e) **the decision of the appointed officer to refuse the application be reversed and the application for planning permission be granted, subject to conditions as detailed in Appendix II to this Minute.**

**REVIEW OF APPLICATION 15/00403/FUL**

4. There had been circulated copies of the request from Ms Paula Milanesi per Clarendon Planning and Development Ltd, 5A Castle Terrace, Edinburgh to review the decision to refuse the planning application in respect of the erection of a dwellinghouse on land south west of Pyatshaw Schoolhouse, Lauder. Included in the supporting papers were the decision notice, Notice of Review, officer's report, consultations, support comments and a list of relevant policies. From their initial discussion Members concluded that there was a building group in the vicinity of the site. Their attention then focused on the design of the proposed dwellinghouse, whether it was an appropriate addition to the building group and whether the removal of trees to accommodate the house and the proposed replanting was acceptable. They concluded that the innovative design was appropriate to the setting and that the proposed replacement planting of trees would balance those lost as a result of the planned development.

**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 development was consistent with the Development Plan and there were no other material considerations that would justify departure from the Development Plan; and**
- (d) **the decision of the appointed officer to refuse the application be reversed and the application for planning permission be granted, subject to conditions, an informative and a legal agreement, for the reasons detailed in Appendix III to this Minute.**

**REVIEW OF APPLICATION 15/00424/FUL**

5. There had been circulated copies of the request from Messrs Morgan Partnership, per Cockburn's Consultants, 29 Ryehill Terrace, Edinburgh, to review the decision to refuse the planning application in respect of the erection of a dwellinghouse on land south of Riding Centre, Sunnyside Farm, Reston. The supporting papers included the decision notice, Notice of Review, officer's report, consultations, support comment and a list of relevant policies. Having firstly concluded that there was a building group at Sunnyside Farm, Members went on to consider whether the house would be an acceptable addition to the building group in the location proposed. After discussion the majority view of Members was that the proposed location was well related to the existing group and was a logical extension to the group. Given their conclusion Members did not need to consider the economic justification for the proposal.

**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 development was consistent with the Development Plan and there were no other material considerations that would justify departure from the Development Plan; and**
- (d) the decision of the appointed officer to refuse the application be reversed and the application for planning permission be granted, subject to conditions, informative and a legal agreement, as detailed in Appendix IV to this Minute.**

*The meeting concluded at 12.40 pm*

## 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:** 15/00017/RREF

**Planning Application Reference:** 15/00511/FUL

**Development Proposal:** Erection of decking and balustrade

**Location:** 12 Todburn Way, Clovenfords

**Applicant:** Mr P Smillie

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### DECISION

The Local Review Body reverses the decision of the appointed officer and grants planning permission subject to conditions as set out in the decision notice

### DEVELOPMENT PROPOSAL

The retrospective application relates to the erection of decking and a balustrade to the rear of this detached property at 12 Todburn Way, Clovenfords. The application drawings consisted of the following drawings:

<b>Plan Type</b>	<b>Plan Reference No.</b>
Location Plan	SDC9
Block Plans / Site Plan	SDC10

### PRELIMINARY MATTERS

The Local Review Body considered at its meeting on 21<sup>st</sup> September 2015, that the review had been competently made under section 43A (8) of the Town & Country Planning (Scotland) Act 1997.

After examining the review documentation at that meeting, which included: (a) Decision Notice; (b) Notice of Review; (c) Report of Handling; (d) Location plan; (e) Comment from Community Council; (f) Objections; (g) List of Policies, the Review

Body concluded that it had sufficient information to determine the review and proceeded to consider the case. In coming to this conclusion, the Review Body considered the request from the applicants for further procedure in the form of written representations, one or more hearing sessions and a site visit.

The Appellant had submitted, with the Review Papers, three suggested proposals of action he could take to improve the development in light of the concerns detailed in the Appointed Officer's Refusal Notice. Of these compromise proposals, 2 were proposing fairly minor changes and were not considered to amount to material changes in the proposed development. Therefore it was concluded that the LRB could consider these options and if it was considered appropriate, attach conditions to any consent to effect these changes. These options were, in essence (1) blocking up the balustrade and (2) the setting the deck back from the boundary to accord with the permitted development rights for the deck as interpreted by the appellant.

However, the third option, which involved erecting 1.8m high timber balustrade panels next to the existing balustrade was considered to amount to a proposal to substantially change the proposed development. As such the Local Review Body concluded it would not be appropriate to consider this option during the course of the review, concluding that should the applicant desire to effect such a change it would require to be pursued through a fresh application.

## **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 2013 and the consolidated Scottish Border's Local Plan 2011. The Review Body considered that the most relevant of the listed policies were:

- Local Plan Policies: G1 and H2

Other material key considerations the Local Review Body took into account related to:

### **Other Material Considerations**

- Supplementary Planning Guidance – Householder Development 2006
- Supplementary Planning Guidance - Placemaking and Design 2010
- The Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2011
- Scottish Borders Proposed Local Development Plan 2013

Members of the Review Body noted the concerns raised by objectors regarding the overlooking impacts from the decking into neighbouring properties, windows and their respective gardens. It was noted that the applicant's house was located at a higher level than neighbouring properties and that overlooking was already an issue to a degree irrespective of the deck, and parts of the deck would not materially worsen the overlooking impacts. Members acknowledged that the appellant could erect a deck on his land without requiring planning consent. It was explained that under the

permitted development rights once any part of the deck exceeded 0.5m in height from the ground level planning consent would be required. Although the appellant suggested only 0.9m would be required to be removed from the deck in order for it to fall within the permitted development rights, the planning advisor suggested the set back would likely be considerably more onerous than that. Members felt that even building a deck within the permitted development rights would involve a degree of overlooking into neighbouring properties.

In considering the development, its impacts and the options (1) and (2) Members felt that the development did create a level of additional impact on the residential amenity and privacy of neighbouring properties,. They considered however that impact could be sufficiently mitigated by adopting option (1) and, in addition, requiring that planting be carried put in front of the deck in order to soften its mass and visual appearance.

## **CONCLUSION**

After considering all relevant information, the Local Review Body concluded that development, with the amendments detailed above being achieved by condition, was consistent to the Development Plan and that there were no other material considerations that would justify departure from the Development Plan.

## **CONDITIONS**

1. Amendments to the balustrade panels on top of the decking to be carried out to incorporate the formation of a cross hatched pattern with additional spars of 50mm centres and also spars on the inside of the panel to make a lattice effect pattern. Full details of this work to be submitted and approved in writing by the Planning Authority. This work to be implemented on site within 3 months of the decision date of the Local Review Body

Reason : To reduce privacy and amenity impacts of the decking on the residencies and their garden grounds to the north west

2. A landscape scheme to be submitted to the planning authority within 3 months from the decision date of the Local Review Body. The planting scheme to ensure coverage of the decking and to be submitted to and approved in writing by the planning authority, and shall include :

- i. location of all new plants
- ii. schedule of plants to comprise species, plant sizes and proposed numbers/density
- iii. programme for completion and subsequent maintenance.

Reason: To reduce privacy and amenity impacts of the decking on the residencies and their garden grounds to the north west

**Notice Under Section 21 of the Town & Country Planning (Schemes of Delegation and Local Review procedure) (Scotland) Regulations 2008.**

1. If the applicant is aggrieved by the decision of the planning authority to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.
  
2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.

**Signed..**Councillor J Brown  
Chairman of the Local Review Body

**Date ...**29 September 2015

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**APPENDIX II**

**SCOTTISH BORDERS COUNCIL  
LOCAL REVIEW BODY DECISION NOTICE**

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**APPEAL UNDER SECTION 43A (8) OF THE TOWN AND COUNTRY PLANNING  
(SCOTLAND) ACT 1997**

**THE TOWN AND COUNTRY PLANNING (SCHEMES OF DELEGATION AND  
LOCAL REVIEW PROCEDURE) (SCOTLAND) REGULATIONS 2013**

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**Local Review Reference:** 15/00018/RREF

**Planning Application Reference:** 15/00179/FUL

**Development Proposal:** Erection of wind turbine 34.4m high to tip and associated infrastructure

**Location:** Land to the south west of Clackmae Farmhouse, Earlston

**Applicant:** Mr A Wilson

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**DECISION**

The Local Review Body reverses the decision of the appointed officer and grants planning permission subject to conditions as set out in the decision notice

**DEVELOPMENT PROPOSAL**

The application is for the erection of a wind turbine 34.4m high to blade tip and associated infrastructure. The application drawings consisted of the following drawings:

<b>Plan Type</b>	<b>Plan Reference No.</b>
Location Plan	06450/024/B
Location Plan	06450/015/B
Site Plan	06450/016B
Elevations	06450/017/A
General	06450/018/A

**PRELIMINARY MATTERS**

The Local Review Body considered at its meeting on 21<sup>st</sup> September 2015, that the review had been competently made under section 43A (8) of the Town & Country Planning (Scotland) Act 1997.

After examining the review documentation at that meeting, which included: (a) Decision Notice; (b) Notice of Review and supporting papers; (c) Report of Handling; (d) Consultations (e) Additional Representation (f) List of Policies, the Review Body concluded that it had sufficient information to determine the review and proceeded to consider the case. In coming to this conclusion, the Review Body considered the request from the applicants for further procedure in the form of a site visit.

The Notice of Review indicated that new evidence had been submitted to the Local Review Body that had not been before the appointed officer when the case was determined. This was in respect of Appendix RS1 : Earlston - Topography and Directory and Direction of Proposed Turbine and Appendix RS2 : Earlston – Primary Views and Turbine Visibility. The applicant had provided no explanation as to why this material could not have been submitted at an earlier stage, nor any evidence to suggest that the late submission was as a result of exceptional circumstances. Members therefore concluded in accordance with Section 43B of the Act, that this material was not properly raised and proceeded to determine the case without reference to it.

## **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 2013 and the consolidated Scottish Border's Local Plan 2011. The Review Body considered that the most relevant of the listed policies were:

- SESplan Policy 10
- Local Plan Policies: G1, BE1, BE2, BE3, BE4, NE1, NE4, EP1,EP2, H2, Inf2, Inf 4, Inf 6 and D4

Other material key considerations the Local Review Body took into account related to:

### **Other Material Considerations**

- Supplementary Guidance on Wind Energy 2011
- Supplementary Planning Guidance on Landscape and Development 2008
- Supplementary Planning Guidance on Renewable Energy 2007
- Border Landscape Assessment ASH Consulting Group 1998
- Scottish Borders Proposed Local Development Plan 2013
- Scottish Planning Policy 2014
- National Planning Framework 2014
  
- Planning Advice Note 51: Planning, Environmental Protection and Regulation 2006
- Planning Advice Note 60: Planning for Natural Heritage 2008
- Planning Advice Note 73: Rural Diversification 2005
- Planning Advice Note 1/2011 Planning and Noise 2011

- Planning Advice Note 2/2011 Planning and Archaeology 2011
- Scottish Government On-line Renewables Advice: Onshore Wind Farms

The Review Body agreed with both the appointed officer and the applicant that the development complied with the majority of planning policy considerations relevant to such development proposals, and that it was only the degree of visual impact of the turbine from receptors within Earlston that was at dispute between the parties. Members therefore focussed the deliberations on this question

It was noted the applicant did not consider there were feasible alternative options for business purposes and that the proposal should be judged as submitted. The Review Body acknowledged that the turbine would be visible from receptors particularly in Earlston and in some parts of the town those were likely to be quite noticeable. This was particularly highlighted from Viewpoint 2 submitted as part of the application. This viewpoint was taken from the pitch at Earlston Rugby Club located within Mill Road. Here the impact of the turbine was heightened by the fact that it would breach the skyline. They considered this was likely to create an adverse impact.

However, as required by policy D4 any perceived adverse visual impacts should be weighed against any economic benefits of the turbine. It was agreed that the turbine would be beneficial to the operation of the working farm and this was enhanced by its location close to the dairy shed in close proximity to the turbine. The Local Review Body accepted the submissions made by the applicant as regards the benefits which would derive from the proposal. These included the direct benefit of reducing the financial burden of the farm associated with its power need and the reduction of the farm's carbon footprint, contributing to national energy policy. In addition the Local Review Body accepted the farm needed to seek to utilise green technology to satisfy the requirements imposed by its biggest customer (Tesco) to ensure it retained that business. Consequently, on balance, it was considered that the economic benefits of the turbine outweighed any negative impacts the turbine might have.

It was also noted that within the Report of Handling the planning officer stated that he did not consider the siting of the meter house next to the turbine to be appropriate and an alternative location could be considered, e.g. closer to the dairy shed. Members agreed that the location of the proposed meter house was acceptable as submitted and would not have any significant adverse impact on the area.

## **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.

## **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

## CONDITIONS

1. The development hereby permitted shall not be carried out otherwise than in complete accordance with the plans, specifications, requirements and obligations as set out in the Environmental Statement and associated documentation submitted as part of the application. Any variation thereto must be agreed in writing by the Planning Authority.

Reason: To ensure that the development is carried out in accordance with the approved details.

2. This permission shall be for a period of 25 years from the date of final commissioning. No later than 18 months prior to the end of the period of this planning permission, or by such later date as may be agreed by the Planning Authority, unless a further planning application is submitted and approved, the applicants shall submit a method statement for the decommissioning of the windfarm and the restoration of the application site for the approval of the Planning Authority. Decommissioning in accordance with the approved method statement shall be completed within 6 months of the end of the period of this planning permission or any alternative timescale agreed with the Planning Authority in writing and shall include the dismantling and removal from the site of all turbines, buildings and ancillary development.

Reason: To ensure an indicative scheme is submitted by the developer and approved by the Planning Authority for the decommissioning of the wind farm at the end of its 25 year proposed lifespan.

3. The proposed route for any abnormal loads on the road network must be approved by the planning authority in liaison with the trunk roads authority prior to the movement of any abnormal load. Any accommodation measures required including the removal of street furniture, junction widening, traffic management must similarly be approved.

Reason: To maintain safety for road traffic and the traffic moving to and from the development and to ensure that the transportation of abnormal loads will not have any detrimental effect on the road network

4. Any additional signing or temporary traffic control measures deemed necessary due to the size or length of loads being delivered must be undertaken by a recognised Quality Assured traffic management consultant, to be approved by the planning authority in liaison with the trunk road authority before delivery commences.

Reason : To minimise interference with the safety and free flow of the traffic on the road.

5. At wind speeds not exceeding 10m/s at rotor centre height, the wind turbine noise level at each noise sensitive property shall not exceed the levels stated in table 1 within the Informative

Reason: To protect the amenity of noise sensitive properties.

6. At the request of the Planning Authority, in the event of a complaint to Scottish Borders Council relating to noise emissions from the wind turbine, the wind turbine operator shall shut down the turbine not later than 24 hours after receipt of the request and at his own expense employ an independent consultant, approved by the

Planning Authority, to assess the level of noise emissions from the wind turbine (inclusive of existing background noise). The background noise level shall also be measured without the wind turbine operating. The noise of the turbine alone can then be calculated by logarithmic subtraction. If requested by the Planning Authority the assessment of noise emissions shall include an investigation of amplitude modulation in a manner agreed with the Authority.

Reason : To protect the amenity of noise sensitive properties.

7. Should the wind turbine sound pressure level exceed the level specified in table 1 within the informative the turbine shall cease operation until such time as it has been demonstrated to the Planning Authority that the sound pressure level, referred to in condition 5, can be achieved.

Reason : To protect the amenity of noise sensitive properties.

8. The turbine to be fitted with 25 candela omni-directional red lighting or infrared lighting with optimised flash pattern of 60no flashes per minute of 200ms to 500ms duration at the highest practicable point. The Ministry of Defence to be advised of the date construction starts and ends, the maximum height of construction equipment and the latitude and longitude of the turbine erected

Reason : In the interests of Ministry of Defence safeguarding

### Informative

As stated in condition no 5 noise levels should not exceed the following :

Table 1

Location		Wind speed at rotor height in m/s averaged over 1 minute periods. Sound pressure levels in dB LA90, 10mins						
Property Name	Map ref	4	5	6	7	8	9	10
3-4 CLACKMAE FARM COTTAGES	356061, 639247	26	31	32	32	32	30	31
1-2 CLACKMAE FARM COTTAGES	356069, 639307	25	30	31	31	31	29	31
GLENBURNIE FARMHOUSE	356051, 638802	23	28	29	29	29	27	29
CLACKMAE FARMHOUSE	356187, 639377	22	27	28	28	28	26	28
WEST LODGE, CAROLSIDE	355998, 639714	20	26	27	27	26	24	26
NETHER CAIRNIE	355969, 639764	20	25	26	26	26	24	26
CAIRNEY	354977,	17	22	23	23	23	21	22

MOUNT	639704							
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**Notice Under Section 21 of the Town & Country Planning (Schemes of Delegation and Local Review procedure) (Scotland) Regulations 2008.**

3. 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.
  
4. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.

**Signed..** Councillor J Brown  
Chairman of the Local Review Body

**Date...**29 September 2015

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### APPENDIX III

#### 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:** 15/00019/RREF

**Planning Application Reference:** 15/00403/FUL

**Development Proposal:** Erection of dwellinghouse

**Location:** Land south west of Pyatshaw Schoolhouse, Lauder

**Applicant:** Ms P Milanesi

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#### DECISION

The Local Review Body reverses the decision of the appointed officer and gives notice that it intends to grant planning permission subject to conditions and conclusion of a legal agreement as set out in this notice.

#### DEVELOPMENT PROPOSAL

The application relates to the erection of a house on land south west of Pyatshaw Schoolhouse, Lauder. The application drawings consisted of the following drawings:

<b>Plan Type</b>	<b>Plan Reference No.</b>
Location Plan	
Roof Plan	103
Floor Plans	110
Floor Plans	111
Sections	200
Existing Layout	101
Site Plan	102
Sections	300
Elevations	301
Elevations	302

## **PRELIMINARY MATTERS**

The Local Review Body considered at its meeting on 21<sup>st</sup> September 2015, that the review had been competently made under section 43A (8) of the Town & Country Planning (Scotland) Act 1997.

After examining the review documentation at that meeting, which included: (a) Decision Notice; (b) Notice of Review and supporting papers; (c) Report of Handling; (d) Consultations; (e) Support comments and (f) List of Policies, the Review Body concluded that it had sufficient information to determine the review and proceeded to consider the case. In coming to this conclusion, the Review Body considered the request from the applicants for further procedure in the form of a site visit.

As a point of clarity raised by the appellants it was noted the 2no comments had been received from the Council's landscape team. Although they were similar they had different conclusions. It was confirmed that the second response should take precedence. Although it identified some issues to be addressed, ultimately it did not formally object to the proposal.

## **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 2013 and the consolidated Scottish Border's Local Plan 2011. The Review Body considered that the most relevant of the listed policies were:

- Local Plan Policies: D2, G1, G4, G5, Inf4, Inf5, Inf6, H2, NE3, NE4, NE5

Other material key considerations the Local Review Body took into account related to:

### **Other Material Considerations**

- Supplementary Planning Guidance on New Housing in the Borders Countryside 2008
- Supplementary Planning Guidance on Placemaking and Design 2010
- Supplementary Planning Guidance on Privacy and Sunlight Guide 2007
- Supplementary Planning Guidance on Landscape and Development 2008
- Supplementary Planning Guidance on Trees and Development 2007
- Supplementary Planning Guidance on Development Contributions 2011
- Supplementary Planning Guidance on Biodiversity 2005
- Scottish Borders Proposed Local Development Plan 2013
- Scottish Planning Policy 2014
- Planning Advice Note 72 – Housing in the Countryside 2005

Members viewed slides of the site, which showed its characteristics, the design of the proposed new house, the proposed building materials, the trees to be removed to



accommodate the house and the replacement planting proposed. In the first instance members agreed that within the terms of the Housing in the Countryside policy there was a building group in the vicinity of the site and that the erection of a further house would not breach the 30% rule regarding the possible extension of that group. The Review Body's deliberations thereafter focussed primarily on whether the design of the house was appropriate in this rural location and whether the removal of trees and the proposed replacement planting was acceptable.

Noting the design was a modern one, members complemented its innovative appearance and supported the use of timber cladding, white painted facing brick and a pitched zinc roof. It was considered the design and materials were in accordance with the Council's Placemaking and Design Guidance.

Members did not consider that the proposed loss of the trees would be harmful to the amenity of the area, in the circumstances of this application. Indeed they noted that if the woodland was properly managed some trees would likely be removed in any event. Moreover, they considered that the proposed replacement planting would balance those lost as a result of the house and parking footprint and that this was an acceptable approach for the development to take.

The plans suggested the retention of a silver birch tree within the site although the proximity of the parking area may damage its root systems leading to its removal. Whilst that was considered regrettable members accepted this possibility but determined that an informative should seek to gain its retention if at all possible. A replacement tree should be planted in the vicinity of the silver birch to compensate if it does require to be removed.

## **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.

## **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

## **CONDITIONS**

1. Notwithstanding the description of the materials in the application, no development shall be commenced until precise details of the materials to be used in the construction of the external walls and roofs of the building have been submitted to and approved in writing by the Local Planning Authority, and thereafter no development shall take place except in strict accordance with those details.

Reason: The materials require further consideration to ensure a satisfactory form of development, which contributes appropriately to its setting.

2. 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 vegetation 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
- v. existing and proposed services such as cables, pipelines, sub-stations
- vi. other artefacts and structures such as street furniture, play equipment
- vii. A programme for completion and subsequent maintenance.

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

3. Before any part of the development hereby permitted is commenced detailed drawings showing which trees are to be retained on the site shall be submitted to, and be approved in writing by the Local Planning Authority, and none of the trees so shown shall be felled, thinned, lopped, topped, lifted or disturbed without the prior written consent of the Local Planning Authority.

Reason: To enable the proper effective assimilation of the development into its wider surroundings, and to ensure that those existing trees representing an important visual feature are retained and maintained.

4. Before any part of the permitted development is commenced, the trees to be retained on the site shall be protected by fencing to BS35837:2012 specification, placed at a minimum radius of one metre beyond the crown spread of each tree, and the fencing shall be removed only when the development has been completed. During the period of construction of the development:

- (a) No excavations, site works, trenches or channels shall be cut, or pipes or services laid in such a way as to cause damage or injury to the trees by interference with their root structure;
- (b) No fires shall be lit within the spread of the branches of the trees;
- (c) No materials or equipment shall be stored within the spread of the branches of the trees;
- (d) Any accidental damage to the trees shall be cleared back to undamaged wood and be treated with a preservative if appropriate;
- (e) Ground levels within the spread of the branches of the trees shall not be raised or lowered in relation to the existing ground level, or trenches excavated except in accordance with details shown on the approved plans.

Reason: In the interests of preserving the health and vitality of existing trees on the development site, the loss of which would have an adverse effect on the visual amenity of the area.

5. The construction detail of the access from the public road, over the verge, and into the site should be constructed with a bituminous surface(tar) preferably to the following standard (or similar) : 1no layer of 75mm thick (40mm size) bitumen blinded with grit to BS 4987 laid on 375mm of 75mm broken stone bottoming blinded with Type 1 sub-base. The work carried out within the road and verge to be carried out by an SBC approved contractor.

Reason : To ensure the access is satisfactorily constructed

6. Site clearance or disturbance of habitats which could be used by breeding birds, including hedgerows and trees, shall not be carried out during the breeding bird season (March-August) without the express written permission of the Planning Authority. Supplementary checking surveys and appropriate mitigation for breeding

birds will be required if tree felling and habitat clearance are to commence during the breeding bird season.

Reason : To safeguard sites of breeding birds

7. To protect the water body SEPA Pollution Prevention Guidelines PPG1, PPG5 (general guidance and works affecting watercourses), and PPG 6 (construction and demolition) to be adopted as appropriate. Prior to commencement of works a proportionate Construction Method Statement for Works is required.

Reason : In the interests of pollution prevention

8. The means of water supply, surface water and foul drainage to be submitted to and approved in writing by the Planning Authority before the development is commenced. The development shall then be implemented in accordance with the approved details.

Reason: To ensure that the site is adequately serviced.

## **INFORMATIVE**

The Local Review Body expressed a preference to retain the silver birch tree on the western side of the site. It is accepted in order to accommodate the house and its parking this may not be possible, and if not possible an alternative tree should be planted.

Environmental Health stated that in relation to the provision of solid fuel heating these installations can cause smoke and odour complaints and any Building and Planning Consents for the installation do not indemnify you in respect of Nuisance action. In the event of nuisance action being taken there is no guarantee that remedial work will be granted building/planning permission. The location of the flue should take into account other properties that may be downwind. The discharge point for the flue should be located as high as possible to allow for maximum dispersion of the flue gasses. The flue should be terminated with a cap that encourages a high gas efflux velocity. The flue and appliance should be checked and serviced at regular intervals to ensure that they continue to operate efficiently and cleanly. The appliance should only burn fuel of a type and grade that is recommended by the manufacturer. If you live in a Smoke Control Area you must only use an Exempt Appliance <http://smokecontrol.defra.gov.uk/appliances.php?country=s> and the fuel that is Approved for use in it <http://smokecontrol.defra.gov.uk/fuels.php?country=s> . In wood burning stoves you should only burn dry, seasoned timber. Guidance is available on - [http://www.forestry.gov.uk/pdf/eng-woodfuel-woodasfuelguide.pdf/\\$FILE/eng-woodfuel-woodasfuelguide.pdf](http://www.forestry.gov.uk/pdf/eng-woodfuel-woodasfuelguide.pdf/$FILE/eng-woodfuel-woodasfuelguide.pdf). Treated timber, waste wood, manufactured timber and laminates etc. should not be used as fuel. Paper and kindling can be used for lighting, but purpose made firelighters can cause fewer odour problems. The appliance should only burn fuel of a type and grade that is recommended by the manufacturer.

The Council's Flood Risk and Coastal Management stated that as access and egress to the development may be affected by flood waters, it is recommended that, to receive flood warnings from SEPA, the applicant signs up to FLOODLINE at [www.sepa.org.uk](http://www.sepa.org.uk) or by telephone on 0845 988 1188.

### **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 educational facilities.

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### **Notice Under Section 21 of the Town & Country Planning (Schemes of Delegation and Local Review procedure) (Scotland) Regulations 2008.**

5. 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.
  
6. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.

**Signed...**Councillor J Brown  
Chairman of the Local Review Body

**Date...**4 October 2015

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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:** 15/00020/RREF

**Planning Application Reference:** 15/00424/FUL

**Development Proposal:** Erection of house

**Location:** Land south of Riding Centre, Sunnyside Farm, Reston

**Applicant:** Mr A Morgan

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### **DECISION**

The Local Review Body reverses the decision of the appointed officer and gives notice that it intends to grant planning permission subject to conditions and the conclusion of a legal agreement as set out in the decision notice.

### **DEVELOPMENT PROPOSAL**

The application relates to the erection of a house on land south of Riding Centre at Sunnyside Farm, Reston. The application drawings consisted of the following drawings:

<b>Plan Type</b>	<b>Plan Reference No.</b>
Site Plan	6022.SP
Site Plan	6022PL2
General	6022PL1

### **PRELIMINARY MATTERS**

The Local Review Body considered at its meeting on 21<sup>st</sup> September 2015, that the review had been competently made under section 43A (8) of the Town & Country Planning (Scotland) Act 1997.

After examining the review documentation at that meeting, which included: (a) Decision Notice; (b) Notice of Review and supporting papers; (c) Report of Handling; (d) Consultations; (e) Support comment and (f) List of Policies, the Review Body concluded that it had sufficient information to determine the review and proceeded to consider the case.

Within the appellant's statement reference was made to agreement to submit and implement a landscape plan. Although this was not submitted to the appointed officer it was considered a natural consideration as part of any application submission and was not considered to be new material in terms of section 43B of the Act. The LRB agreed to give consideration to this request.

## **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 2013 and the consolidated Scottish Border's Local Plan 2011. The Review Body considered that the most relevant of the listed policies were:

- Local Plan Policies: G1, D2, G5, Inf4, Inf5, H2, NE3, NE4,

Other material key considerations the Local Review Body took into account related to:

### **Other Material Considerations**

- Supplementary Planning Guidance on Placemaking and Design 2010
- Supplementary Planning Guidance on New Housing in the Borders Countryside 2008
- Supplementary Planning Guidance on Privacy and Sunlight Guide 2006
- Supplementary Planning Guidance on Landscape and Development 2008
- Supplementary Planning Guidance on Development Contributions 2011
- Supplementary Planning Guidance on Biodiversity 2005
- Planning Advice Note 72 – Housing in the Countryside
- Scottish Borders Proposed Local Development Plan 2013
- Scottish Planning Policy 2014

The Review Body viewed and noted the plans submitted, photographs of the proposed site and details of the proposal. Although a business case was submitted with the application in support of the proposed house, in the first instance members considered whether there was a building group at Sunnyside Farm. They noted the existence of a farmhouse, the applicant's property and 3no cottages owned by the farm. They considered such a group existed and that the possibility of development within that group could be allowed under the 30% expansion rule.

The members noted the views of the Appointed Officer and in particular the conclusion that the proposal to develop into an open field which extended outwith the natural boundaries of the group was not in compliance with the Housing in the Countryside policy. They turned their attention therefore to whether the house would be an acceptable addition to the group.

Members considered that the location of the house immediately next to the riding arena was on an area of land which had a sense of place and related well to the existing group. Ultimately they considered the proposed location and details of the design of the single storey house to be an acceptable addition to the group. Members therefore concluded that the siting of the development at the proposed location would in itself be in accordance with the Development Plan and the Housing in the Countryside policy. Given that conclusion there was no need to further consider the economic justification for the proposal, nor was there any need to consider whether any occupancy conditions, or any other planning obligation, would be necessary to make the proposal acceptable.

## **CONCLUSION**

After considering all relevant information, the Local Review Body concluded that the development was consistent to the Development Plan and that there were no other material considerations that would justify departure from the Development Plan.

## **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

## **CONDITIONS**

1. Notwithstanding the description of the materials in the application, no development shall be commenced until precise details of the materials to be used in the construction of the external walls and roofs of the building have been submitted to and approved in writing by the Local Planning Authority, and thereafter no development shall take place except in strict accordance with those details.

Reason: The materials require further consideration to ensure a satisfactory form of development, which contributes appropriately to its setting.

2. The means of water supply, surface water and foul drainage to be submitted to and approved in writing by the Planning Authority before the development is commenced. The development shall then be implemented in accordance with the approved details.

Reason: To ensure that the site is adequately serviced.

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

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- ii. existing landscaping features, trees and vegetation 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
- v. existing and proposed services such as cables, pipelines, sub-stations
- vi. other artefacts and structures such as street furniture, play equipment
- vii. A programme for completion and subsequent maintenance.

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

4. Visibility to the left at the junction with the public road to be improved to provide a splay of 2.4m by 120m and maintained thereafter in perpetuity. This requires the removal of a short section of hedge, and minor alterations to the fence.

Reason : In the interests of road safety

5. Two parking spaces and turning to be provided within the curtilage of the site and retained in perpetuity thereafter.

Reason : To ensure adequate parking provision for vehicles

### **Informative**

SEPA stated that in relation to waste water drainage they note the applicant intends to deal with foul drainage arising from the site by way of a septic tank discharging to a soakaway. Assuming the porosity is suitable, this is acceptable to SEPA and potentially consentable under the Water Environment (Controlled Activities) (Scotland) Regulations (also known as CAR). The applicant should contact our SEPA Local Regulatory Team at the number below in order to discuss the CAR registration process.

SEPA also stated that details of regulatory requirements and good practice advice for the applicant can be found on the Regulations section of our website.

### **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 educational facilities.

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### **Notice Under Section 21 of the Town & Country Planning (Schemes of Delegation and Local Review procedure) (Scotland) Regulations 2008.**

- 7. 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.
- 8. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the



planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.

**Signed...**Councillor J Brown  
Chairman of the Local Review Body

**Date ...**4 October 2015

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