

# Public Document Pack

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

MINUTES of Meeting of the LOCAL REVIEW BODY held in Council Chamber, Council Headquarters. on Monday, 15 June, 2015 at 10.00 am

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Present:- Councillors R Smith (Chairman), J Brown (Vice-Chairman), M Ballantyne, D Moffat, J A Fullarton, S Mountford, B White and J Campbell

Apologies:- Councillor I Gillespie

Also Present:- Para 2: Councillors S. Bell, G. Garvie, G. Logan, Para 3: Councillor A. Nicol.

In Attendance:- Major Applications, Review and Enforcement Manager, Solicitor (G. Nelson), Democratic Services Team Leader, Democratic Services Officers (F. Henderson and F. Walling).

### 1. **DECLARATIONS OF INTEREST**

In terms of Section 5 of the Councillors Code of Conduct, Councillor Mountford declared an interest in respect of Item 5 of the agenda (paragraph 3) and Councillor Smith declared an interest in Item 6 (paragraph 4). Both Councillors left the meeting during consideration of these reviews.

### 2. **REVIEW OF APPLICATION 15/00275/FUL**

There had been circulated copies of the request from J T Ceramics Ltd, per Ferguson Planning, 54 Island Street, Galashiels, to review the decision to refuse the planning application in respect of part change of use to form Dental Surgery Suite at 3 Cherry Court, Cavalry Park, Peebles. Included in the supporting papers were the Decision Notice, Notice of Review and supporting papers, the officer's report of handling, consultation responses and a list of relevant policies. Members noted that Cavalry Park was classified as a Strategic Employment site in the Consolidated Local Plan and that the proposal, being Class 2 use, was contrary to Policy ED1 which stated that development for uses other than Classes 4, 5 and 6 would be refused. However it was also noted that Policy ED1 of the emerging Local Development Plan was not as restrictive. Members considered the nature of the business, the suitability of the location, how Cavalry Park was currently operating and the fact that the proposal would not involve the development of a vacant employment site. They concluded that there were material factors which outweighed the non-compliance with the Development Plan and that planning permission should be granted.

### **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 determined without further procedure on the basis of the papers submitted;**
- (c) **there were material factors which outweighed the non-compliance with 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, as detailed in Appendix I to this Minute.**

3. **REVIEW OF APPLICATION 14/01342/FUL**

There had been circulated copies of the request from Cheviot Vets, per Clarendon Planning and Development Ltd, Semple Street, Edinburgh, to review the decision to refuse the planning application in respect of the erection of a Veterinary Practice building on Plot 8 Pinnaclehill Industrial Estate, Kelso. Included in the supporting papers were the Decision Notice, Notice of Review and supporting papers, the officer's report of handling and papers referred to in the report, consultations, an additional representation from the Community Council and a list of relevant policies. In respect of new evidence submitted with the Notice of Review, Members agreed that this did not meet the tests set out in Section 43B of the Act and proceeded to determine the case without reference to this information. In considering the proposal Members noted that Pinnacle Hill was classified as a Strategic Employment site in the Consolidated Local Plan and that the proposal, being Class 2 use, was contrary to Policy ED1 which stated that development for uses other than Classes 4, 5 and 6 would be refused. However it was also noted that the emerging policy position in the Proposed Local Development Plan allowed some degree of flexibility in decision making. Members took into account the nature of the business, the important service already being delivered by the existing business, the suitability of the location and the potential high quality services and employment that the business would provide. Members' view was that the proposal was consistent with the emerging Local Development Plan policy as it would enhance the quality of Pinnaclehill as an employment location and contribute to the efficient operation of the strategic site. They concluded that there were material factors which outweighed the non-compliance with the Development Plan and that planning permission should be granted.

**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 determined without further procedure on the basis of the papers submitted;**
- (d) **there were material factors which outweighed the non-compliance with 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, as detailed in Appendix II to this Minute.**

4. **REVIEW OF APPLICATION 15/00111/FUL**

There had been circulated copies of the request from Mr Ronnie Wells, 1 Old Mill Cottages, Romanno Bridge, West Linton, to review the planning consent subject to a condition in respect of the erection of a boundary fence and garden shed (retrospective) at 1 Old Mill Cottages. Included in the supporting papers were the Decision Notice, Notice of Review and supporting papers, the officer's report of handling, consultation responses, support comments and a list of relevant policies. Members noted that, although the Notice of Review referred to the removal of the condition placed on the planning permission, their consideration of the matter was 'de novo'. After concluding that

the fence and shed were acceptable Members went on to consider the condition to paint the fence at the front of the property. Following detailed discussion Members' unanimous view was that the condition did not meet the tests set out in Circular 4/1998 as it would not be necessary, reasonable or beneficial to paint or stain the timber.

#### **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 determined without further procedure on the basis of the papers submitted; and**
- (c) the decision of the appointed officer be varied and unconditional planning permission be granted for the reasons detailed in Appendix III to this Minute.**

#### **5. REVIEW OF APPLICATION 14/00835/FUL**

There had been circulated copies of the request from Mr Alistair Moody to review the decision to refuse the planning application in respect of the siting of a static caravan (retrospective) at Tibbie Shiels Inn, St Mary's Loch, Selkirk. Included in the supporting papers were the Decision Notice, Notice of Review and supporting papers, the officer's report of handling and papers referred to in the report, consultations, an objection comment, further representation and a list of relevant policies. Members recognised that the planning application had been considered on the basis of the caravan being for permanent residential use. However new evidence relating to actual usage had been submitted with the Notice of Review which drew into question the policies against which the application had been considered. Members agreed that this new evidence, which was not before the appointed officer at the time of consideration of the application, did not meet the tests set out in Section 43B of the Act. Following detailed discussion Members' unanimous view was that the review could not be considered without further information. It was therefore proposed to defer consideration of the review and undertake further written procedure to obtain evidence of the actual usage of the caravan, the proposed use going forward and associated economic justification for that use.

#### **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) new evidence submitted with the Notice of Review documentation did not meet the tests of Section 43B of the Town and Country Planning (Scotland) Act 1997 and could not therefore be taken into consideration;**
- (c) the review could not be considered without further information in the form of written submissions as follows:**
  - (i) evidence of the basis on which the caravan had been occupied over the last 2-3 year period in respect of the nature of user and length of period(s) of use in each case; and**
  - (ii) the proposed use or uses going forward with economic justification for the use(s)**

*The meeting concluded at 11.50 am*

## APPENDIX I

### SCOTTISH BORDERS COUNCIL LOCAL REVIEW BODY DECISION NOTICE

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

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

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**Local Review Reference:** 15/00011/RREF

**Planning Application Reference:** 15/00275/FUL

**Development Proposal:** Part change of use to form dental surgery suite

**Location:** 3 Cherry Court Cavalry Park, Peebles

**Applicant:** J T Ceramics Ltd

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### DECISION

The Local Review Body reverses the decision of the appointed officer and grants unconditional planning permission for the reasons set out in this notice.

### DEVELOPMENT PROPOSAL

The application relates to the part change of use of the existing dental laboratory at 3 Cherry Court, Cavalry Park, Peebles to form dental surgery suite. The application drawings consisted of the following drawings:

<b>Plan Type</b>	<b>Plan Reference No.</b>
Location Plan	1:1250
Office 1 Floor Plan	CC-wd03 rev J
Internal Alterations	01
Panel Details	02

### PRELIMINARY MATTERS

The Local Review Body considered at its meeting on 15<sup>th</sup> June 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, which included: (a) Decision Notice, (b) Notice of Review and supporting papers, (c) Officer's Report of Handling, (d) Consultations and (e) List of Policies, the Local Review Body determined that it had sufficient information to determine the review. In coming to this conclusion, the

Review Body considered the applicant's request for further procedure in the form of one or more hearing sessions and a site inspection.

## **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:

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- Local Plan Policies: G1, H2, H3, INF4 and ED1

Other material considerations the Review Body took into consideration were:

- Scottish Planning Policy
- Proposed Local Development Plan - Policy ED1( Protection of Business & Industrial land)

The Review Body were conscious that section 25 of the Planning Act requires planning decisions to be made in accordance with the provisions of the development plan unless material considerations indicate otherwise.

The Review Body noted that the business unit lay within Cavalry Park, which is classified as a Strategic Employment Site in the Consolidated Local Plan. Members identified that Policy ED1 of the Local Plan was most critical to their deliberations, which stated:

*"Development for uses other than Classes 4, 5 and 6 on strategic employment sites in the locations identified under Policy E13 of the Structure Plan will be refused."*

Members concluded that as the proposal sought to introduce a use lying within Class 2 of the Town & Country Planning (Use Classes) Scotland Order 1997 the development was contrary to Policy ED1. The policy position is unequivocal in that all uses outwith classes 4, 5 & 6 will be refused. The development did not meet the policy's qualifying criteria and was therefore contrary to the Development Plan. The Review Body confirmed that the development was consistent with the other listed Development Plan policies.

In considering other material factors, the Review Body considered that these should be given significant weight in their deliberations. In the first instance, they acknowledged that Scottish Planning Policy was supportive of sustainable economic development and stated that planning authorities should "...give due weight to the net economic benefit of the proposed development." Members were content that this was a thriving business that was looking to expand its services and create employment for up to 8 new staff members. The economic benefits that would be generated by the development were in its favour.

The Review Body noted that Policy ED1 in the Proposed Local Development Plan now defined Cavalry Park as a Strategic High Amenity site, in which uses other than use class 4 would generally be refused. Members considered that this highlighted

there may be circumstances where alternative uses would be permissible and that the emerging policy position was not as restrictive as the existing Local Plan policy. In particular, the policy stated that a complementary use other than Class 4:

“...may be acceptable if it enhances the quality of the business park as an employment location.”

In this regard, Members considered, in detail, the nature of the business and its suitability at this location. In their view, the dental surgery was complementary to the existing business operation and would allow the business to grow and expand upon its specialist dental service. There were synergies in having the two elements of the business in the same location and it did not make practical or business sense for the business to be forced to consider a second premise elsewhere. The business would provide high quality services and employment and would, in Members’ view, clearly enhance the quality of Cavalry Park as an employment location. The development’s consistency with the emerging Local Development Plan policy was in its favour.

The Review Body also gave weight to how Cavalry Park was currently operating with a range of businesses, some in classes uses outwith the specified classes, which were flourishing and adding to the vibrancy of the business park. They also noted that another dental practice had been approved on the site in recent years.

The proposal would not involve the development of a vacant employment site and only required a modest portion of the floor space of the existing business to operate. Members noted that, in any event, there was a significant oversupply of such land within the Scottish Borders and the Peebles area and that there had been a low take-up of such land in recent years. The Review Body were satisfied that the development would not prejudice the availability of employment land at Cavalry Park, or the area more generally, and that this was also in its favour.

## **CONCLUSIONS**

The Local Review Body concluded that, whilst the development was contrary to the Development Plan, there were a number of material factors that affect the balance of the decision in its favour. It was Members’ determination that these matters outweighed the non-compliance with the Development Plan and that planning permission should be granted.

## **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

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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.

**Signed...** Councillor R Smith  
Chairman of the Local Review Body

**Date:...** 25 June 2015



## 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:** 15/00009/RREF

**Planning Application Reference:** 14/01342/FUL

**Development Proposal:** Erection of veterinary practice building

**Location:** Land South East Of Paul Burton Warehouse, Plot 8, Pinnaclehill Industrial Estate, Kelso

**Applicant:** Cheviot Vets

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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 notice and subject to the conditions listed below.

### DEVELOPMENT PROPOSAL

The application relates to the erection of veterinary practice building on land South East of Paul Burton Warehouse, Plot 8, Pinnaclehill Industrial Estate, Kelso. The application drawings consisted of the following drawings:

<b>Plan Type</b>	<b>Plan Reference No.</b>
Location Plan	LOC-01
Existing Layout	EX-01
Floor Plans	PL-01
Elevations	PL-02
Site Plan	PL-03

### PRELIMINARY MATTERS

The Local Review Body considered at its meeting on 15<sup>th</sup> June 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, which included: (a) Decision Notice, (b) Notice of Review and supporting papers, (c) Officer's Report of Handling, (including papers referred to in Report of Handling) (d) Consultations, (e) Additional representation from Community Council and (f) List of Policies, the Local Review Body determined that it had sufficient information to determine the review. In coming to this conclusion, the Review Body considered the applicant's request for further procedure in the form of a site inspection.

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 alternative sites and the sequential approach to their assessment set out in section 5.0 of the applicant's Notice of Review Supporting Statement. Members decided that this evidence did not meet the tests set out in Section 43B of the Act, and they 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 2013 and the consolidated Scottish Border's Local Plan 2011. The Review Body considered that the most relevant of the listed policies were:

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- Local Plan Policies: G1, H2, H3, INF3, INF4, INF6 and ED1

Other material considerations the Review Body took into considering were:

- Scottish Planning Policy
- Supplementary Planning Guidance on Householder Development 2006
- Supplementary Planning Guidance on Placemaking & Design 2010
- Supplementary Planning Guidance on Trees & Development 2008
- Supplementary Planning Guidance on Landscape & Development 2008
- Supplementary Planning Guidance on Timber in Sustainable Construction 2009
- Proposed Local Development Plan - Policy ED1( Protection of Business & Industrial land)

The Review Body were conscious that section 25 of the Planning Act requires planning decisions to be made in accordance with the provisions of the development plan unless material considerations indicate otherwise.

The Review Body noted that the development site lay within Pinnacle Hill, which is classified as a Strategic Employment Site in the Consolidated Local Plan. Members identified that Policy ED1 of the Local Plan was critical to their deliberations, which stated:

"Development for uses other than Classes 4, 5 and 6 on strategic employment sites in the locations identified under Policy E13 of the Structure Plan will be refused."

Members concluded that as the proposal sought to introduce a use lying within Class 2 of the Town & Country Planning (Use Classes) Scotland Order 1997, the development was contrary to Policy ED1. The policy position is unequivocal in that all uses out with classes 4, 5 & 6 will be refused. The development did not meet the policy's qualifying criteria and was therefore contrary to the Development Plan. The Review Body confirmed that the development was consistent with the other listed Development Plan policies in terms of its impact on neighbouring uses, its design, layout and landscape fit.

There was some frustration expressed by Members that the basis of employment land allocations and associated policies were resulting in viable businesses being turned away. Notwithstanding the existing policy position, the Review Body considered that there were a number of other material factors that should be given significant weight in their deliberations.

In the first instance, they acknowledged that Scottish Planning Policy was supportive of sustainable economic development and stated that planning authorities should "...give due weight to the net economic benefit of the proposed development."

Members acknowledged that the existing business was already delivering an important service to the rural community, providing equine and small pet care and to the farming community more generally. The provision of the new facility at Pinnaclehill would assist in the further development of their operations in the Scottish Borders enhancing the capacity of the business and importantly would create up to 5 new jobs at the facility, for professional and admin staff. Members also noted that in addition to the proposed facilities there was capacity and aspiration to expand the business to accommodate care for large animals in the future.

The Review Body concluded that the economic benefits that would be generated by the development were in its favour and they also gave weight to the positive support for the development from the local community and the Council's own Economic Development team.

The Review Body noted that Policy ED1 in the Proposed Local Development Plan now defined Pinnaclehill as a Strategic Business and Industrial Site, in which uses other than use class 4, 5 & 6 would generally be refused. Members considered that this wording highlighted there may be circumstances where alternative uses would be permissible. They were satisfied that the emerging policy position allowed some degree of flexibility in decision making and enabled them to take into account the nature and quality of the proposed business and the benefits it would bring to the local economy. In particular, the policy stated that uses other than Class 4, 5 & 6 can be considered if it can be:

*"...clearly demonstrated as contributing to the efficient functioning of an allocated site."*

In this regard, Members considered, in detail, the nature of the business and its suitability at this location. In their view, a modern veterinary surgery requires a location away from town centres and residential properties, with adequate access and parking facilities and that this site was ideally placed to accommodate the business and future proof it for expansion. It was also a logical position in terms of the practice catchment area and the practical management and operation of the business. The business would provide high quality services and employment and

would, in Members' view, clearly enhance the quality of Pinnaclehill as an employment location and contribute to the efficient operation of the strategic site.

The development's consistency with the emerging Local Development Plan policy was in its favour.

The proposal would involve the development of a vacant employment site. However, Members noted that there had been a low take up of such land in recent years at the site and in Kelso. The land at the extension to Pinnaclehill had been marketed for a considerable period with only limited success and if this development did not proceed it was likely that the site would remain vacant for the foreseeable future. The fact that all the allocated land in Kelso is classed as strategic, does not currently encourage this type of use and is potentially an impediment to business development.

The Review Body were satisfied that the development would not prejudice the availability of employment land at Pinnacle, or the area more generally, that it may in fact provide a stimulus for other businesses to develop at the site and that these factors were also in its favour.

## **CONCLUSIONS**

The Local Review Body concluded that, whilst the development was contrary to the Development Plan, there were a number of material factors that affect the balance of the decision in its favour. It was Members determination that these matters outweighed the non-compliance with the Development Plan and that planning permission should be granted.

## **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 buildings 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 all boundary fencing 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. Prior to the commencement of the development, details of the access, parking and turning facilities for the site to be submitted to and approved by the Planning Authority. Thereafter the works to be carried out in accordance with the approved details before the business becomes operational.

Reason: In the interests of road safety to ensure that site is adequately serviced.

4. No development shall commence until details of the means of water supply and of both surface water drainage and foul drainage have been submitted to, and approved in writing by, the Planning Authority. Thereafter the development shall be implemented in accordance with the approved details.

Reason: To ensure that the site is adequately serviced

5. Any noise emitted by plant and machinery used on the premises will not exceed Noise Rating Curve NR20 between the hours of 2300 – 0700 and NR 30 at all other times when measured within the nearest noise sensitive dwelling (windows can be open for ventilation). The noise emanating from any plant and machinery used on the premises should not contain any discernable tonal component. Tonality shall be determined with reference to BS 7445-2

Reason: To protect the residential amenity of nearby properties

6. The premises shall be used for a veterinary surgery 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 remains compatible within the site.

## **INFORMATIVE**

In respect of condition 3 above, the Roads Planning Officer requires that:

- The verge crossing to be surfaced to his specification i.e. A 40mm layer of 14mm size close graded bituminous surface course to BS 4987 laid on a 100mm layer of 28mm size dense base (roadbase) to the same BS laid on a 310mm layer of 100mm broken stone bottoming blinded with sub-base, type 1.
- The radii to be kerbed using precast concrete half battered radius kerbing.
- A footway link to be provided from the main entrance of the building to tie in with the existing footway provision opposite, on the main access road. This will include footway crossing points on both sides of the carriageway. Details of which must be submitted and approved by the Planning Authority and implemented thereafter prior to first occupation of the building.

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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.

**Signed...** Councillor R Smith  
Chairman of the Local Review Body

**Date:...** 25 June 2015

## 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:** 15/00008/RCOND

**Planning Application Reference:** 15/00111/FUL

**Development Proposal:** Erection of boundary fence and garden shed  
(retrospective)

**Location:** 1 Old Mill Cottages, Romannobridge, West Linton

**Applicant:** Mr Ronnie Wells

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### DECISION

The Local Review Body varies the decision of the appointed officer and grants unconditional planning permission for the reasons set out in this notice

### DEVELOPMENT PROPOSAL

The application is retrospective and relates to the erection of boundary fence and garden shed at 1 Old Mill Cottages Romannobridge. The application drawings consisted of the following drawings:

<b>Plan Type</b>	<b>Plan Reference No.</b>
Block Plan	001
Photographs	-

### PRELIMINARY MATTERS

The Local Review Body considered at its meeting on 15<sup>th</sup> June 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, which included: (a) Decision Notice, (b) Notice of Review and supporting papers, (c) Officer's Report of Handling, (d) Consultations, (e) Support comments and (f) List of Policies, the Local Review Body determined that it had sufficient information to determine the review. In coming to this

conclusion, the Review Body considered the applicant's request for further procedure in the form of further written procedure.

## **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:

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- Local Plan Policies: G1, G4, H2 and BE1

Other material considerations the Review Body took into considering were:

- Circular 4/1998 - The Use of Conditions in Planning Permissions

The Review Body noted that, whilst the Notice of Review specifically referred to the removal of the condition placed on the planning permission, their consideration of the matter was "de novo" and they were required to consider the acceptability, or otherwise, of the erection of the fence and the garden shed.

After considering the submitted documentation and the Planning Advisor's slide presentation, they concluded that the fence and the shed were acceptable and would have no adverse visual impact on the listed building, the area more generally or the amenity of the neighbouring properties.

Members turned their attention to the terms of the planning condition. In considering the condition, Members were aware of the tests of validity set out in planning circular 4/1998 and that conditions should not be imposed unless they are both necessary and effective, and do not place unjustifiable burdens on applicants.

The Review Body accepted that the fence currently looked rather raw in appearance but they were satisfied that, as the timber was tanalised, it would weather over time to a more natural and attractive appearance. They did not feel that it was necessary, reasonable or beneficial to paint or stain the timber. They also expressed concern that the painting or staining of the fence "dark green" would actually make it stand out more, particularly when contrasted against the red coloured render of the walls of the property.

## **CONCLUSIONS**

The Local Review Body concluded that the proposed garden shed and fence were consistent with the provisions of the listed Development Plan policies but that as the condition did not meet the tests set out in Circular 4/1998 it should be struck from the planning permission.



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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.

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

**Date:...**25 June 2015

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