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SCOTTISH BORDERS COUNCIL LOCAL REVIEW BODY

MINUTE of Meeting of the LOCAL REVIEW BODY held in Council Chamber, Council Headquarters, Newtown St Boswells, TD6 0SA on Monday, 19 October, 2015 at 10.00 am

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

1. **REVIEW OF APPLICATION 15/00616/FUL**

There had been circulated copies of the request from Mr Gethin Chamberlain, Raebank, Chapel Street, Selkirk, to review the decision to refuse the planning application in respect of the installation of 16 No solar photovoltaic (PV) panels to roof at Raebank, Chapel Street, Selkirk. Included in the supporting papers were the Decision Notice, Notice of Review, officer's report of handling, papers referred to in report, comment from Community Council, papers referred to in the report and a list of relevant policies. Members debated the application at length. Although recognising that the proposed photovoltaic panels would have a degree of impact they noted that the roof on which the panels were to be installed was not on a prime frontage within the Conservation Area. On balance they concluded that this impact would be outweighed by the benefits of the development in terms of the provision of renewable energy technology.

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 as detailed in Appendix I to this Minute.**

2. **REVIEW OF APPLICATION 15/00504/FUL**

There had been circulated copies of the request from Rural Renaissance Limited, per Felsham Planning and Development, 1 Western Terrace, Edinburgh, to review the decision to refuse the planning application in respect of external alterations and erection of 4 No flagpoles at West Grove, Waverley Road, Melrose. The supporting papers included the Decision Notice, Notice of Review, officer's report of handling, consultations,

objections and a list of relevant policies. In considering the application de novo Members initially discussed the proposed external alterations to the building, which they agreed were acceptable. However, they expressed concern about the proposed off-white colour of the render which they believed was not sensitive to the building or the surrounding area. They agreed that should the application receive consent, the applicant be obliged, by condition, to obtain agreement of the planning officer with regard to the choice of colour. Members' discussion then focused on the proposal to erect four flagpoles and the impact on the character of the surrounding area.

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 not be considered without further procedure in the form of an unaccompanied site visit; and**
- (c) as the location was relatively close, the meeting be adjourned to allow an unaccompanied site visit to be carried out.**

2.2 The meeting was adjourned at 11.35 am and reconvened at 12.30 pm.

2.3 Members continued consideration of the review and agreed that the site visit had been helpful in their assessment of the application. However, in view of the limited ground area in front of the building, they expressed concern at the lack of detail in the planning application with respect to the exact position and height of the flagpoles.

VOTE

Councillor Campbell, seconded by Councillor Smith, moved that the decision to refuse the application be upheld.

Councillor Fullarton, seconded by Councillor Mountford, moved as an amendment that the decision should be overturned and the application approved.

On a show of hands Members voted as follows:-

Motion - 3 votes

Amendment - 2 votes

The motion was accordingly carried.

DECISION

AGREED that:-

- (a) the review could now be determined without any further procedure on the basis of the papers submitted and following the site visit;**
- (b) the proposal would be contrary to the Development Plan and that there were no other material considerations that would justify departure from the Development Plan; and**
- (c) the decision of the appointed officer to refuse the application be upheld for the reasons detailed in Appendix II to this Minute.**

The meeting concluded at 12.45 pm



APPENDIX I

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

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

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

Local Review Reference: 15/00021/RREF

Planning Application Reference: 15/00616/FUL

Development Proposal: Installation of 16 no. solar photovoltaic panels to roof

Location: Raebank, Chapel Street, Selkirk

Applicant: Mr G Chamberlain

DECISION

The Local Review Body (LRB) reverses the decision of the appointed planning officer and grants planning permission as set out in the decision notice.

DEVELOPMENT PROPOSAL

The application relates to the erection of 16 no. solar photovoltaic panels on the south east facing roof of this detached property within Selkirk Conservation Area. The application drawings consist of the following :

Plan Type	Plan Reference No.
Location Plan	OS Extract
Planning Layout	Roof layout
Brochures	Solar Panel
Photos	As existing

PRELIMINARY MATTERS

The LRB considered at its meeting on 19th October 2015, that the review had been made under section 43A (8) of the Town & Country Planning (Scotland) Act 1997.

REASONING

After examining the review documentation at that meeting, which included : a) Notice of Review and accompanying papers including the decision notice, officer's report and comment from the Community Council; b) Papers referred to in officer's report and c) List of policies, the LRB considered that it had sufficient information to determine the review and proceeded to consider the case. In coming to this conclusion, the LRB considered the request from the applicants for further procedure in the form of written representations, one or more hearing sessions and a site visit.

Within the Notice of Review it was noted that the Appellant stated that "The interpretation of what constitutes unacceptable impact on the conservation area is subjective. The application needs to be seen in the context of the surrounding street and the precedent set by the approval of a larger application by the Parish Church has been overlooked". Members were advised that they should consider the Local Review proposals "de novo", but should have due regard to whether the Parish Church decision set a relevant precedent that was material to the current application.

Clarification was made in respect of reference given within the Notice of Review by the Appellants to the Town and Country Planning (General Permitted Development) (Domestic Microgeneration) (Scotland) Amendment Order 2009. The LRB acknowledged that the Order lays down the regulations as to whether proposals require planning consent or not – it does not state whether such proposals should or should not be approved. Whether proposals are consequently acceptable or not is guided by policy and other material considerations. The LRB noted that the proposal required planning consent as the property was located within the Selkirk Conservation Area of which the Council had withdrawn all normal permitted development rights.

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 LRB considered that the most relevant of the listed policies were:

- Local Plan policies : G1, BE4 and D4

Other material key considerations the LRB took into account related to:

Other Material Considerations

- Supplementary Planning Guidance on Renewable Energy 2007
- Supplementary Planning Guidance - Placemaking and Design 2010
- Historic Scotland's Managing Change in the Historic Environment "Micro Renewables" 2010
- Historic Scotland's Micro-renewables in the Historic Environment 2014
- Scottish Historic Environment Policy 2011
- Scottish Planning Policy
- Scottish Borders Proposed Local Development Plan 2013

Members of the LRB noted the proposed location and proposed array of the solar panels over the majority of the south east face of the roof and that the Appellant considered that the proposal would not be feasible from an economic point of view if the proposed number of panels were reduced.

Members of the LRB also noted the context of the surrounding streets and considered whether a precedent had been set by the approval of a larger application for a solar panel array at the Parish Church within the Selkirk conservation area. While members did consider that the Parish Church was a relevant consideration they considered that it did not set a general precedent for such proposals and that it could be distinguished from the current application given that in overall area terms only a small part of the church roof was covered by the array of solar panels, minimising the impact on the conservation area.

Whilst noting the proposal was within the Selkirk Conservation Area, members noted that the street that the solar array would face was not within the prime frontage. They considered that Chapel Street was not a primary route through the town nor did they consider it was of any great architectural merit. Members considered that the location of the property, and in particular the section of roof on which the panels are proposed, was not particularly prominent within the Conservation Area, that the scale of the panels was not prominent in relation to the context of the street and that in general solar panels were now considered a more common and less contentious means of renewable energy. Members made reference to the recently updated Council Guidance on Replacement Windows which stated that when determining applications for replacement windows cognisance should be given as to how prominent properties were within Conservation Areas, and that there could be more flexibility in more extreme cases. It was considered that this principal could also be applied to this proposal.

As required by policy D4 members weighed up the wider economic and environmental benefits of the solar panels against any perceived detrimental impacts on the Conservation Area. It was considered that in the specific location of the proposal the benefits outweighed any perceived detrimental impacts on the Conservation Area.

CONCLUSION

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

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...2nd November 2015



APPENDIX II

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

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

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

Local Review Reference: 15/00022/RREF

Planning Application Reference: 15/00504/FUL

Development Proposal: External alterations and erection of 4no flagpoles

Location: West Grove, Waverley Road, Melrose

Applicant: Rural Renaissance Ltd

DECISION

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

1. The proposed development is contrary to Adopted Local Plan Policy G1, in that the erection of the four no. flagpoles, would not be compatible with, or respectful of, the character of the surrounding area and neighbouring built form.
2. The proposed development is contrary to Adopted Local Plan Policy BE4 in that the erection of the four no. flagpoles would have an unacceptable adverse impact upon the character and appearance of the Conservation Area as a consequence of the unusual character of this aspect of the development; its siting immediately adjacent to the Conservation Area; and the high visibility of the site, which would mean that the aforementioned impacts would go unmitigated.

DEVELOPMENT PROPOSAL

The application relates to external alterations and the erection of 4no flagpoles at West Grove, Waverley Road, Melrose. The application drawings consisted of the following drawings :

Plan Type	Plan Reference No.
Location Plan	9208.1.01
Floor Plans	9208.1.02
Elevations	9208.1.03 Front
Elevations	9209.1.04 Side

PRELIMINARY MATTERS

The Local Review Body considered at its meeting on 19th October 2015, that the Review had been made under section 43A (8) of the Town & Country Planning (Scotland) Act 1997.

After examining the review documentation at that meeting, which included: a) Notice of Review and accompanying papers including Decision Notice and Officer's report; b) Consultation Responses; c) Objections and d) List of policies, the LRB concluded that it had sufficient information to determine the review and proceeded to consider the case. In coming to its conclusion the LRB considered the request from the applicants for a site inspection, further written submissions and one or more hearing sessions.

Within the Notice of Review it was noted that reference was made to a previous approval for flagpoles at the entrance to the applicant's site at Priorwood within the town. The Appellant considers this a precedent whilst the planning officer states that the site location, site characteristics and proposals are different. Members were advised that they should consider the Local Review proposals "de novo", with the issue of whether Priorwood set any precedent that was material to the current case also being a matter for the LRB to consider.

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 Borders Local Plan 2011. The LRB considered that the most relevant of the listed policies were:

- Local Plan policies : G1 and BE4

Other material key considerations the LRB took into account related to:

Other Material Considerations

Scottish Planning Policy
Scottish Borders Proposed Local Development Plan 2013

LRB members noted the full extent of all parts of the application proposal, and whilst not located within the Conservation Area the application site immediately adjoined it. Some concerns were raised regarding the proposed colour of the external render and that details of the proposal sun dial were limited. However, it was considered that appropriately worded conditions could be attached to any consent issued requiring the agreement of an alternative render and the submission of further details for approval regarding the sun dial. It was therefore not considered there would be any insurmountable issues to resolve these matters.

Members considered that the most contentious part of the proposal was the erection of the 4no flagpoles. Members noted that information regarding the flagpoles was limited, particularly that no specific heights were stated and that it could only be estimated they would be between 8 and 9 metres taking cognisance of plan ref 9208.1.03 which suggests they may be approximately 1 metre above the existing lighting column on site.

In order to fully assess the proposal members visited the site. On site members took cognisance of the proposed location of the flagpoles and their estimated heights, that the surrounding buildings were primarily residential properties, they considered how prominent they may be from a number of locations within the immediate vicinity and considered any perceived impacts the flagpoles will have on the Conservation Area.

The LRB agreed with the planning officer that Priorswood did not set a precedent effecting this proposal in that the site location, site characteristics and proposals are different.

Whilst having no general objections in principal to flagpoles, the LRB considered that in this specific instance their perceived overall heights, their prominent appearance due to their locations close to the roadside, their cluttered nature, the impact on the adjoining Conservation Area and that they were considered out of character with the residential area prevented members supporting the proposal. Although members considered that an alternative proposal for the siting and scale of the flagpoles could be more acceptable, members agreed that the application required to be judged as submitted.

CONCLUSION

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

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 ...2nd November 2015
