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SCOTTISH BORDERS COUNCIL LOCAL REVIEW BODY

MINUTE of Meeting of the LOCAL REVIEW BODY held in the Council Chamber, Council Headquarters, Newtown St Boswells, TD6 0SA on Monday, 14 December, 2015 at 10.00 am

- Present:- Councillors R. Smith (Chairman), J. Brown (Vice-Chairman), M. Ballantyne, J. Campbell, J. A. Fullarton, I. Gillespie, D. Moffat, S. Mountford and B White
- In Attendance:- Chief Planning Officer (Paragraphs 1 & 2), Planning Policy and Access Manager (Paragraph 3), Lead Officer Plans and Research (Paragraphs 4, 5 & 6), Solicitor (G. Nelson), Democratic Services Team Leader, Democratic Services Officer (F.Walling).

1. **DECLARATIONS OF INTEREST.**

In terms of Section 5 of the Councillors Code of Conduct Councillor Gillespie declared an interest in the review of application 15/00745/PPP and left the meeting during consideration of this review.

2. **REVIEW OF APPLICATION 14/00996/PPP**

There had been circulated copies of the request from Mr G. Drummond, per Richard Amos Ltd, 2 Golden Square, Duns, to review the decision to refuse the planning application in respect of the erection of a dwellinghouse on Plot A, Chirnside Station, Chirnside. Included in the supporting papers were the Decision Notice, Notice of Review, officer's report of handling, papers referred to in report, consultations and a list of relevant policies. Members accepted that there was a building group at Chirnside Station but after further discussion agreed with the appointed officer that the size of the group was 28 dwellinghouses. They accepted that addition of a further unit would be over the permitted policy threshold for expanding building groups but held a lengthy debate about the capacity of the group for further development. In terms of the position of the plot Members concluded that it was an acceptable addition to the building group. Although the proposed dwelling would impinge on the former railway route, it was noted that the existing right of way by-passed the site and would not be impacted by the development.

VOTE

Councillor Brown, seconded by Councillor White, moved that the decision of the appointed officer be varied and that the application be refused as the proposal would exceed the maximum threshold for expansion of the building group.

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

On a show of hands Members voted as follows:-

*Motion - 5 votes
Amendment - 4 votes*

The motion 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 considered without the need for any further procedure on the basis of the papers submitted;**
- (c) the proposal would be contrary to the Development Plan and that there were no other material considerations that would justify departure from the Development Plan; and**
- (d) the decision of the appointed officer to refuse the application be varied and the application for planning permission be refused for the reasons detailed in Appendix I to this Minute.**

3. REVIEW OF APPLICATION 15/00027/RREF

There had been circulated copies of the request from Park Resorts Ltd, per Bilfinger GVA, City Point, 29 King Street, Leeds, to review the decision to refuse the planning application in respect of change of use of land for siting 23 mobile homes (extension to holiday park) on land south west of Northburn Caravan Park, Pocklaw Slap, Eyemouth. The supporting papers included the Decision Notice, Notice of Review, officer's report of handling, papers referred to in the report, consultations, objections, additional representation and response and a list of relevant policies. Members noted that the application site was an allocated housing site as defined in the adopted Local Plan and Proposed Local Development Plan. Although they accepted that the proposed mobile homes had residential character and were of a quality that could be lived in all year round confirmation was given by the solicitor that legally they were defined as caravans and the planning advisor advised that as such for planning policy purposes they were not permanent dwellinghouses. It was recognised that these units would not contribute towards the overall housing requirements as set out in the Development Plan.

VOTE

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

Councillor Ballantyne, seconded by Councillor Mountford, moved as an amendment that the decision should be overturned and the application approved with the condition that the proposed mobile homes be licensed for permanent residential use.

On a show of hands Members voted as follows:

Motion - 6 votes

Amendment - 3 votes

The motion 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 considered without the need for any further procedure on the basis of the papers submitted;**

- (c) **the proposal would be contrary to the Development Plan and that there were no other material considerations that would justify departure from the Development Plan; and**
- (d) **the decision of the appointed officer to refuse the application be upheld and the application for planning permission be refused as detailed in Appendix II to this Minute.**

4. **REVIEW OF APPLICATION 15/00745/PPP**

There had been circulated copies of the request from Mr James Hewit, per Ferguson Planning, Shiel House, 54 Island Street Galashiels, to review the decision to refuse the planning application in respect of the erection of a residential dwelling, demolition of stables, access and associated works on land east of Park Lane, Croft Park, Croft Road, Kelso. Included in the supporting papers were the Decision Notice, Notice of Review, officer's report of handling, consultations, objection, additional representations and response, Local Development Plan further issues and a list of relevant policies. Members were aware the application was for planning permission in principle. Their discussion focussed on whether the development could be satisfactorily accommodated on the site and without adverse impact on the character of the surrounding area.

VOTE

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

Councillor Mountford, seconded by Councillor Ballantyne, moved as an amendment that the officer's decision be reversed and the application approved subject to conditions to include the provision of two parking spaces within the curtilage of the plot and the reduction in height of the hedge separating the private access and the public footway.

On a show of hands Members voted as follows:

Motion - 3 votes

Amendment - 5 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 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, as detailed in Appendix III to this Minute.**

ADJOURNEMENT

The meeting adjourned for lunch at 12:15 pm and re-convened at 1.00 pm

5. **REVIEW OF APPLICATION 15/00601/FUL**

There had been circulated copies of the request from Ms Donna Cornish, 7 The Weatherhouse, Bowhill, Selkirk, to review the decision to refuse the planning application in respect of replacement windows (retrospective) at the Tushielaw Inn, Ettrick, Selkirk. Included in the supporting papers were the Decision Notice, Notice of Review, officer's report of handling, papers referred to in report, consultation, objections and a list of relevant policies. Members discussed at length the appearance of the UPVC windows which had replaced timber sliding sash and case windows with astragels, noting that, as the Tushielaw Inn was neither listed nor within a conservation area, the Council's Supplementary Planning Guidance on Replacement Windows 2011 and Replacement Windows and Doors 2015 did not apply. Members considered how much weight to give to Historic Scotland's Guidance Note "Managing change in the Historic Environment: Windows". Members' opinions varied about the appearance and suitability of the replacement windows and, where Members were unhappy with the windows, about the practical steps which should be requested to improve their appearance.

VOTE

Councillor Moffat, seconded by Councillor Ballantyne moved that the officer's decision be reversed and the application approved.

The following amendments were moved:

- (I) Councillor Gillespie moved that the practicality of installing external astragels on all of the replacement windows be investigated.*
- (II) Councillor Fullarton moved that the officer's decision be varied and the four main windows either side of the front door be replaced with original timber astragelled sash and case windows.*
- (III) Councillor Fullarton moved that the officer's decision be varied and all the windows at the front of the building be replaced with original timber astragelled sash and case windows.*

None of the above amendments were seconded and they accordingly fell. The motion was therefore carried.

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 IV to this Minute.**

6. REVIEW OF APPLICATION 15/00662/FUL

There had been circulated copies of the request from Mr Mark Hepworth, Caroline Villa, Main Street, West Linton, to review the decision to approve the planning application subject to a condition in respect of the installation of two roof lights at Caroline Villa. Included in the supporting papers were the Decision Notice, Notice of Review, officer's report of handling, papers referred to in the report, consultation, objection and a list of

relevant policies. Members considered the application “de novo”, whilst noting that the reason stated for the appeal related to the condition seeking to ensure that the roof lights were permanently fixed and were fitted with obscure glass. The Local Review Body were content that the roof lights were of an appropriate conservation style for the property and their size and location on the roof were considered appropriate. After further discussion about the condition attached to the planning consent, Members concluded that for safety and ventilation purposes there was a need for the roof lights to open. However to prevent any potential overlooking of the neighbouring property it was agreed the roof lights should be fitted with obscure glass.

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 grant planning permission be upheld but that the attached planning condition be varied as detailed in Appendix V to this Minute.**

7. REVIEW OF APPLICATION 15/00682/FUL

There had been circulated copies of the request from RMR Ltd, per Erich Planning & Property Consultants, 40 Belgrave Road, Edinburgh, to review the decision to refuse the planning application in respect of the siting of a portacabin for use as a flour mill on land north west of Spruce House, Romano Bridge, West Linton. Included in the supporting papers were the Decision Notice, Notice of Review, officer’s report of handling, papers referred to in report, additional information, consultations and a list of relevant policies. In discussing the application Members noted that the application was for temporary consent for the portacabin for use as a flour mill, in order to test the success of the business venture. Members expressed general support for farm diversification and did not consider that the proposed location for the portacabin would result in any adverse impacts on existing residential properties or in terms of traffic generation. In conclusion Members agreed to approve the application and grant planning permission for a maximum period of 5 years.

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 as detailed in Appendix VI to this Minute.**

The meeting concluded at 2.40 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: 15/00023/RREF

Planning Application Reference: 14/00996/PPP

Development Proposal: Erection of dwellinghouse

Location: Plot A, Chirnside Station, Chirnside

Applicant: G Drummond

DECISION

The Local Review Body varies the decision of the appointed officer and refuses to grant planning permission for the following reason:

- 1 The proposal is contrary to policy D2 of the Scottish Borders Consolidated Local Plan 2011 as the proposal for the dwellinghouse would exceed the maximum threshold of 8 new dwellinghouses or a 30% increase in the size of the existing building group (when assessed in conjunction with associated applications 14/00997/PPP and 14/00995/PPP) during the current Local Plan period and the need for the number of units above this threshold in this location has not been adequately substantiated. The proposal would therefore represent an unacceptable and unjustified development which would inappropriately expand the building group into the surrounding countryside.

DEVELOPMENT PROPOSAL

The application relates to the erection of a dwellinghouse on Plot A, Chirnside Station, Chirnside. The application drawings consisted of the following drawings:

Plan Type	Plan Reference No.
Location Plan	-

PRELIMINARY MATTERS

The Local Review Body considered at its meeting on 14th December 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) Notice of Review and accompanying papers: including Decision Notice; (b) Officer Report (Report of Handling); (c) Papers referred to in officer's report; (d) Consultations; and (e) List of Policies, the Review Body concluded that it had sufficient information to decide the case. In coming to this decision, the Review Body considered the applicant's request for further procedure in the form of a site visit and a hearing session.

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 Policies: 8-Transportation and 11 – Delivering the Green Network
- Local Plan Policies: INF2, INF3, INF4, INF5 , INF6, H2, D2, G5 and G1

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

- Supplementary Planning Guidance on New Housing in the Borders Countryside 2008
- Supplementary Planning Guidance on Placemaking & Design 2010
- Supplementary Planning Guidance on Development Contributions 2011
- Scottish Borders Proposed Local Development Plan 2013 (Plus Reporters recommendations set out in their Report of Examination)

The Local Review Body was satisfied there was a building group at Chirside Station, as defined in Local Plan Policy D2 and in the approved Supplementary Planning Guidance on New Housing in the Borders Countryside. However, the size of the building group and its resultant capacity for further development was subject to significant debate and deliberation by Members.

The Review Body noted the applicant suggested there were 30 existing houses at the group but that the appointed officer only accepted a total of 28 dwellinghouses. Members examined in detail the "site plan" and "List of Dwelling and Addresses in the Building Group" in the applicants Statement of Appeal.

In considering Plot C (No. 30), they noted that Policy D2 of the Local Plan and Policy HD2 of the Proposed Local Development Plan set out that:

“The calculations on building group size are based on the existing number of housing units within the group as at the start of the Local (Development) Plan period. This will include those units under construction or nearing completion at that point.”

Whilst the Review Body accepted that the consent for Plot C had been implemented, due to modest site works being undertaken a number of years ago, there was no evidence of subsequent or recent construction works and the dwelling was not nearing completion at the start of the Local Plan period in 2011. Members concluded that Plot C (No. 30) could not count towards the number of dwellings in the group.

The position on No.29 (The Old Birdhouses) was less clear, in that it appeared to relate to a property in the same curtilage as No 27 (Chestnut Lodge) but it was not, on the basis of the available evidence, conclusively proven that two separate dwellinghouses existed. The only planning history at that property related to the formation of a “granny annexe”, which would be ancillary and would not be classed as a separate dwellinghouse in planning terms. Notwithstanding, the dubiety about this unit, Members observed that even if it was conclusively demonstrated that 29 dwellings existed at the locality the approval of a further unit would constitute a 31% increase in the capacity of the building group. This would have been above the permitted policy threshold for expanding building groups.

Members noted that planning permission had been granted for a dwellinghouse on Plot A on several occasions in the past but that since the recent approval in 2007 the Development Plan policy had changed in respect of group capacity for additional units. While the old policy allowed up to a 100% increase, this has been reduced in terms of the current Development Plan policy to the greater of either 2 dwellinghouses or 30 % within a Local Plan period. The policy had been introduced to allow only smaller scale additions to building groups and to ensure development was effectively assimilated into the form and nature of building groups. The Review Body were aware that 8 dwellinghouses had recently been approved at the group (using up the available 30% capacity) and they concluded that this consent should be developed before any further development was approved.

In the circumstances, the application would be contrary to Development Plan Policy D2 and HD2 of the Proposed Local Development Plan. The question of capacity could be re-considered in subsequent Local Plans periods, should new houses be built at the locus.

In terms of the development of the plot, the Review Body was satisfied that the proposal would be consistent with the existing development pattern at the group. The plot will relate well to the building group. Consequently, it was concluded that a house on the site would be an acceptable addition to the building group.

The Review Body did not accept that it was necessary, or practicable, to retain the former railway line for recreational use. The existing right of way (The David Hume Way) by-passed the site and would not be impacted by the development. Any proposed route along this section of the railway line would be limited by the development approved on Plot C and the restriction in travelling south through the Ahlstrom factory complex.

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.... Cllr R Smith
Chairman of the Local Review Body

Date:... 17 December 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: 15/00027/RREF

Planning Application Reference: 14/01282/FUL

Development Proposal: Change of use of land to form extension to existing holiday park

Location: Land South West of Northburn Caravan Park, Pocklaw Slap, Eyemouth

Applicant: Park Resorts Ltd

DECISION

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

1. The proposals would be contrary to policy H3 of the Consolidated Local Plan in that the proposed change of use of land would result in the loss of allocated housing land which is required to meet the housing land requirement for the Berwickshire Housing Market Area.
2. The proposal would be contrary to Policy Inf3 of the Consolidated Local Plan in that the proposed development would give rise to road safety concerns with additional traffic to the park requiring to access residential streets rather than utilising the existing park entrance and access route.

DEVELOPMENT PROPOSAL

The application relates the change of use of land to form an extension to the existing holiday park on land South West of Northburn Caravan Park, Pocklaw Slap, Eyemouth. The application drawings consisted of the following drawings:

Plan Type	Plan Reference No.
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Block Plans	3487-310
Location Plan	3487-300
Site Plan	3487-320A
Sections	3487-315

PRELIMINARY MATTERS

The Local Review Body considered at its meeting on 14th December 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; (c) Officer's Report (Report of Handling); (d) Papers referred to in officer's report; (e) Consultations; (f) Objections; (g) Additional representations and response and (h) List of Policies, the Review Body concluded that it had sufficient information to decide the case. In coming to this decision, the Review Body considered the applicant's request for further procedure in the form of a site visit, written submissions and a hearing session.

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 Policies: 5 – Housing Land
- Local Plan Policies: H1, H2, H3, INF2, EP2,EP4, G5 and G1

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

- Scottish Planning Policy
- Supplementary Planning Guidance on Development Contributions 2011
- Scottish Borders Proposed Local Development Plan 2013 (Plus Reporters recommendations set out in their Report of Examination)

The Review Body noted that the application site was an allocated housing site within the settlement boundary of Eyemouth, as defined in the adopted Local Plan and Proposed Local Development Plan. In addition, they were mindful that both plans protect existing land use allocations and state "Any other use on allocated sites will be refused" unless the developer sets out a persuasive case to justify an exception to this policy.

The Review Body accepted the proposed mobile homes (or residential standard lodges) were of a quality and standard to be lived in year round and that they had a residential character. They also noted that the occupancy and security of tender could also be controlled via a Residential Licence Agreement between the Park operator and the purchaser of the mobile home. However, mobile homes are legally

defined as caravans and are not therefore permanent dwellinghouses. In the circumstances, they do not contribute towards the overall housing requirements as set out in the housing land audits and the Development Plan.

The Review Body were aware that the loss of housing land was even more critical following the Reporters findings on the Local Development Plan, which indicated that there was a shortfall of housing land in the Scottish Borders and that the Council was required to produce Supplementary Guidance in the next year to provide for a further 916 houses. In their view, there was not sufficient justification to set aside the housing policy requirements to protect this allocation or for the alternative use of the site.

The Review Body noted the Council's affordable housing policy required a contribution of 25% affordable units from housing sites. Members acknowledged that the mobile homes could help provide a low cost form of alternative residential accommodation for certain groups in society that cannot afford main stream housing but that, at present, the Council's affordable housing policy did not allow for this type of provision. In their view, this was a matter that required further investigation and consideration in future policy reviews.

The Review Body also noted the Council's Developer Contribution policy and considered whether it could apply to this type of Development. Members were content that the general policy could and should apply to this type of Development, but considered that this point was not clearly addressed within the supplementary guidance. In their view, this was a matter that required further investigation and consideration in future policy reviews.

In terms of the proposed vehicular access, Members accepted the view of the appointed officer that as the site would be controlled and managed as an adjunct to the caravan park, it would need to be connected to the existing caravan site and that it would be best served by utilising the existing main caravan site entrance. They did not accept the need for a new access onto Pocklaw Slap or Barefoots Road.

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...Cllr R Smith
Chairman of the Local Review Body

Date:...17 December 2015



APPENDIX III

**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: 15/00028/RREF

Planning Application Reference: 15/00745/PPP

Development Proposal: Erection of residential dwelling, demolition of stables,
access and associated works

Location: Land east of Park Lane, Croft Park, Croft Road, Kelso TD5 7ET

Applicant: Jim Hewit

DECISION

For the reasons set out below, the Local Review Body overturns the decision of the appointed officer and grants planning permission in principle subject to directions and conditions as set out in this decision notice.

DEVELOPMENT PROPOSAL

The application relates to the erection of residential dwelling, demolition of stables, access and associated works in respect of land east of Park Lane, Croft Park, Croft Road, Kelso TD5 7ET. The application drawings consisted of the following drawings:

Plan Type	Plan Reference No.
Site Plan	SK02
Block Plan	SK01
Site Sections	SK03

PRELIMINARY MATTERS

After examining the review documentation, which included: (a) Notice of Review and accompanying papers - officer's report and decision notice of 1 October 2015 (b)

consultations (c) objection (d) additional representations and response (e) Local Development Plan further issues (f) List of Policies, the Review Body concluded that it had sufficient information to determine the review and that further procedure was not required in this instance. In coming to this conclusion, the Review Body took into account the applicant's request for further procedure in the form of a site visit.

The Local Review Body considered the Review competently made under section 43A (8) of the Town & Country Planning (Scotland) Act 1997 at its meeting on 14th December 2015.

REASONING

The determining issues in this review were:

- (1) whether the proposal would be in keeping with the Development Plan, and
- (2) whether there were any material considerations which would justify departure from the Development Plan.

The Development Plan comprises: SESplan Strategic Development Plan 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, G5, G7, H2

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

- Proposed Local Development Plan Policies: PMD2, PMD5, HD3, IS2
- Supplementary Planning Guidance on Placemaking & Design 2010
- Supplementary Planning Guidance on Landscape and Development 2008
- Supplementary Planning Guidance on Development Contributions 2015

The Review Body noted that the site lies within the settlement boundary of Kelso and that the site lies within the curtilage of the residential property known as Park Lane. The proposed area for building lies to the west end of the site in the vicinity of the loose box currently on site. The site constraints in terms of its steep slope were noted as were the proposed sections in relation to the development.

The Review Body was mindful of the provisions of Development Plan Policies that any development within a settlement boundary would require to meet the tests set by policies G1 and G7 (and H2). Members also noted that because the application was 'in principle' that it was unable to reach conclusions on a number of the criteria that would require further detail at the reserved matters stage. The meeting focused upon the compatibility of the proposed development with the surrounding area and on whether it could be satisfactorily accommodated on site.

Members noted that the proposal was acceptable to the Council Roads service subject to the inclusion of conditions in relation to the provision of car parking for two cars and associated turning, and the reduction in height of a hedge to allow visibility from the public footpath.

Members observed that it was a challenging site and that if Planning Permission in Principle was granted it would require, at the reserved matters stage, an innovative

and high quality solution to be found for the proposed dwelling house to fit well into its surroundings.

The Review Body on balance considered the site suitable for development in relation to the key determining policies.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was acceptable in relation to the Development Plan and that there were no other material considerations that would justify refusal of the proposal. The Local Review Body therefore agreed to overturn the officer decision and approve the appeal subject to directions and conditions.

DIRECTIONS

1. No development shall commence until the details of the layout, siting, design and external appearance of the building, the means of access thereto and the landscaping of the site have been submitted to and approved in writing by the Planning Authority.

Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

2. Application for approval of matters specified in the conditions set out in this decision shall be made to the Planning Authority before whichever is the latest of the following:

- (a) the expiration of three years from the date of this permission, or
- (b) the expiration of six months from the date on which an earlier application for approval of matters specified in the conditions set out in this decision notice was refused or dismissed following an appeal.

Only one application may be submitted under paragraph (b) of this condition, where such an application is made later than three years after the date of this consent.

Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

3. No development shall commence until all matters specified in conditions have, where required, been submitted to and approved in writing by the Planning Authority. Thereafter the development shall only take place except in strict accordance with the details so approved.

Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

4. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the matters specified in the conditions set out in this decision.

Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

CONDITIONS

1. Two parking spaces and turning to be provided within the curtilage of the plot and retained in perpetuity.

Reason: To ensure that there is adequate space within the site for the parking of vehicles clear of the highway.

2. The hedge that separates the private access from the public footway to be reduced in height to no greater than 1000mm over the first 2000mm in perpetuity.

Reason: To ensure that the development is served by a safe and satisfactory means of access.

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 Cllr R Smith

Chairman of the Local Review Body

Date: ...17 December 2015



APPENDIX IV

**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: 15/00025/RREF

Planning Application Reference: 15/00601/FUL

Development Proposal: Replacement Windows (retrospective)

Location: Tushielaw Inn, Ettrick

Applicant: D Cornish

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 retrospective application relates to the installation of replacement windows on the Tushielaw Inn. The application drawings consist of the following :

Plan Type	Plan Reference No.
Location Plan	OS Extract
Floor Plan	-
Photos	Various showing windows as installed

PRELIMINARY MATTERS

The LRB considered at its meeting on 14th December 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) Decision Notice; b) Notice of Review; c) Officer's report; d) Papers referred to in officer's report; e) Consultation f) Objections and g) 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 one or more hearing sessions and a site visit.

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

- Local Plan policy : G1

The LRB also noted that following the recent DPEA Reporter's recommendations regarding the Examination of the Council's proposed Local Development Plan 2013, policy PMD2, which will replace policy G1, should be a material consideration to the application. It was agreed by the LRB that policy PMD2 did not raise any new material considerations in this instance.

Other material considerations the LRB took into account related to:

Other Material Considerations

- SBC Supplementary Planning Guidance – Replacement Windows 2011
- SBC Supplementary Planning Guidance – Replacement Windows and Doors 2015
- Managing Change in the Historic Environment Guidance Note : Windows (Historic Scotland)

It was confirmed that planning consent was required for the replacement windows as the hotel did not have the benefit of any permitted development rights and the planning officer had requested an application as it was considered that that replacement windows were a material alteration to the appearance of the building.

It was understood that the premises had now been sold at auction and confirmation was sought as to the legalities of which party would be responsible for replacing the unauthorised windows should the LRB dismiss the appeal. Members were reminded that ownership issues are not a material consideration in considering a planning appeal. It was confirmed that the responsibility for replacement of the windows would likely fall on the new owners.

The application was for the replacement of timber sliding sash and case windows with astragals with UPVC side hung windows. The LRB noted that the Tushielaw Inn was neither listed nor within a conservation area. The Council's SPG on Replacement Windows 2011, which was in place when the application was refused, and the recent updated version Replacement Windows and Doors 2015 both relate solely to listed buildings and buildings within conservation areas and the LRB

concluded that these SPGs should not have been referred to in the second reason for refusal to the application. It was therefore acknowledged that these SPGs should not be considered as part of the LRB process.

The LRB also noted the contents of Historic Scotland's "Managing Change in the Historic Environment Guidance Note : Windows". The purpose of the document is to give guidance in relation to Historic Buildings, although it does not define what constitutes a "historic building" and does not specifically single out listed buildings and those within conservation areas for consideration. It was recommended members should decide how much weight is given to this Guidance.

It was generally accepted that the replacement windows were likely installed by the appellant without realising planning consent was required given the building is not listed nor within a conservation area. It was noted that whilst all the windows on the front elevation had been changed, only 4no had been replaced at the rear and therefore these were to be considered as part of the application submission. It was agreed that the windows to the rear were much less prominent to members of the public given their distance from the public road.

Mention was made to the property on the opposite side of the road which had windows fitted as part of a previous planning approval. It was considered by some members that although these windows incorporated astragals these were not fitted in a uniform manner and this was to the detriment of the overall appearance of the building.

There was detailed debate with a variety of opinions on the suitability of the windows and mixed opinions as to the suitability and practical issues of applying astragals to the glazing. There was positive support for the property being brought back into use and comment was made that the potential high cost of replacing the windows may prevent the building being re-instated as a hotel which was an important rural facility. Whilst some members felt some windows were more prominent than others and consequently suggested different levels of amendments to the window types to deem them appropriate, other members felt a non-uniform appearance with a range of window types and styles would be an unsatisfactory solution. Ultimately there were a number of options proposed by members which included :

- Support for the replacement windows
- Refusal of the replacement windows
- Installation of astragals on all the windows
- Installation of astragals only on those on the front elevation
- Approval of the proposal other than the main windows on the front elevation which should be replaced with the original timber astragalled sash and case windows

It was agreed that given the Council's SPG on Replacement Windows and Doors 2015 did not apply to the proposal, that if it was to be supported as a hotel within the countryside there were a number of unique considerations to be considered which would narrow down the possibility of it being cited as a precedent.

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 ...17 December 2015



APPENDIX V

**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: 15/00029/RCOND

Planning Application Reference: 15/00662/FUL

Development Proposal: Installation of 2no rooflights

Location: Caroline Villa, Main Street, West Linton

Applicant: M Hepworth

DECISION

The Local Review Body (LRB) upholds the decision of the appointed planning officer and grants planning permission, but varies the attached planning condition as set out in the decision notice.

DEVELOPMENT PROPOSAL

The application relates to the erection of 2no velux rooflights on the north elevation of this property located within the West Linton Conservation Area. Planning consent was granted subject to a condition seeking to ensure the rooflights were fixed and were fitted with obscure glass to prevent any overlooking into the bedroom windows of the nearby Braemar Cottage. The LRB appeal was in relation to the attached condition. The application drawings consist of the following :

Plan Type	Plan Reference No.
Location Plan	OS Extract
Photos	-

PRELIMINARY MATTERS

The LRB considered at its meeting on 14th December 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) Decision Notice; b) Notice of Review; c) Officer's report; d) Papers referred to in the officer's report; e) Consultation; f) Objection and g) 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 one or more hearing sessions and a site visit.

Within their LRB statement the appellants suggested a means around any perceived privacy issues would be resolved if it was agreed that the rooflights could be reduced in size and moved further along the roof area to prevent any overlooking towards the objector's bedroom window. However, the LRB agreed that such a decision was outwith their remit as the amended proposal would require the submission of a formal application which would allow comment from third parties via the neighbour notification process.

The LRB also agreed that as referred to within the appellant's statement, any perceived overlooking from the objector's property into their property from the objector's property was a longstanding scenario outwith the remit of the LRB.

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

- Local Plan policies : G1, BE4 and H2

The LRB also noted that following the recent DPEA Reporter's recommendations regarding the Examination of the Council's proposed Local Development Plan 2013, policies PMD2, EP9 and HD3 which will replace the aforesaid polices respectively should be material considerations. It was agreed that the policies in the proposed Plan did not raise any new material considerations.

Other material considerations the LRB took into account related to:

Other Material Considerations

SBC Supplementary Planning Guidance on Privacy and Sunlight (Householder Developments) 2006
SBC Supplementary Planning Guidance – Replacement Windows and Doors 2015
SBC Supplementary Planning Guidance – Replacement Windows 2012
Managing Change in the Historic Environment Guidance Note : Windows (Historic Scotland)
Scottish Historic Environment Policy 2011

Reference was made to the Council's Supplementary Planning Guidance on Privacy and Sunlight (Householder Developments) 2006 which was referred to within the planning officer's report. Para 2.3 states that "As a rule, a minimum 18metres privacy zone should be maintained between windows of principal rooms when directly opposite". Although the rooflights were only 5 metres away from the objector's bedroom window, the rooflights were to be installed over a storeroom. A storeroom is not recognised within the guidance as a principal room (i.e. lounge, dining room, bedroom, kitchen, study) and therefore it was suggested this should have minimal weight within the LRB decision in this particular instance.

LRB members noted that although the appeal was against the terms stated within the planning condition attached to the consent, members should consider the proposal "de novo" and should consider whether they feel the rooflights are appropriate in the first instance. The LRB confirmed they were content that the 2no rooflights were of an appropriate conservation style for the property and their size and location on the roof were considered to be appropriate.

The LRB then gave consideration to the condition attached to the consent issued. It was noted that given the planning officer's concerns as to potential overlooking from the rooflights the condition was attached requiring that the rooflights should be permanently fixed to prevent them opening and should have obscure glass installed. Both these requirements were proposed to prevent any perceived privacy issues.

The LRB considered that there was a need to allow the rooflights to open for ventilation purposes and to allow a means of fire escape. However, they did feel that in order to prevent any potential overlooking into the objector's bedroom window the rooflights should be fitted with obscure glass

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was consistent with the Development Plan and consent should be granted for the rooflights with an amendment to the attached planning condition to read :

1. "Notwithstanding the details of the proposed rooflights submitted with the application, the approved rooflights to incorporate obscure glazing, to be retained in perpetuity. Before any development commences on site details of the rooflights, including the type of obscure glazing, to be submitted to and approved by the Planning Authority. The development then to be completed in accordance with the approved details.

Reason: To protect the residential amenity of nearby properties from overlooking."

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... 17 December 2015



APPENDIX VI

**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: 15/00026/RREF

Planning Application Reference: 15/00682/FUL

Development Proposal: Siting of portacabin for use as flour mill

Location: Land to north west of Spruce House, Romanno Bridge, West Linton

Applicant: Romanno Mains Renewables Ltd

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 temporary siting of a portacabin for use as a flour mill on land to the north west of the appellant's property at Spruce House, Romanno Bridge. The application drawings consist of the following :

Plan Type	Plan Reference No.
Location Plan	OS Extract
Site Plan	-
Floor Plan	-
Combi Mill - Brochure (2no)	-

PRELIMINARY MATTERS

The LRB considered at its meeting on 14th December 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 officer's report and decision notice; b) Papers referred to in officer's report and c) Additional information; d) Consultations and e) 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 a site visit.

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, D1, H2 and Inf4

The LRB also noted that following the recent DPEA Reporter's recommendations regarding the Examination of the Council's proposed Local Development Plan 2013, policies PMD2, ED7, HD3, IS7 respectively will replace the aforesaid policies and are therefore material considerations to this proposal. It was agreed these new policies do not raise any new material considerations

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

Other Material Considerations

- Circular 4 / 1998 – The Use of Planning Conditions

It was noted that the appellants had applied for a temporary consent in order to test the success of the business venture and if successful it was intended that an alternative site would be sought to operate the business on a more permanent basis. The planning officer had expressed concern that by allowing even a temporary consent it may be difficult to prevent a permanent use from the site should such an application be submitted. The LRB were advised that allowing a temporary consent would be a reasonable course of action which would be defensible should it be challenged for a permanent use of the proposal in the future.

The LRB noted that the appellants were not able to identify any appropriate location for this venture within the built up area of nearby Romanno Bridge and that there were no alternative locations within the vicinity of the farm holding. LRB members expressed general support for farm diversification and felt the proximity of the proposed portacabin to the applicant's property known as Spruce House allowed a degree of overlooking and consequent site security as well as convenience for the operators. The LRB considered that as the proposal was only to operate 2 days a week there would be no adverse impacts in terms of any traffic generation or any general amenity issues.

It was considered that there would be no impact on the amenity of existing residential properties as identified in policy D1 and that the proposed site was well screened from existing housing in nearby Romanno Bridge by 30 metre coniferous woodland. The LRB referred to Council support for working from home and felt the rural location was appropriate for this business venture.

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. The LRB therefore agreed to overturn the officer decision and approve the appeal subject to the following conditions:

1. Approval is granted for a limited period of five years from the date of this consent and the portacabin to be removed from the site prior to the expiry of that period

Reason : The site is not considered appropriate for the permanent siting of the portacabin and operation of the business

2. The materials to be used on the external walls and roof of the portacabin shall first have been submitted to and approved in writing by the Local Planning Authority prior to onsite works commencing.

Reason: To ensure a satisfactory form of development, which contributes appropriately to its setting

3. 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.

4. The Unit shall be maintained and serviced in accordance with the manufacturer's instructions so as to stay in compliance with the aforementioned noise limits.

Reason : To protect the residential amenity of nearby properties.

Informative

Food Premises Registration

The premises will need to be registered with the Council before commencing operations. In order to ensure that the layout of the premises complies with the registration requirements the applicant should contact an Environmental Health Officer as the earliest stage possible. This can be done by calling 0300 100 1800 or emailing PLACEhealth@scotborders.gov.uk

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 ...17 December 2015
