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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, 5 September, 2016 at 10.00 am

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

Apologies:- Councillors B White

In Attendance:- Planning Policy and Access Manager, Chief Legal Officer, Democratic Services Team Leader, Democratic Services Officer (F. Walling).

1. **CONTINUE CONSIDERATION OF REVIEW OF APPLICATION 16/00162/PPP**  
With reference to paragraph 5 of the Minute of 15 August 2016, and following an unaccompanied site visit, Members continued consideration of the request from Mr H. Armstrong, per HM Architecture Ltd, Bloomfield, Heatherlie Park, Selkirk, to review the decision to refuse the planning application in respect of the erection of a dwellinghouse and garage in the garden ground of Lindisfarne, Gattonside. Members agreed that the site visit had been helpful in order to make a realistic appraisal of the access to the site from the east, using the Loan. Although they recognised that the section through the houses was narrow and steep it was not unreasonably so. There were passing places and there was evidence to suggest that drivers took into account the access difficulties by driving carefully and slowly. Also taken into account was the fact that there was an alternative access to the site from the west. After further discussion it was concluded that a house at the proposed site would not lead to significant additional safety implications for road users. Members also discussed the difference in levels between the proposed site and the public road, at the point of access. It was noted that further detailed engineering work would be required as part of the Approval of Matters subject to Conditions (AMC). As there were also concerns about the access to the site by construction traffic it was agreed that a construction phase traffic management plan be requested through condition.

### **DECISION**

#### **AGREED that:-**

- (a) **the review could be determined without further procedure on the basis of the papers submitted and the unaccompanied site visit;**
- (b) **the development was consistent with the development plan; and**
- (c) **the decision of the appointed planning officer to refuse the application be reversed and the application for planning permission be granted, subject to conditions, informatives and a legal agreement, for the reasons given in the Appendix to this Minute.**

*The meeting concluded at 10.40 am*

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**APPENDIX**

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

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

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

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**Local Review Reference: 16/00021/RREF**

**Planning Application Reference: 16/00162/PPP**

**Development Proposal: Erection of dwellinghouse and garage**

**Location: Garden Ground of Lindisfarne, The Loan, Gattonside**

**Applicant: Mr H Armstrong**

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**DECISION**

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

**DEVELOPMENT PROPOSAL**

The application is for planning permission in principle (PPP) and relates to the erection of a dwellinghouse and garage on garden ground associated with a detached house (Lindisfarne) located at the northern end of the Loan, Gattonside. The application consisted of the following drawings:

<b>Plan Type</b>	<b>Plan Reference No.</b>
Location Plan	
Site Plan	15-020/SD/001 B

**PRELIMINARY MATTERS**

The Local Review Body considered at its meeting on 15<sup>th</sup> August 2016 that the Review had been competently made under section 43A (8) of the Town & Country Planning (Scotland) Act 1997.

After examining the review documentation at that meeting, which included: a) Notice of Review; b) Decision Notice; c) Officer's Report; d) Paper Referred to in report; e) Consultations; f) Objection; and, g) list of policies, the LRB concluded that it had sufficient information to determine the review and proceeded to consider the case.

The Local Review Body noted that the appellant had requested a site inspection, and agreed that they would take this into account as part of their considerations.

## **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 adopted Scottish Borders Local Development Plan (LDP) 2016. The LRB considered that the most relevant of the listed policies of the LDP 2016 were:

- Local Development Plan policies : PMD2 (Quality Standards), PMD5 (Infill Development)

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

- Local Development Plan Policies: IS2 on developer contributions; IS3 Developer contributions related to Borders Railway; IS7 Parking provision and standards; IS9 waste water treatment standards and SUDS; EP3 Local Biodiversity; EP4 National Scenic Areas; EP13 Trees, Woodlands and Hedgerows; HD3 Meeting the Housing Land requirement
- Scottish Borders Supplementary Planning Guidance: Householder Development 2006; Placemaking and Design 2010; Trees and Development 2008; Landscape and Development 2008; Biodiversity 2005; Developer Contributions 2015
- Designing Streets.

The Local Review Body proceeded to discuss the merits of the application, and agreed that the principle of development in this location largely complied with development plan policy.

The Local Review Body then focused discussion on the matters of road access and road safety. The Local Review Body considered whether a safe access to the immediate development could be achieved. They went on to discuss the issue of access and safety on the wider village road network, particularly the Loan.

The Local Review Body agreed that the Loan is a steep, narrow, and long access road to the proposed development and that it requires extreme caution from road users. There were differing views as to the additional impact that might arise from the additional traffic caused by the development. The Review Body acknowledged that there was an alternative access via the high road to the west, but did not consider that it would remove the need to use the Loan to some degree.

At this point the Local Review Body agreed that a site visit would be beneficial, and the meeting adjourned.

The Local Review Body undertook an unaccompanied site visit on 5<sup>th</sup> September 2016, and reconvened later on the same day.

The Local Review Body agreed that the site visit had been helpful and had developed their thinking in respect of the proposal, and had confirmed that the main issue for discussion related to the wider and immediate access to the site.

Members discussed the volume of traffic using the Loan and agreed that the volumes were low. In addition, they noted that the evidence from the site visit was that vehicles took the access difficulties into account in their driving and were slow and careful. Members also noted that whilst steep, the Loan was not unreasonably steep for driving or walking. In addition, it was noted that there was little evidence of damage to any buildings.

Members discussed the availability of an alternative access to the west towards the Pavilion Estate and Galashiels, and noted that this could be a preferred access to the site particularly during adverse winter conditions.

The Local Review Body concluded that it would be acceptable to allow this additional house to the Loan without unduly compromising the safety of other road users or pedestrians.

Members went on to discuss the immediate access to the site. They noted that there was a steep drop from the roadside into the site and that the road condition was consequently adversely impacted. Accordingly the Local Review Body considered that further detailed engineering work would be required as part of the AMC process to demonstrate an acceptable entry into the site could be achieved, and would also deliver the proposed passing space, and the parking spaces and turning area for the development. This process would also require to meet Member concerns that any damage to the road should be dealt with. Members further raised concerns on the access to the site by construction traffic, and the Local Review Body agreed that this would be dealt with through condition relating to a construction phase traffic management plan.

The Local Review Body also agreed that the conditions, informatives, and the need for a section 75 agreement in relation to developer contributions towards education as highlighted in the officer report would also be applied to the decision.

## **CONCLUSION**

After considering all relevant information, the Local Review Body concluded that, subject to the conditions and legal agreement detailed below, the development was acceptable in terms of the Development Plan and that there were no material considerations which outweighed that conclusion.

## **DIRECTIONS**

1. Application for approval of matters specified in the conditions set out in this decision shall be made to the Planning Authority before whichever is the latest of the following:
  - (a) the expiration of three years from the date of this permission, or

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

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

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

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

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. The dwellinghouse hereby approved shall not be occupied until two parking spaces and a turning area have been provided within the site, excluding any garages, and retained in perpetuity.

Reason: To ensure the provision of adequate off street parking.

2. A passing place to be provided at the plot roadside. The location of the passing place to be submitted and approved in writing by the Planning Authority before the development commences. The passing place to be constructed in accordance with the approved details before the dwellinghouse is occupied.

Reason: To ensure that there is free movement of the public road.

3. A detailed engineering drawing, including levels, to be submitted with the first detailed or Approval of Matters Specified in Conditions application for this development for approval in writing by the Planning Authority. The drawing will show the access into the site and relationship to the proposed house, the road passing

place, residential parking and turning area. Thereafter, the development is to be implemented in accordance with the approved details.

Reason: To ensure that an acceptable development can be achieved.

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

Reason: To ensure the site is adequately serviced.

5. A drawing to be submitted with the first detailed or Approval of Matters Specified in Conditions application for this development showing the position, species, canopy spread and root protection area of all the trees within the site, those on the boundary or overhanging the site and any trees to be felled for approval in writing by the Planning Authority. The trees to be retained not to be felled, lopped, lifted or disturbed in any way unless otherwise agreed by the Planning Authority. The drawing scheme should show the removal of only of the four conifers, with the remaining boundary trees retained and protected by fencing during the works, allowing only for the lowering of the roadside hedge (which should be reduced completely, and not partially clipped as proposed).

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

6. 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, and shall include:

- i. indication of existing trees, shrubs and hedges to be removed, those to be retained, and, in case of damage proposals for their restoration;
- ii. location of new trees, shrubs, hedges and grassed areas;
- iii. schedule of trees/plants to comprise species, sizes, and proposed numbers and density;
- iv. location and design, including materials, of walls, fences and gates
- v. soft and hard landscaping works
- vi. existing and proposed services such as cables, pipelines, sub-stations
- vii. A programme for completion and subsequent maintenance.

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

7. No development shall take place until a construction phase traffic management plan has been submitted to and approved in writing by the Planning Authority. Thereafter, the development is to proceed in accordance with the agreed traffic management plan.

Reason: to ensure that impact on the road network during construction is minimised.

## **Informatives**

### **Bats**

The applicant is reminded that bats are protected under The Conservation (Natural Habitats &c.) Regulations 1994 (as amended). It is illegal to intentionally or

deliberately kill or injure them, intentionally, deliberately or recklessly damage, destroy, or obstruct access to any place used for shelter or protection including resting or breeding places (all roosts, whether occupied or not), or deliberately, intentionally or recklessly disturb them. If bats are discovered following the commencement of tree felling, works should stop immediately and the developer must contact SNH (tel: 01896-756652) and a licenced bat worker for further guidance. Works should only recommence by following any guidance given by SNH and a licenced bat worker. The developer and all contractors to be made aware of accepted standard procedures of working with bats at [www.bats.org.uk](http://www.bats.org.uk). Further information available at [http://www.bats.org.uk/data/files/publications/Bats\\_Trees.pdf](http://www.bats.org.uk/data/files/publications/Bats_Trees.pdf)

#### **Breeding Birds (from BS 42020)**

The applicant is reminded that, under the Wildlife and Countryside Act 1981, (as amended), it is an offence to remove, damage or destroy the nest of any wild bird while that nest is in use or being built. Planning consent for a development does not provide a defence against prosecution under this act. Trees and scrub are likely to contain nesting birds between 1st March and 31st August inclusive. Trees and scrub are present on the application site and are to be assumed to contain nesting birds between the above dates, unless a recent survey has been undertaken by a competent ecologist to assess the nesting bird activity on site during this period and has shown it is absolutely certain that nesting birds are not present.

#### **Legal Agreements**

The Local Review Body requires that a Section 75 Agreement, or other suitable legal agreement, be entered into regarding the payment of financial contributions towards educational facilities and the Waverley line.

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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.....**13 September 2016