

# Public Document Pack

## 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, 16 October 2017 at 10.00 am

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Present:- Councillors S. Hamilton (Vice Chairman), S. Aitchison, A. Anderson, J. A. Fullarton, H. Laing, S. Mountford and C. Ramage.

Also present:- Councillor D. Paterson

Apologies:- Councillors T. Miers and E. Small

In Attendance:- Chief Planning Officer, Lead Planning Officer, Solicitor (E. Moir), Democratic Services Team Leader, Democratic Services Officer (F. Walling).

### **CHAIRMAN**

In the absence of the Chairman the meeting was chaired by Vice Chairman Councillor Scott Hamilton.

### **MEMBERS**

Councillors Fullarton and Mountford had not been present at the initial consideration in respect of the undernoted application and were therefore unable to participate in the further consideration. These Members withdrew from the Chamber for this part of the meeting.

### **1. CONTINUATION OF REVIEW OF 17/00257/FUL**

- 1.1 With reference to paragraph 5 of the Minute of 21 August 2017, the Local Review Body continued their consideration of the request to review the refusal of planning permission in respect of erection of replacement windows and installation of chimney flue at 5 High Street, Innerleithen. Members had noted that planning consent had been given for the replacement windows in an earlier application. The appeal therefore related just to the installation of the chimney flue. The Chairman referred to the decision made by Members when the application was first considered that the application could not be determined without further procedure in the form of a Hearing to receive information on the technical elements regarding the use of a chimney flue, specifically in relation to the proposed use of an ABCAT flue gas filter; nuisance issues associated with the proposed chimney flue; and the implications of the increase in length of the flue. Following the hearing session Members of the Local Review Body would consider all aspects of the review with no further input from the hearing attendees.

### **HEARING SESSION**

- 1.2 In attendance for the Hearing were the appointed Planning Officer, Mr Craig Miller, and the Council's Environmental Health Officer Mr David Brown. Hearing statements by both officers had been circulated. The appellant was not present nor represented at the Hearing session. Members noted the content of his email which had been circulated and submitted as a Hearing statement. The appellant explained that the manufacturer of the ABCAT filter, who was based in The Netherlands, was unable to attend the Hearing and that he believed that without having any specialist knowledge of the ABCAT filter it would be of no advantage for him, the applicant, to attend. He referred Members to the product information that had already been submitted. He believed that the decision of Environmental Health to object to the proposed flue was based purely on opinion and without definitive facts and re-iterated that the design and purpose of the ABCAT filter was

to exactly address the concerns raised by Environmental Health. The appellant concluded his written submission by stating that he would be happy to accept a condition to an approval of the application which provided for the removal of the ABCAT filter if it was subsequently shown to be not performing as designed.

- 1.3 Mr Miller, appointed Planning Officer, gave a summary of the points made in his statement which focused on the implications of increasing the length of the flue. He advised that the flue, as proposed, caused no significant aesthetic issues as it was grey coloured and of modest height emerging from the hipped roof of the office and terminating just above the office ridge. The taller the flue in this location, the greater the impact from Leithen Crescent, the High Street junction and on the visual amenity of the Conservation Area and nearby properties. Mr Miller felt that even raising the flue a further metre in height would increase the impacts to the extent that any subsequent application may be unlikely to be supported, even if Environmental Health had accepted an additional metre. His understanding, however, was that they were objecting unless the flue terminated above the height of the nearest affected residential windows at second floor level on the rear of the High Street. This would mean the flue would need to be raised at least another 3.5 metres which would appear isolated, intrusive and ill-related to the modest building and roof to which it would be attached. Unlike another extended flue case in Innerleithen to the rear of the St Ronan's Hotel, a significant increase in the flue height in this location would be far more prominent in the Conservation Area and impact on the public realm in a more obvious, significant and adverse way. Such a solution to meet air quality issues would be likely to create insurmountable aesthetic and visual amenity impacts in this location. The historical photograph provided by the applicant indicated a traditional gable chimney structure which did not appear to exceed the top of the first floor windows on the High Street. Whilst this historical evidence did not alter Mr Miller's opinion about the aesthetic and intrusive impact of any proposed flue to reach top of second floor window height, he advised that it would be re-considered as a factor should any planning application be resubmitted with a lower flue height, assuming the air quality issues were resolved to permit this.
- 1.4 Environmental Health Officer, David Brown, referred to his written statement and advised that his submission was divided into two parts: the potential impacts on the local amenity; and an examination of the requirements of the flue gas treatment proposals. Mr Brown explained that the application was recommended for refusal on the grounds that the discharge height of the proposed flue was insufficient to guarantee adequate dispersal of flue gases arising from the use of a wood burning stove. The combustion of wood generated pungent odour components, the presence of which could be experienced some time after that appliance had been extinguished. Experience gained on similar sites elsewhere in the Borders had shown that complaints were likely when stove gases were allowed to discharge below the heights at which openable windows were situated. As a minimum, it was recommended that flues terminated at least one metre above eaves height unless there were skylights/roof windows above. Discharge of gases above ridge height was the preferred option. The Applicants had sought to justify their flue height by producing a photograph showing the historical presence on site of a chimney stack. This had no relevance to the modern situation. The British Flue and Chimney Manufacturers Association Guidance "Chimney Heights & Termination" gave a minimum chimney height of 4.5m from the top of the appliance stating – *"The reason for this is to clear pressure zones created by wind hitting the roof and nearby structures, like trees, which may interfere with the up draught required by the appliance or fire."*
- 1.5 Mr Brown went on to refer to the technical documentation submitted by the appellant in the form of the ABCAT Product Information; ABCAT background and application; and ABCAT SP test results summary. He explained that when assessing the impact of all wood burning appliances, the Scottish Air Quality Regulations laid a duty on the Council to assess particulate matter below 10 micron particle size (PM10). The Council was also required to assess Oxides of Nitrogen (NOx). The documentation stated that *"Various tests have shown that the ABCAT mainly cracks the smallest particulate fraction, namely*

PM2.5.” The unit therefore failed to address 75% of the range of fine particles which had been shown to impact on human health and which the Council had a duty to assess. No information was provided in respect of any reduction in emissions of NOx. Furthermore, within the ABCAT SP test results summary it was acknowledged that the unit may have difficulty in processing hydrocarbon emissions and methane gas and indicated that further research was required on the matter which would -“*hopefully provide answers.*” Mr Brown argued that this statement offered no assurance that the unit would prevent odour or other impacts on the amenity of other occupiers. In conclusion, Mr Brown stated that when considering an application to install a stove, the Council must be satisfied that the discharge point for the flue would allow adequate dispersal and dilution of the emissions. He submitted that in this case the applicants had failed to do so and that the technical information provided did not demonstrate that the proposed abatement technology would properly address all the pollutants of concern.

- 1.6 Mr Brown provided clarification to Members on certain technical points in response to their questions. A comment was made about the context of the application in relation to the surrounding traditionally built houses and probability of existing fireplaces in use which had not been the subject of a planning application and which were emitting gases which affected the air quality in the area. Mr Brown clarified that all chimneys in the area were at the minimum height acceptable and that any specific nuisance brought to the attention of the Council would be investigated. This was a conservation area and therefore the Council did have control of such matters.
- 1.7 After the Chairman had closed the Hearing session the Local Review Body reconvened to continue consideration of the review. Members agreed that the Hearing had been useful in providing clarity on the technical aspects of the case but expressed regret that the applicant had not taken the opportunity to be represented. After further discussion of the evidence that had been presented Members concluded that the flue would adversely affect the air quality and residential amenity in the surrounding area.

## **DECISION**

### **AGREED that:-**

- (a) **that the review could be determined without further procedure on the basis of the papers submitted and the Hearing session;**
  - (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 I to this Minute.**
2. **REVIEW OF 17/00384/FUL**

There had been circulated copies of the request from Cleek Poultry Ltd, The Tractor Shed, Kirkburn, Cardrona, to review the decision to refuse the planning application in respect of alterations to existing bellmouth and formation of new access on land north west of Kirkburn Parish Church, Cardrona. The supporting papers included the Notice of Review (including the Decision Notice and Officer’s Report); papers referred to in the report; consultations; objections; additional representations; and a list of relevant policies. In their discussion Members were particularly concerned about a lack of information in the application and questioned the justification for the new access. They considered that the existing access further to the west was suitable to serve the landholding and consented developments. Members also considered the scale of the engineering works required to create the new access, the loss of mature trees and potential conflict between the use of the new access and the amenity of residents at the Kirkburn building group.

## **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 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 officer's decision to refuse the application be upheld for the reasons detailed in Appendix II to this Minute.**

**3. REVIEW OF 17/00647/FUL**

There had been circulated copies of the request from Cleek Poultry Ltd, The Tractor Shed, Kirkburn, Cardrona, to review the decision to refuse the planning application in respect of the formation of hardstanding steps, retaining wall and new footpath on land north west of Kirkburn Parish Church, Cardrona. The supporting papers included the Notice of Review (including the Decision Notice and Officer's Report); consultations; objections; additional representations; and a list of relevant policies. Members noted that the proposed footpath and hardstanding had no direct access to the Kirkburn road and commented that it would have been more logical if this application and the previous application for a new access (17/00384/FUL) had been submitted as a single proposal. Members also noted the lack of justification for the proposal and discussed its potential impact on the setting of the former William Cree Memorial Church and the amenity of adjacent residential properties.

**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 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 officer's decision to refuse the application be upheld for the reasons detailed in Appendix III to this Minute.**

**4. REVIEW OF 17/00806/FUL**

There had been circulated copies of the request from Cleek Poultry Ltd, The Tractor Shed, Kirkburn, Cardrona, to review the decision to refuse the planning application in respect of the erection of an agricultural building and formation of new access track on land south of 3 Kirkburn Cottages, Cardrona. The supporting papers included the Notice of Review (including the Decision Notice and Officer's Report); papers referred to in report; consultations; objections; additional representations; and a list of relevant policies. Members noted that a Business Plan submitted with the Notice of Review constituted new evidence as it had not been lodged with the appointed planning officer when the application was determined. They agreed that as this evidence did not meet the tests set out in Section 43B of the Act they would proceed to consider the case without reference to this information. Members noted that an economic case had not been made to justify a building of the size proposed at this site. They made reference to previous applications and approvals for the landholding, which were material in their consideration of this

proposal, and spoke at length about the need for a masterplan to be provided to clearly set out the objectives for the site in its entirety.

#### **DECISION**

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

- (a) the request for a review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;**
- (b) in accordance with Section 43B of the Town and Country Planning (Scotland) Act 1997 the review be determined without reference to the new evidence submitted with the Notice of Review documentation;**
- (c) the review could be considered without the need for any further procedure on the basis of the papers submitted;**
- (d) the 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**
- (e) the officer's decision to refuse the application be upheld for the reasons detailed in Appendix IV to this Minute.**

#### **5. REVIEW OF 17/00380/FUL**

There had been circulated copies of the request from Mr and Mrs Chris Edge, Jordonlaw Farmhouse, to review the decision to refuse the planning application to vary Condition 3 of planning consent 10/00156/FUL to allow short term letting at Jordonlaw Granary, Westruther. Included in the supporting papers were the Notice of Review (including the Decision Notice); Officer's Report; papers referred to in the report; consultation; support comments; objection; additional representations and response; and a list of relevant policies. Members focused their attention on road safety issues at the junction of the farm access track with the B6456 and discussed whether any additional traffic was likely to be generated by the proposed change of use of the one-bedroomed property. Members also considered the nature of the farm track in terms of the ability for vehicles to pass each other and the potential for a dedicated parking area within the site to avoid obstruction of the access to the farm steading.

#### **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 proposal would be in keeping with the Development Plan; and**
- (d) the officer's decision to refuse the application be reversed and planning permission be granted, subject to conditions, for the reasons detailed in Appendix V to this Minute.**

#### **6. REVIEW OF 17/00479/FUL**

There had been circulated copies of the request from Austin Travel, per Aitken, Turnbull Architects Ltd, 9 Bridge Place, Galashiels, to review the decision to refuse the planning application in respect of the erection of a dwellinghouse on land north east of and incorporating J. Rutherford Workshop, Rhymers Mill, Mill Road, Earlston. The supporting papers included the Notice of Review (including the Decision Notice); Officer's Report;

consultations; and a list of relevant policies. Members discussed whether the design of the building was sympathetic with that of the surrounding properties, noting that there were residential properties to the north east of the site and the industrial type workshop building on the south west. They also discussed the proximity and possible impact of the workshop building on the residential amenity of the occupants of the proposed dwellinghouse. However their main concern related to the identified flood risk to the site and the potential increase in risk that would be brought about by blockage of the Clatteringford Bridge during a flooding event. They noted that SEPA had objected to the application on the grounds of flood risk but that there were discrepancies between the consultation replies from SEPA and the Council's Flood Risk Officer and the Flood Risk Assessment submitted on behalf of the applicant. Members therefore concluded that the review could not be considered without further procedure in the form of a Hearing session to provide clarification on: the discrepancies between the assessments of flood risk to the site; and the finished floor level required in the proposed dwellinghouse to mitigate against a 1 in 200 year flood event and blockage of the Clatteringford Bridge.

## **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 a hearing session; and**
- (c) that the applicant, Council's Flood Risk Officer and Planning Officer be invited to attend a hearing to provide information on: the discrepancies between the flood risk assessment submitted on behalf of the applicant and consultation replies from SEPA and the Council's Flood Risk officer in respect of flood risk to the site; and the finished floor level required to preserve a freeboard to mitigate against a 1 in 200 year flood event and blockage of the Clatteringford Bridge.**

*The meeting concluded at 1.10 pm*



**APPENDIX I**

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

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

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

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**Local Review Reference:** 17/00028/RREF

**Planning Application Reference:** 17/00257/FUL

**Development Proposal:** Replacement windows and installation of chimney flue,

**Location:** 5 High Street, Innerleithen

**Applicant:** David & Jane Gordon

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**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 and on the following grounds:

1. The application is contrary to Policy EP16 of the Scottish Borders Local Development Plan in that the proposed flue is of insufficient height to allow fumes to disperse properly without adversely affecting the air quality and residential amenity of surrounding property occupiers.

**DEVELOPMENT PROPOSAL**

The application relates to the replacement windows and installation of chimney flue at 5 High Street, Innerleithen. The application drawings and documentation consisted of the following:

<b>Plan Type</b>	<b>Plan Reference No.</b>
Location Plan	13011-LOC
Proposed Plans & Elevations	13011-101-B
Sections	ECOLINK SOLUTIONS
Report	ABCAT TEST
Specifications	EMISSIONS GRAPHS
Specifications	PRODUCT SPECIFICATIONS

The Local Review Body considered the review, which had been competently made, under section 43A (8) of the Town & Country Planning (Scotland) Act 1997 at its meeting on 21<sup>st</sup> August 2017.

After examining the review documentation at that meeting, which included: a) Notice of Review; b) Decision Notice c) Officer's Report; d) Papers referred to in report; e) Consultations; and f) List of Policies, the LRB concluded that it did not have sufficient information to determine the review and that it required Further Procedure in the form of an oral hearing.

Members considered a hearing necessary to allow the applicant, Environmental Health Officer and Planning Officer to provide information on: the technical elements regarding the use of a chimney flue, specifically in relation to the proposed use of an ABCAT flue gas filter; nuisance issues associated with the proposed chimney flue; and the implications of the increase in length of the flue.

The hearing was held at 10am on Monday 16<sup>th</sup> October, after which the Review Body re-convened to consider the case. Members noted with regret that the applicant did not take up the opportunity to be represented at the hearing.

## **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 2013 and the Scottish Borders Local Development Plan 2016. The LRB considered that the relevant listed policies were:

- Local Development Plan policies: PMD1, PMD2, HD3, ED9, EP16

Other Material Considerations

- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006

The Local Review Body noted that whilst the application related to the installation of replacement windows and a chimney flue at the property, the windows had already been approved by the Council under planning reference 15/01079/FUL and in the circumstances, they focussed their deliberations on the acceptability, or otherwise, of the proposed flue.

The Review Body noted that the proposed flue, which would be in a grey powder coated metal, would emerge from the hipped roof to the rear of the applicant's office terminating just above ridge of the roof and would be approximately 1.6m in length. The Review Body were content that, at the height proposed, the flue would be no adverse impact on the appearance or character of the building or the Conservation Area.



The Review Body discussed the question of the potential nuisance impact the flue emissions may have on adjoining residential properties and sought greater clarity on this issue through the holding of an oral hearing session. Members felt that the hearing had helped their understanding of the issue; explaining how the proximity and relationship to the neighbouring properties windows and the lack of height of the flue to disperse smoke and odour was problematic and explaining why the proposed mitigation measures, in the form of an ABCAT gas oxidizing catalytic converter and raising the flue by 1m in height, would not address the potential impacts on local amenity and human health raised by the Environmental Health. After considering the evidence presented to them the Review Body concluded that the flue would adversely affect the air quality and residential amenity of the occupants of surrounding property.

The Review Body did not accept that the existence historically of a chimney on this building provided any justification for the new flue. Circumstances and regulations have altered significantly since that chimney was in operation.

The Review Body determined that it would not be reasonable or necessary to impose a condition that required the removal of the stove and associated flue should it be proven, following operation, that it was causing a nuisance.

## **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. Consequently, the application was refused.

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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.

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**Signed**.....  
Councillor S Hamilton  
Vice Chairman of the Local Review Body

**Date**...24 October 2017

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**APPENDIX II**

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

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

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

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**Local Review Reference:** 17/00032/RREF

**Planning Application Reference:** 17/00384/FUL

**Development Proposal:** Alterations to existing bellmouth and formation of new access

**Location:** Land North West of Kirkburn Parish Church, Cardrona

**Applicant:** Cleek Poultry Ltd

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**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 and on the following grounds:

- 1 The application is contrary to Policies PMD2, ED7, EP5 and HD3 of the Scottish Borders Local Development Plan and Supplementary Planning Policies relating to Special Landscape Area 2-Tweed Valley in that the proposed access road will be locally prominent in the landscape and will create significant earthworks, loss of mature trees and reduction of proposed planting areas intended to screen the consented holiday developments, having a significant adverse effect on the character and quality of the designated landscape and the amenity of adjoining residents. Furthermore, the application has failed to demonstrate that the development can be achieved in terms of levels, geometry, drainage and that there is any ability to secure stopping up of the existing roadway.

**DEVELOPMENT PROPOSAL**

The application relates to alterations to existing bellmouth and formation of new access on land to the north west of the applicant's landholding at Kirkburn, Cardrona. The application drawings consisted of the following drawings:

<b>Plan Type</b>	<b>Plan Reference No.</b>
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Location & Site Plan	196 90
General Arrangement Contour Plan	196 91

### **PRELIMINARY MATTERS**

The Local Review Body considered the review, which had been competently made, under section 43A (8) of the Town & Country Planning (Scotland) Act 1997 at its meeting on 16<sup>th</sup> October 2017.

After examining the review documentation at that meeting, which included: a) Notice of Review; b) Papers referred to in report; c) Consultations; d) Objections; e) Additional representations; and f) List of policies, the LRB concluded that it had sufficient information to determine the review and proceeded to consider the case.

### **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 2013 and the Scottish Borders Local Development Plan 2016. The LRB considered that the most relevant of the listed policies were:

- Local Development Plan policies: HD3, PMD2, ED7, EP5, EP7, EP8 & EP13

#### Other Material Considerations

- SBC Supplementary Planning Guidance on Local Landscape Designations 2012

The Review Body noted that the proposal would involve altering the existing access that serves the small building group at Kirkburn through a re-alignment of the road and the creation of a new bellmouth onto the B7062. The revised access would also allow vehicular access into the applicant's landholding via a 6 m wide field access from the new road.

After considering the evidence before them, the Review Body were not convinced that a sufficiently strong case had been made to justify a new access point to serve the landholding. Members noted that in approving permission for holiday chalets and a hub building on the adjoining land there had been concerns expressed regarding the potential for conflict between the proposed use and the building group at Kirkburn and that a planted buffer had been required to screen the development. The current proposal would appear to remove this buffer and the separation between the uses, allowing a mix of traffic using the Kirkburn access, and this would likely have a detrimental impact on the amenity of residents. The Review Body was content that the existing access from the B7062 further to the west was suitable to serve the applicant's landholding and the consented developments.

The Review Body was concerned that the scale of the engineering works required to facilitate the new access would alter the character of this part of the B7062, which is a minor rural road. This work associated with the removal of the buffer screen to the holiday chalet development and the loss of three existing mature trees along the roadside would have an unacceptable detrimental visual impact on the area, which lies within the Tweed Valley Special Landscape Area.

The Review Body was also conscious that, whilst the proposal may result in some road safety benefits, there was insufficient information available with the application to allow a full assessment of the access, its precise nature and impact.

The Review Body concluded that any potential benefits accrued from the development did not outweigh the significant landscape and amenity impacts.

## **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. Consequently, the application was refused.

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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.

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**Signed**.....  
Councillor S Hamilton  
Vice Chairman of the Local Review Body

**Date**.....24 October 2017

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**APPENDIX III**

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

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

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

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**Local Review Reference:** 17/00033/RREF

**Planning Application Reference:** 17/00647/FUL

**Development Proposal:** Formation of hardstanding, steps, retaining wall and new foot path

**Location:** Land North West of Kirkburn Parish Church, Cardrona

**Applicant:** Cleek Poultry Ltd

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**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 and on the following grounds:

- 1 The application is contrary to Policies PMD2, HD3, EP7 and ED7 of the Scottish Borders Local Development Plan 2016 in that the proposal would create adverse effects on the setting of a Category B Statutorily Listed Building adjoining the site and on the amenity of nearby residential amenity properties.
- 2 The application is contrary to Policy ED7 of the Scottish Borders Local Development Plan 2016 in that it has not been adequately demonstrated that any traffic generated by the proposal can access the site without detriment to road safety.

## **DEVELOPMENT PROPOSAL**

The application relates to the formation of hardstanding, steps, retaining wall and new footpath on land to the north west of the applicant's landholding at Kirkburn, Cardrona. The application drawings consisted of the following drawings:

<b>Plan Type</b>	<b>Plan Reference No.</b>
General Arrangement Location Plan	196 92

## **PRELIMINARY MATTERS**

The Local Review Body considered the review, which had been competently made, under section 43A (8) of the Town & Country Planning (Scotland) Act 1997 at its meeting on 16<sup>th</sup> October 2017.

After examining the review documentation at that meeting, which included: a) Notice of Review; b) Consultations; c) Objections; d) Additional representations; and f) List of policies, the LRB concluded that it had sufficient information to determine the review and proceeded to consider the case.

## **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 2013 and the Scottish Borders Local Development Plan 2016. The LRB considered that the most relevant of the listed policies were:

- Local Development Plan policies: HD3, PMD2, ED7, EP5, EP7 & EP8

Other Material Considerations

- SBC Supplementary Planning Guidance on Local Landscape Designations 2012

The Review Body noted that the proposal would involve the formation of a new pedestrian footpath along the eastern edge of the applicant's landholding running along the boundary of the land with Our Lady's Church and graveyard and the former William Cree Memorial Church. Due to the site's topography the footpath required a flight of steps and a two tier row of gabions next to the church to deal with the change in levels. A large gravel hardstanding was also proposed at the end of the footpath next to the site's boundary with Kirkburn.

The Review Body noted that unusually the footpath and the gravel hardstanding had no direct access to the Kirkburn road; the grass verge remaining between the application site and the road. Members had just considered the review for the alterations to existing bellmouth and formation of new access ref: 17/00032/RREF,



which would have provided such an access and, in their view, it would have been better if the applications had been submitted as a singular coherent proposal. As such the proposal must be judged against the possible increase in traffic on the current access junction. However, in the absence of a Transport Statement outlining the type, frequency and number of vehicles anticipated it is not possible to judge whether the existing access is suitable to serve the development.

After considering the evidence before them, the Review Body were not convinced that a sufficiently strong case had been made to justify the footpath or the

hardstanding to serve the landholding. Members noted that in approving permission for holiday chalets and a hub building on the adjoining land there had been concerns expressed regarding the potential for conflict between the proposed use and the building group at Kirkburn and that a planted buffer had been required to screen the development. The current proposal would appear to remove this buffer and the separation between the uses, increasing the potential for a mix of traffic using the Kirkburn access, and this would likely have a detrimental impact on the amenity of residents. The Review Body was content that the existing access from the B7062 further to the west was suitable to serve the applicant's landholding and the consented developments.

The Review Body were conscious of the sensitivities in terms of the works relationship to the listed former William Cree Memorial Church. Members did not feel that this had been adequately taken into account or resolved by the applicant and that there would be an unacceptable impact on the setting of the listed building.

The Review Body noted that the application was not supported by a masterplan or any statement that set out the development strategy for the landholding. They had no detailed evidence before them as to the activities carried out at the site or why the footpath and hardstanding were needed and how they fitted with the overall strategy for the landholding. The Review Body requested that the applicant submit a business case/masterplan for the landholding that would set out clearly the objectives for the landholding with any subsequent planning applications lodged with the Council.

## **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. Consequently, the application was refused.

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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.
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**Signed**.....  
Councillor S Hamilton  
Vice Chairman of the Local Review Body

**Date**.....24 October 2017



## APPENDIX IV

### SCOTTISH BORDERS COUNCIL LOCAL REVIEW BODY DECISION NOTICE

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

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

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**Local Review Reference:** 17/00034/RREF

**Planning Application Reference:** 17/00806/FUL

**Development Proposal:** Erection of agricultural building and formation of new access track

**Location:** Land South of 3 Kirkburn Cottages, Cardrona, Peebles

**Applicant:** Cleek Poultry Ltd

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## 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 and on the following grounds:

- 1 The application is contrary to Policies PMD2 and ED7 of the Scottish Borders Local Development Plan 2016 in that it has not been adequately demonstrated that there is an overriding justification for the proposed building that would justify an exceptional permission for it in this rural location and, therefore, the development would appear as unwarranted development in the open countryside. The proposed building is not of a scale that appears suited to the size of the holding on which it would be situated, which further undermines the case for justification in this location.
- 2 The application is contrary to Policy ED7 of the Scottish Borders Local Development Plan 2016 in that it has not been adequately demonstrated that any traffic generated by the proposal can access the site without detriment to road safety.

## DEVELOPMENT PROPOSAL

The application relates to the erection of agricultural building and formation of new access track on land South of 3 Kirkburn Cottages, Cardrona. The application drawings consisted of the following drawings:

<b>Plan Type</b>	<b>Plan Reference No.</b>
Location Plan	HAN 01 Revision A
General Arrangements & Elevations	HAN 02

## **PRELIMINARY MATTERS**

The Local Review Body considered the review, which had been competently made, under section 43A (8) of the Town & Country Planning (Scotland) Act 1997 at its meeting on 16<sup>th</sup> October 2017.

After examining the review documentation at that meeting, which included: a) Notice of Review; b) Papers referred to in the report; c) Consultations; d) Objections; e) Additional representations; and f) List of policies, the LRB concluded that it had sufficient information to determine the review and proceeded to consider the case.

The Review Body noted that a business case had been submitted with the Notice of Review but which had not been lodged with the appointed officer when the application was determined. Members decided that this evidence did not meet the tests set out in Section 43B of the Act, in that it could have been submitted before that time and that there were no exceptional circumstances why it could not have been lodged before that time. The Review Body proceeded to determine the case without reference to this information.

## **REASONING**

The determining issues in this Review were:

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

The Development Plan comprises: SESplan Strategic Development Plan 2013 and the Scottish Borders Local Development Plan 2016. The LRB considered that the most relevant of the listed policies were:

- Local Development Plan policies: HD3, PMD2, ED7, EP5, EP8 & EP13

Other Material Considerations

- SBC Supplementary Planning Guidance on Local Landscape Designations 2012

The Review Body noted that the proposal was to erect an agricultural shed with staff welfare accommodation for the applicant's proposed cattle venture. The building had a footprint of 9m x 27m and a ridge height of 7.5m and would be erected in a currently undeveloped field to south of the applicant existing 40 acre small holding on land leased by the applicant. Access was originally to be provided from the end of Kirkburn Road, past the existing dwellinghouse, however, this has now changed to utilise the field access through the applicant's landholding and the existing access onto the B7062.

The Review Body noted that the application had not been supported by a business plan/masterplan or any statement that set out the development strategy for the landholding. Members had no detailed evidence before them as to the activities carried out at the site or why the building was needed and how it fitted with the overall strategy for the landholding. In their view, no credible or sustainable economic justification had been made for the building of this size on the landholding.

The Review Body requested that the applicant submit a business case/masterplan for the landholding that would set out clearly the objectives for the landholding with any subsequent planning applications lodged with the Council.

In terms of the access, the Review Body contended that in the absence of a Transport Statement outlining the type, frequency and number of vehicles anticipated to be generated by this business it is not possible to judge whether the existing access is suitable to serve the development.

## **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. Consequently, the application was refused.

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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.

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**Signed**.....  
Councillor S Hamilton  
Vice Chairman of the Local Review Body

**Date**.....24 October 2017

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**APPENDIX V**

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

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

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

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**Local Review Reference:** 17/00035/RREF

**Planning Application Reference:** 17/00380/FUL

**Development Proposal:** Variation of Condition No. 3 of planning consent 10/00156/FUL to allow short term letting.

**Location:** Jordonlaw Granary, Jordonlaw Road, Westruther

**Applicant:** Susan and Chris Edge

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**DECISION**

The Local Review Body (LRB) reverses the decision of the appointed officer and grants planning permission for the reasons set out in this decision notice and subject to the direction, conditions and informative set out below.

**DEVELOPMENT PROPOSAL**

The application relates to the variation of Condition No. 3 of planning consent 10/00156/FUL to allow short term letting. The application drawings consisted of the following drawings:

<b>Plan Type</b>	<b>Plan Reference No.</b>
Location Plan	

**PRELIMINARY MATTERS**

The Local Review Body considered the review, which had been competently made, under section 43A (8) of the Town & Country Planning (Scotland) Act 1997 at its meeting on 16<sup>th</sup> October 2017.

After examining the review documentation at that meeting, which included: a) Notice of Review; b) Officer's Report; c) Papers referred to in report; d) Consultations; e) Support Comments; f) Objection; g) Additional representations and response and h) List of Policies, the LRB concluded that it had sufficient information to determine the review and proceeded to consider the case.

## **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 2013 and the Scottish Borders Local Development Plan 2016. The LRB considered that the relevant listed policies were:

- Local Development Plan policies: PMD1, PMD2, ED7, HD3 and IS7.

### **Other Material Considerations**

- SBC Supplementary Planning Guidance on New Housing in the Borders Countryside 2008
- SBC Supplementary Planning Guidance on Placemaking & Design 2010
- SBC Supplementary Planning Guidance on Development Contributions 2011
- SBC Supplementary Planning Guidance on Trees and Development 2008
- SBC Supplementary Planning Guidance on Landscape and Development 2008

The Review Body noted that the proposal was submitted to vary Condition No. 3 of planning consent 10/00156/FUL to allow for short term letting of Jordonlaw Granary in place of its use as ancillary accommodation associated with the main house at Jordonlaw Farm. They noted the nature of the farm access track and the layout and relationship of the track at its junction with the B6456.

The Review Body considered the road safety issues identified at the junction but also what level of traffic increase, if any, would be generated by the variation of Condition proposal. They gave weight to the fact that the property was only one-bedroomed and that there was no evidence to suggest that the level of traffic would be increased in nature or volume to the extent that road safety would be compromised at the junction. The Review Body considered what improvements at the junction could either be implemented by the applicant or the Council, but as they were not in possession of information on land ownership they could not determine whether the improvements were achievable. Ultimately the Review Body did not feel that the proposal would result in increased traffic to justify refusal of the variation request.

In coming to this conclusion, the Review Body also noted the length and nature of the farm track with generous verges and considered it was possible for vehicles to pass each other, both along the track and at the junction. They did, however, note from one of the site photographs that wheelie bins were stored too close to the road edge and that the visibility at the junction could be improved by setting the bins back by the tree and hedge. This advice would be attached as an Applicant Informative.



The issue of road safety and relationship with traffic movement was also considered at The Granary, Members noting that the positioning of parked vehicles could create adverse impact unless provision was made for dedicated parking within the site to the south-east of The Granary within the verge at the edge of the track. They considered it necessary to impose a condition to secure this provision. Similarly, they noted that permitted development was restricted by condition on the previous consents for the Granary and considered it necessary to attach the same condition again, given that the granting of the application was establishing a new usage of the building.

## **CONCLUSION**

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

## **DIRECTIONS**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.  
Reason: To comply with Section 58 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006

## **CONDITIONS**

1. No development shall commence until a scheme for the provision of a car parking space within the site adjoining the track to the south, be submitted to, and approved by, the Planning Authority. Once approved, the parking space then to be completed in accordance with the approved scheme and maintained thereafter in perpetuity as parking space for the use of occupants of Jordonlaw Granary only.  
Reason: In the interests of road safety and the unimpeded flow of agricultural and residential traffic in the immediate vicinity of the site.
2. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(Scotland) Order 1992 (or any subsequent Order amending, revoking or re-enacting that Order);
  - (i) There shall be no addition or extension to the dwelling (including the insertion of dormer windows or chimneys);
  - (ii) There shall be no further building, structure or other enclosure constructed or placed on the site;
  - (iii) No additional window or other opening shall be made in any elevation;unless an application for planning permission in that behalf has first been submitted to and approved by the Local Planning Authority.  
Reason: To safeguard the character, appearance and setting of the building to be converted.

## **INFORMATIVE**

The Local Review Body were keen to minimise road safety risks at the junction of the track and the public road by maintenance of visibility splays free from obstruction and requested that these were not impeded by placement of wheelie bins close to the

road edge, asking that the bins be set back so that they did not lie in front of the hedgelines.

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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.
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**Signed**.....

Councillor S Hamilton

Vice Chairman of the Local Review Body

**Date**.....24 October 2017