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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, 18 December 2017 at 10.00 am

- Present:- Councillors T. Miers (Chairman), S. Aitchison, A. Anderson, J. A. Fullarton, S. Hamilton, S. Mountford and C. Ramage
- Apologies:- Councillors H. Laing and E. Small
- In Attendance:- Chief Planning Officer, Solicitor (E. Moir), Democratic Services Team Leader, Democratic Services Officer (F. Walling).

1. **DECLARATION OF INTEREST.**

Councillor Ramage declared an interest in item 5 on the agenda (17/00973/FUL) in terms of Section 5 of the Councillors Code of Conduct and left the Chamber during the discussion.

2. **REVIEW OF 17/00926/PPP.**

There had been circulated copies of the request from Mr and Mrs Peter Gardiner, per Kanak Bose, Ogscastle, Carnwath, Lanark, to review the decision to refuse the planning application in respect of erection of dwellinghouse on land adjacent to Deanfoot Cottage, Deanfoot Road, West Linton. The supporting papers included the Notice of Review (including Decision Notice and consultations); officer's report; and a list of relevant policies. Members noted that the proposed site for the dwellinghouse was outwith the settlement boundary of West Linton and in their initial discussion agreed that there was not a building group in that location. Members' discussion moved on to whether the proposal complied with the Housing in the Countryside policies, also noting the planning history in the area in respect of previous refusal of planning permission for housing opposite the site.

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 I to this Minute.**

3. **REVIEW OF 17/00973/FUL.**

There had been circulated copies of the request from Bayhill Farming Ltd., per Ferguson Planning, Shiel House, 54 Island Street, Galashiels, to review the decision to refuse the planning application in respect of proposed storage yard including siting of 7 no storage containers and change of use of land from agricultural land to storage yard north east of Greenbraehead Farmhouse, Hawick. Included in the supporting papers were the Notice of Review; Decision Notice; officer's report; papers referred to in the report; consultations; and a list of relevant policies. Members accepted that there was an economic need for the business and that it represented a diversification of an existing agricultural business. Although differing views were expressed, they concluded that the rural location for this proposal may be more appropriate than a site within the settlement of Hawick. Members' ensuing discussion focused on the visual impact of the proposed development, how this could be mitigated and the suitability of the access to the site. There was agreement that a temporary permission in the first instance would give an opportunity for the applicant to demonstrate that the business could be operated successfully from the site.

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 for a period of three years and subject to conditions, for the reasons detailed in Appendix II to this Minute.**

4. REVIEW OF 17/01139/FUL.

There had been circulated copies of the request from Mr Robert McCririck per Ferguson Planning, Shiel House, 54 Island Street, Galashiels, to review the decision to refuse the planning application in respect of change of use from Class 1 Retail to allow mixed use Class 2 (Podiatry Clinic) and Class 1 (Ancillary Retail) at 40-41, the Square, Kelso. The supporting papers included the Notice of Review (including Decision Notice and officer's report); papers referred to in the officer's report; consultations; support comments; additional representation; and a list of relevant policies. Members noted that, despite being advertised for a retail use, the property in question had been empty for two years which in their opinion would have a negative effect on the town centre. Their discussion focused on interpretation of policy ED4 and in this respect concluded that the development would provide flexibility and maintain vitality and viability in the retail core of the town centre. Members asked for a condition to be added restricting the Class 2 use to the podiatry business only.

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 III to this Minute.**

The meeting concluded at 11.35 am

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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: 17/00045/RREF

Planning Application Reference: 17/00926/PPP

Development Proposal: Erection of dwellinghouse

Location: Land Adjacent Deanfoot Cottage, Deanfoot Road, West Linton

Applicant: Mr & Mrs Peter Gardiner

DECISION

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

1. The development would be contrary to Policy HD2 of the Local Development Plan 2016 and New Housing in the Borders Countryside Guidance 2008 in that it would amount to sporadic residential development in a countryside location, and no overriding case for a dwellinghouse has been substantiated

DEVELOPMENT PROPOSAL

The full application relates to the erection of dwellinghouse on garden ground adjacent to Deanfoot Cottage, Deanfoot Road, West Linton

The application drawings consisted of the following drawings:

Plan Type	Plan Reference No.
Location Plan	OGS 259 01

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 18th December 2017.

After examining the review documentation at that meeting, which included: a) Notice of Review (including Decision Notice and Consultations); b) Officer's Report of Handling; and c) List of policies, the LRB concluded that it had sufficient information to determine the review and proceeded to consider the case. In coming to this decision Members considered the applicant's request for further procedure in the form of 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 Strategic Development Plan 2013 and the Scottish Borders Local Development Plan 2016. The LRB considered that the most relevant of the policies were:

- Local Development Plan policies: PMD4, PMD2, HD2, HD3, EP8, EP13, IS2, IS5, IS7 & IS9

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 Privacy and Sunlight 2006
- SBC Supplementary Planning Guidance on Trees and Development 2008

The Local Review Body noted the site consisted of part of the garden to Deanfoot Cottage and that it lay around 90m outwith the settlement boundary of West Linton, as defined in Local Development Plan (LDP). In the circumstances, the application fell to be determined within the terms of the Council's Housing in the Countryside policies and would need to be tested against the criteria set out in Policy HD2 of the LDP and against the provisions of the approved Supplementary Planning Guidance on New Housing in the Borders Countryside.

After considering the evidence before them and the slide presentation, the Review Body concluded that a building group, as defined in Policy HD2 and the guidance, did not exist at the locus. There was only one house, Deanfoot Cottage and as it was 150m from the access into Deanfoot Farm it could not be considered to be part of that building group. Members agreed that the development was contrary to Part A of Policy HD2 and that the proposal would amount to sporadic residential development in a countryside location. In coming to this decision Members gave weight to the planning history in the immediate area where planning permission had been refused for housing proposals opposite the site for similar reasons.

As no evidence was placed before the Review Body in respect of an economic or operational need for a house on the site there was no justification for a house under Part (F) of Policy HD2. In addition, the proposal could not be justified under the provisions for conversions, restorations or replacement dwellings.

Members accepted that the site could accommodate a dwelling without significant visual or landscape impact and that matters such as servicing and access could be covered by planning condition. However, this did not override the strong policy objection to the principle of the development.

CONCLUSION

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

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 T Miers
Chairman of the Local Review Body

Date.....21 December 2017

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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: 17/00046/RREF

Planning Application Reference: 17/00973/FUL

Development Proposal: Change of use of agricultural land to form storage yard and siting of 7 No storage containers

Location: Land North East of Greenbraehead Farmhouse, Hawick

Applicant: Bayhill Farming Ltd

DECISION

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

DEVELOPMENT PROPOSAL

The application relates to the change of use of agricultural land to form a storage yard and for the siting of 7 No storage containers on land North East of Greenbraehead Farmhouse, Hawick. The application drawings consisted of the following drawings:

Plan Type	Plan Reference No.
Location Plan	LOC Rev A
Site Plan	L (-1) 101 Rev A

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 18th December 2017.

After examining the review documentation at that meeting, which included: a) Notice of Review (including Decision Notice, Officer's Report of Handling and Consultations); b) Papers referred to in report; c) List of policies, the LRB concluded that it had sufficient information to determine the review and that further procedure was not necessary.

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 of the listed policies were:

- Local Development Plan policies: HD3, PMD1, PMD2, ED7, IS5, IS7 & IS8

Other Material Considerations

- Scottish Planning Policy 2014
- PAN 73 Rural Diversification
- SBC Supplementary Planning Guidance on Placemaking & Design 2010
- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006

In considering the suitability of the site for this business use, Members discussed the terms of Policy ED7. The policy requires that there be an economic and/or operational need for the particular countryside location, and that it can be proven that the development could not be reasonably accommodated within the Development Boundary of a settlement.

After considering the evidence before them, the Review Body was satisfied a persuasive economic case had been made for the proposed business at Greenbraehead. The Review Body noted and gave weight to the fact that the Economic Development Section had no objections to the development. They also agreed that the project was a diversification of an existing agricultural business which was supported by Council and Scottish Planning Policy.

The Review Body debated whether this rural site was suitable for the proposed use and whether there were alternative locations for the business within Hawick. Members were content that there was no fundamental reason why such a use could not be carried out in a rural location or that it would significantly alter the character of the area. In this regard, they acknowledged that planning permission had been granted at Courthill Farm to the north of Hawick for a similar business also in a rural location, which had expanded due to demand for its services in recent years. Members concluded that such a rural location may actually be more appropriate than a settlement due to the need for separation from other uses and the increased security that could be provided by the applicant living on site.

Members noted that the applicant had planning permission for a site at Commercial Road in Hawick for the siting of containers but on reflection, they accepted that the

site was not suitable for the current development and that there were no other suitable alternative sites within Hawick for the scale of development proposed.

In terms of Policy ED7 they were content that there was both an operational and economic need for the business to be in this location and that it could not be reasonably located within the Development Boundary of Hawick.

The Local Review Body was satisfied that the site could be developed in a way that respected the character and amenity of the area. They were content that the nature of the existing topography and extensive mature tree screening along the bank of the Slitrig Water meant that the development would not be unduly visible or strident in the landscape. The proposed storage containers were also tucked into a corner adjoining the existing farm buildings and would be relatively discreet particularly, if they were coloured dark green and kept to single level only. Members expressed some concerns about the potential visual impact of the caravans, their general arrangement on the site and the appearance of the hardstanding areas to be used for storage. However, they agreed that some additional planting along the boundaries of the site and a generally tidying up of the yard surfacing would allow the development to integrate more successfully with its immediate environs and the wider landscape more generally.

Members debated in some detail the nature of the access to the site and whether it was capable of accommodating the proposed development. However, they accepted that due to the low level of activity at the site and that most traffic was likely to be highly seasonal, the proposed improvements to the road surface and the provision of additional passing places were sufficient to address their concerns.

Members agreed to temporary 3 year permission so that the applicant would be able to implement the access, landscape and yard surface improvements and demonstrate that the business could be operated successfully from the site.

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. The use hereby permitted shall be discontinued 3 years from the date of this decision notice unless further permission is obtained for its continued use.
Reason: To enable the Local Planning Authority to review the matter at the end of a limited period.
2. The approved storage containers shall be dark green in colour, unless otherwise agreed in writing by the Planning Authority.

Reason: To ensure the satisfactory assimilation of the development in to the local landscape.

3. The approved storage containers shall be sited single height only and shall not be stacked on top of each other.

Reason: To ensure the satisfactory assimilation of the development in to the local landscape.

4. No development shall take place except in strict accordance with a scheme of hard and soft landscaping works, which has first been submitted to and approved in writing by the planning authority. Details of the scheme shall include (as appropriate):

- i. existing and finished ground levels in relation to a fixed datum preferably ordnance
- ii. measures to protect existing trees and hedgerows during the construction phase and to ensure their retention thereafter and, in the case of damage, restored
- iii. details of a planting around the boundaries of the site
- iv. details of the improved surfacing to the storage yard
- v. location and design, including materials, of walls, fences and gates
- vi. soft and hard landscaping works
- vii. existing and proposed services such as cables, pipelines, sub-stations
- viii. other artefacts and structures such as street furniture, play equipment
- ix. A programme for the implementation and completion of the scheme of landscape works and subsequent maintenance thereof.

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

5. The access improvements shown on the approved drawing L(-1) 101 Rev A shall be carried out in accordance with a scheme of work which shall first be submitted to and approved by the planning authority prior to the commencement of the development hereby approved. The approved works shall be implemented in accordance with the approved scheme.

Reason: To ensure that the access road is of a suitable standard to serve the approved development.

6. Rights of way BR116 and BR117 that adjoin the application site shall be kept open and free from obstruction during the construction phase of the development.

Reason: To protect public right of access.

INFORMATIVE

The Council's Flood Protection Officer recommends that the applicant adopts water resilient materials and construction methods as appropriate in the development and that the applicant review the Online Planning Advice on Flood Risk.

The applicant should be aware that flooding can occur from other sources including runoff from surrounding land, blocked road drains, surcharging sewers and blocked bridges and culverts. It is recommended that, to receive flood warnings from SEPA, the applicant signs up to FLOODLINE at www.sepa.org.uk or by telephone on 0845 988 1188.

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 T Miers
Chairman of the Local Review Body

Date.....8 January 2018

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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: 17/00047/RREF

Planning Application Reference: 17/01139/FUL

Development Proposal: Change of use from Class 1 Retail to allow Mixed Use Class 2 (Podiatry Clinic) and Class 1 (Ancillary Retail)

Location: 40-41, The Square, Kelso

Applicant: Mr Robert McCririck

DECISION

For the reasons set out below, the Local Review Body reverses the decision of the appointed officer and grants planning permission subject to condition.

DEVELOPMENT PROPOSAL

The application relates to the change of use from Class 1 retail to allow mixed use of Class 2 (Podiatry Clinic) and Class 1 (Ancillary Retail) at 40-41, The Square, Kelso. The application consisted of the following drawings:

Plan Type	Plan Reference No.
Location Plan	1:5,000
Location Plan	1:500
Existing Layout	Ground Floor Plan
Existing Layout	First Floor Plan
Proposed Layout	Ground Floor Plan
Proposed Layout	First Floor Plan

PRELIMINARY MATTERS

The Local Review Body considered, at its meeting on 18th December 2017, 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 (including Decision Notice and Officer's Report of Handling); (b) Papers referred to in Officer's Report of Handling; (c) Consultations; (d) Support Comments; (e) Additional Representation; and (f) List of Policies, the Review Body concluded that it had sufficient information to determine the case and that further procedure was not required.

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 Scottish Borders Local Development Plan 2016. The Review Body considered that the most relevant of the listed policies were:

- Local Development Plan Policies: PMD1, PMD2, ED3, ED4, EP7, EP9, HD3 and IS7

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

- SBC Supplementary Planning Guidance on Shop Fronts and Shop Signs 2011
- SBC Retail Survey 2016
- Connected Borders 2017-2022
- Historic Environment Scotland Policy Statement 2016
- Scottish Planning Policy 2014
- 'National Review of Town Centres External Advisory Group Report: Community and Enterprise in Scotland's Town Centres' 2013
- 'Town Centre Action Plan' Scottish Government 2013

The Local Review Body agreed that the focus of their deliberations was the compliance of the development with Policy ED4 of the Local Development Plan and whether the development would make a significant positive contribution to the core retail function of Kelso town centre.

Members were satisfied that the proposed podiatry business was a suitable town centre use, that added to the diverse range of independent operators in the town centre and which would complement those existing businesses. The new business would provide a much needed service locally, which was particularly relevant to an ageing population. They noted the inclusion of the retail element to the front of the ground floor and that the premises would still retain a shop front appearance. They felt it important that the shop front was retained to maintain an interesting frontage to The Square.

The Review Body did not accept that the business would result in an unacceptable adverse impact on the viability or vitality of the town centre. They were satisfied that the proposed use would generate footfall and contribute to joint shopping trips in the town. They were content that it would have a positive economic impact on the town centre.

Members gave significant weight to the fact that the property had been advertised for a retail use but that no tenants/purchasers had been forthcoming. The property being empty for around 2 years had a negative impact on the town centre. The impact of its continuing to be left vacant was also an overriding concern of the Review Body.

Whilst there may be implications for the town centre, if other uses specified in Class 2 were permitted, they were content that with the proposed condition restricting the proposed use to a podiatry business only the development would be consistent with Policy ED4.

CONCLUSION

The Local Review Body concluded that the development would not have an unacceptable adverse impact on the viability or vitality of the town centre of Kelso and that it was consistent with Policy ED4 of the Development Plan. There were no other material considerations that would justify departure from the Development Plan.

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

2. The premises shall be used for a podiatry clinic (with ancillary retail use) and for no other purpose (including any other purpose in Class 2 of the Schedule to The Town and Country Planning (Use Classes) (Scotland) Order 1997, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order). The only exception to this restriction would be a change to a use specified in Class 1 (Shops) as defined in the relevant statutory instrument.
Reason: To ensure that the use remains compatible with the site.

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 T Miers
Chairman of the Local Review Body

Date:.....21 December 2017