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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, 19 February 2018 at 10.00 am

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

Apologies:- Councillors C. Ramage and E. Small

In Attendance:- Principal Planning Officer (C. Miller), Solicitor (E. Moir), Democratic Services Team Leader, Democratic Services Officer (F. Walling).

1. **DECLARATION OF INTEREST.**

Councillor Aitchison declared an interest in Item 5 of the agenda (Review of 17/01008/FUL) in terms of Section 5 of the Councillors Code of Conduct and left the Chamber during the discussion.

2. **REVIEW OF 17/01039/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 erection of a temple on land south west of Kirkburn Parish Church, Cardrona. The supporting papers included the Notice of Review (including the Decision Notice); officer's report; papers referred to in the officer's report; consultations; objections; and a list of relevant policies. Members' discussion focused on the impact of the proposed structure on the surrounding designated landscape and expressed concern in particular on its height which exceeded the height of adjoining trees. Members considered the proposed building was inappropriate in this rural agricultural setting and noted that no justification had been provided for the building at this location.

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 17/01008/FUL**

There had been circulated copies of the request from Mr Adam Elder, per Camerons Ltd., 1 Wilderhaugh, Galashiels, to review the decision to refuse the planning application in respect of erection of replacement dwellinghouse on land west of Glenkinnon Lodge,

Peelburnfoot, Clovenfords. Included in the supporting papers were the Notice of Review (including the Decision Notice); officer's report; papers referred to in the officer's report; consultations; objections; general comment; further representations in response to appeal; response from applicant to further representations; and a list of relevant policies. Members were asked by the Legal Advisor to consider whether certain matters included in the review documents constituted new evidence and were invited to apply the test under Section 43B of the Town and Country Planning (Scotland) Act 1997 and to decide whether or not this evidence could be referred to in their deliberations. Members decided that the applicant's offers relating to community benefits, affordable house unit and business intentions did not meet the test and therefore could not be considered in their deliberations. However, they concluded that the amended plan (reference 9303.1.02 B) did meet the Section 43B test and was material to their consideration. In order to allow the appointed planning officer, the landscape officer, ecology officer and objectors to submit their views on the amended drawing they requested further procedure in the form of written submissions. Members also asked for the applicant to have the opportunity of commenting on the responses received.

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 determined without further procedure in the form of written submissions;**
- (c) the amended plan drawing (reference 9303.1.02 B) be accepted as new evidence under Section 43B of the Act and that the appointed planning officer, landscape officer, ecology officer and the objectors be asked:- 'Taking into account your previous representations does the amended plan change your position in relation to compliance with Policy EP13 (Trees, Woodlands and Hedgerows) of the Local Development Plan 2016';**
- (d) the applicant be given the opportunity to comment on the responses received on the new evidence; and**
- (e) consideration of the review be continued on a date to be arranged.**

4. REVIEW OF 17/01406/FUL

There had been circulated copies of the request from Mr and Mrs D Gold, per Kanak Bose Ltd., Ogcscastle, Roman Road, Carnwarth, to review the decision to refuse the planning application in respect of erection of dwellinghouse with attached garage on land north west of Alderbank, Macbiehill, West Linton. The supporting papers included the Notice of Review (including Decision Notice and the Local Review Body Decision Notice for 17/00530/FUL); officer's report; papers referred to in the officer's report; consultations; and a list of relevant policies. Members accepted that there was a building group at Macbiehill. They recognised and went on to discuss the measures taken by the applicant, to address the Local Review Body's previous reason for refusal in respect of the proposed building's relationship with 'Alderbank', which included relocation of the site, lowering of the floor level and an amendment to the roof design. Views were expressed that the proposed roof design was not appropriate in relation to the character of the surrounding buildings. Members paid particular attention to the relationship of the proposed dwelling with the building group and made reference to the natural boundaries of the group. After lengthy debate, opinion remained divided as to whether the dwellinghouse, at its relocated site, represented a suitable addition to the existing building group.

VOTE

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

Councillor Mountford, seconded by Councillor Miers, moved as an amendment that the decision to refuse the application be reversed and the application approved.

On a show of hands Members voted as follows:-

*Motion - 2 votes
Amendment - 5 votes*

The amendment was accordingly carried and the application approved.

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 and a legal agreement, for the reasons detailed in Appendix II to this Minute.**

The meeting concluded at 11.30 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: 17/00049/RREF

Planning Application Reference: 17/01039/FUL

Development Proposal: Erection of temple

Location: Land South West of Kirkburn Parish Church, Cardrona

Applicant: Cleek Poultry Ltd

DECISION

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

1 The application is contrary to Policies ED7 of Scottish Borders Local Development Plan 2016 in that it has not been demonstrated that the proposal meets any of the acceptable land uses listed in Policy ED7 and no overriding justification for the proposed building has been provided 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 and use are not of a scale or purpose that appear related to the nature or size of the holding on which the building would be situated, which further undermines the case for justification in this location.

2 The application is contrary to Policies PMD2, ED7 and EP5 of Scottish Borders Local Development Plan 2016 and Supplementary Planning Guidance on Local Landscape Designations in that the scale and design of the proposal would be prominent in the landscape and would result in an unacceptable adverse visual impact on the designated area. The proposed development would detract from the character and quality of the Tweed Valley Special Landscape Area and it has not been adequately demonstrated that the adverse landscape impact would be outweighed by social or economic benefits of national or local importance.

3 The application is contrary to Policies PMD2 and ED7 of the Scottish Borders Local Development Plan 2016 in that the proposed temple would result in an unacceptable adverse impact on road safety. The proposed building would increase traffic levels on the existing minor public road and it has not been adequately demonstrated that any traffic generated by the proposal can access the site in manner which does not detrimentally impact on road safety.

4 The application is contrary to Policy EP8 of the Scottish Borders Local Development Plan 2016 in that the siting, scale and design of the proposed development would have an unacceptable adverse impact on the setting of the Our Lady's Church. It has not been adequately demonstrated that the proposal can be accommodated on the site in a manner which does not adversely affect the heritage value of a nationally important archaeological site.

5 The application is contrary to Policy EP7 of the Scottish Borders Local Development Plan 2016 in that the siting, scale and design of the proposed development would have an unacceptable adverse impact on the setting of the William Cree Memorial Church. It has not been adequately demonstrated that the proposal can be accommodated on the site in a manner which protects the setting of the category C listed building.

DEVELOPMENT PROPOSAL

The application relates to the erection of a temple. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	PP01
Elevations	PP02

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 19th February 2018.

After examining the review documentation at that meeting, which included: a) Notice of Review (including the Decision Notice); b) Officer's report; c) Papers referred to in Officer's Report; d) Consultations ; e) Objections 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 relevant listed policies were:

- Local Development Plan policies: PMD1, PMD2, ED7, HD3, EP5, EP7, EP8 and IS7

Other Material Considerations

- SBC Supplementary Planning Guidance on Local Landscape Designations 2012

The Review Body noted that the proposal was to erect a temple for mixed religious use on land at the eastern end of the applicant's landholding at Kirkburn, adjoining the site of Our Lady's Church and churchyard. The building has a footprint of 450sq m, of triangular design with 29m apex height, clad in dark green profiled sheeting with clear polycarbonate apex.

The Review Body noted that the proposed building would be significantly higher than the tree and hedge screening alongside the public road and adjoining the site at the churchyard boundary, its height exceeding the top of the screening by a significant degree. Members noted the advice of the Landscape Architect in this respect that the apex of the building would be 132m AOD compared to the highest adjoining tree top heights being 110m AOD. Members, therefore, considered that the building would be unduly tall and of overdominant scale in this setting, appearing both incongruous and out of scale with the surrounding designated landscape, rural setting and buildings.

The Review Body also noted that the application was not in compliance with Local Development Plan Policy ED7 as it was not supported by a business plan or any statement that set out the justification and need for the building at this site. In the circumstances, they, therefore, had no reason to set aside the strong landscape and visual impact objections to the development or overturn the decision.

Members noted the comments of the Roads Planning, Heritage and Archaeology Officers who considered that the application was also deficient in terms of the required traffic and photomontage information to enable a full assessment of the road safety and cultural heritage implications of the development to be undertaken. In the absence of such information, Members had no reason to overturn the Appointed Officer's conclusions in these respects.

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.

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.....20 February 2018

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APPENDIX II

**SCOTTISH BORDERS COUNCIL
LOCAL REVIEW BODY INTENTIONS 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: 18/00002/RREF

Planning Application Reference: 17/01406/FUL

Development Proposal: Erection of dwellinghouse with attached garage

Location: Land North West of Alderbank, Macbiehill, West Linton

Applicant: Mr & Mrs D Gold

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 subject to conditions, informatives and the applicant entering into a Section 75 agreement as set out below.

DEVELOPMENT PROPOSAL

The application relates to the erection of a dwellinghouse with attached garage. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	OGS 265 01
Site Plan	OGS 265 02
Floor Plans	OGS 265 03
Elevations	OGS 265 04
Sections	OGS 265 05

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 19th February 2018.

After examining the review documentation at that meeting, which included: a) Notice of Review (including the Decision Notice and LRB Decision Notice relating to 17/00530/FUL); b) Officer's report; c) Papers referred to in Officer's Report; d) Consultations and e) 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, HD2, HD3, EP13, IS2, IS7 and 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 Trees and Development 2008
- SBC Supplementary Planning Guidance on Landscape and Development 2008
- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006

The Local Review Body was satisfied that there was a building group at Macbiehill, as defined in Local Plan Policy HD2 and in the approved Supplementary Planning Guidance on New Housing in the Borders Countryside, that consisted of more than three existing dwellinghouses. They accepted that the proposed dwellinghouse would not exceed the maximum two houses allowed in such small groups, allowing for other development approved but not yet implemented.

The Review Body then turned its attention to whether the site was a suitable addition to the building group. After considering the presentation slides in detail, they noted that the house position had relocated some distance north-west from "Alderbank", compared to the house position intended under application 17/00530/FUL which had been refused. Whilst there was acceptance that the relocation resulted in a more linear expansion of the building group, the Review Body noted from the slides and photographic submissions that the building group boundary was more clearly demarcated by the field boundary further to the north-west. Combined with the lowered floor level shown on the cross section and with the visual impact further lessened by the presence of an agricultural building at higher level outwith the site to the north-west, they concluded that the relocated site was still within the natural boundaries

of the building group at Macbiehill and that visual impacts would not be significant as a result.

In determining this, the Review Body noted and generally welcomed the measures taken by the applicant to address the previous reason for refusal in terms of overbearing impacts on "Alderbank". They noted the significant movement north-west, the excavation of the ground to lower the floor level/building height and the truncated roof height with flat-topped section. However, the Review Body had concerns over the roof design which they felt was not appropriate to the overall character of the building group and they felt that the relocation and excavated floor level were sufficient measures to alleviate residential impact on "Alderbank" without the need to propose the flat-topped roof. Noting that the concerns of the Appointed Officer on this matter could be addressed by condition, they agreed that an amended roof design should be sought by planning condition, understanding that this would result in an increase in height.

The Review Body also considered other matters with regard to development of the site including the potential for contamination and ground conditions associated with the response from the Coal Authority. They were content that all other matters could be adequately addressed by appropriate planning conditions and informatives.

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. Notwithstanding the details of the roof shown in the submitted drawings, no development shall be commenced until a revised roof design without flat topped section has been submitted to and approved in writing by the Local Planning Authority, and thereafter no development shall take place except in strict accordance with those details.
Reason: The roof design requires further consideration to ensure a satisfactory form of development, which is sympathetic in character to its setting.
2. Notwithstanding the description of the materials in the application, no development shall be commenced until precise details of the materials to be used in the construction of the external walls and roofs of the house have been submitted to and approved in writing by the Local Planning Authority, and thereafter no development shall take place except in strict accordance with those details.
Reason: The materials require further consideration to ensure a satisfactory form of development, which contributes appropriately to its setting.
3. 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):

- existing and finished ground levels in relation to a fixed datum preferably ordnance
- existing landscaping features and vegetation to be retained and, in the case of damage, restored
- location and design, including materials, of walls, fences and gates
- soft and hard landscaping works
- existing and proposed services such as cables, pipelines, sub-stations
- other artefacts and structures such as street furniture, play equipment
- A programme for completion and subsequent maintenance.

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

4. No development is to commence until a report has been submitted to and approved in writing by the Planning Authority that the public mains water supply is available and can be provided for the development. Prior to the occupation of the building(s), written confirmation shall be provided to the approval of the Planning Authority that the development has been connected to the public mains water supply.

Reason: To ensure that the Development is adequately serviced with a sufficient supply of wholesome water and there are no unacceptable impacts upon the amenity of any neighbouring properties.

5. No water supply other than the public mains shall be used to supply the Development without the written agreement of the Planning Authority.

Reason: To ensure that the Development is adequately serviced with a sufficient supply of wholesome water and there are no unacceptable impacts upon the amenity of any neighbouring properties.

6. No development is to commence until a report has been submitted to and approved in writing by the Planning Authority providing evidence that arrangements are in place to ensure that the private drainage system is provided and thereafter maintained in a serviceable condition. The provisions of the approved report shall be implemented prior to the occupation of the dwellinghouse hereby approved.

Reason: To ensure that the development does not have a detrimental effect on public health.

7. In terms of the vehicular access and servicing of the site, the following shall be provided:

- Section of private road between Alderbank and the plot to be upgraded to provide a well compacted free draining smooth running surface capable of withstanding a minimum axle loading of 14 tonne prior to occupation of the dwelling.
- Parking and turning for a minimum of two vehicles, not including any garages, provided within the curtilage of the property prior to occupation. These facilities shall be retained thereafter perpetuity for that purpose only.

Reason: In the interests of road safety and to ensure that the site is adequately serviced.

INFORMATIVES

1. Private Drainage System

Private drainage systems often cause public health problems when no clear responsibility or access rights exist for maintaining the system in a working condition.

Problems can also arise when new properties connect into an existing system and the rights and duties have not been set down in law.

To discharge the Condition relating to the private drainage arrangements, the Applicant should produce documentary evidence that the maintenance duties on each dwelling served by the system have been clearly established by way of a binding legal agreement. Access rights should also be specified.

The waste water drainage proposals will require authorisation from SEPA under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (as amended). Details of regulatory requirements and good practice advice for the applicant can be found on the [Regulations section](#) of our website. If you are unable to find the advice you need for a specific regulatory matter, please contact a member of the regulatory team in your local SEPA office at:

SEPA Galashiels, Burnbrae, Mossilee Road, Galashiels, Borders, TD1 1NF, Tel: 01896 754797

2. Stoves and Use of Solid Fuel

These installations can cause smoke and odour complaints and any Building and Planning Consents for the installation do not indemnify the applicant in respect of Nuisance action. In the event of nuisance action being taken there is no guarantee that remedial work will be granted building/planning permission.

Accordingly this advice can assist you to avoid future problems.

The location of the flue should take into account other properties that may be downwind.

The discharge point for the flue should be located as high as possible to allow for maximum dispersion of the flue gasses.

The flue should be terminated with a cap that encourages a high gas efflux velocity.

The flue and appliance should be checked and serviced at regular intervals to ensure that they continue to operate efficiently and cleanly.

The appliance should only burn fuel of a type and grade that is recommended by the manufacturer.

If you live in a Smoke Control Area you must only use an Exempt Appliance <http://smokecontrol.defra.gov.uk/appliances.php?country=s> and the fuel that is Approved for use in it <http://smokecontrol.defra.gov.uk/fuels.php?country=s> .

In wood burning stoves you should only burn dry, seasoned timber. Guidance is available on - [http://www.forestry.gov.uk/pdf/eng-woodfuel-woodasfuelguide.pdf/\\$FILE/eng-woodfuel-woodasfuelguide.pdf](http://www.forestry.gov.uk/pdf/eng-woodfuel-woodasfuelguide.pdf/$FILE/eng-woodfuel-woodasfuelguide.pdf)

Treated timber, waste wood, manufactured timber and laminates etc. should not be used as fuel.

Paper and kindling can be used for lighting, but purpose made firelighters can cause fewer odour problems.

3. Coal Authority

The proposed development lies within an area that has been defined by The Coal Authority as containing potential hazards arising from former coal mining activity. These hazards can include: mine entries (shafts and adits); shallow coal workings; geological features (fissures and break lines); mine gas and previous surface mining sites. Although such hazards are seldom readily visible, they can often be present and problems can occur in the future, particularly as a result of development taking place. It is recommended that information outlining how the former mining activities affect the proposed development, along with any mitigation measures required (for example the need for gas protection measures within the foundations), be submitted alongside any subsequent application for Building Standards approval (if relevant). Your attention is drawn to the Coal Authority policy in relation to new development and mine entries available at www.coal.decc.gov.uk

Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires the prior written permission of The Coal Authority. Such activities could include site investigation boreholes, digging of foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Failure to obtain Coal Authority permission for such activities is trespass, with the potential for court action.

Property specific summary information on past, current and future coal mining activity can be obtained from The Coal Authority's Property Search Service on 0845 762 6848 or at www.groundstability.com

If any of the coal mining features are unexpectedly encountered during development, this should be reported immediately to The Coal Authority on 0845 762 6848. Further information is available on The Coal Authority website www.coal.decc.gov.uk

LEGAL AGREEMENT

The Local Review Body required that a Section 75 Agreement, or other suitable legal agreement, be entered into regarding the payment of a financial contribution towards education facilities in the locality.

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.....20 February 2018

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