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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 June 2018 at 10.00 am

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

Apologies:- Councillor A. Anderson

In Attendance:- Principal Planning Officer – Major Applications/Local Review, Solicitor  
(E. Moir), Democratic Services Team Leader, Democratic Services Officer  
(F. Walling).

### 1. **REVIEW OF 17/01362/FUL**

There had been circulated copies of the request from Mrs Sarah Wilkinson, per Ferguson Planning, Shiel House, 54 Island Street, Galashiels to refuse the planning application in respect of part change of use of paddock to form new access and drive to dwellinghouse, erection of gates and summerhouse and formation of new parking area and tennis court south east of Southbank, Bowden. The supporting papers included the Notice of Review (including the Decision Notice and officer's report); additional papers referred to in the officer's report; consultations; and a list of relevant policies. Members' attention was drawn to new evidence submitted with the Notice of Review documentation in the form of specification of ground reinforcement for tree protection. They concluded that under the terms of Section 43B of the Town and Country Planning (Scotland) Act 1997 this evidence could be referred to in the determination of the review. In noting that the application site was in a conservation area and outwith the Bowden settlement boundary, as defined in the Local Development Plan, Members referred to the fact that the proposal did not relate to housing but was in effect development of a garden area. They recognised the improvement to road safety that would result from the provision of off-road parking within the grounds of the property and commented on the positive impact on the conservation area which may result if cars did not use the current roadside parking area. Being mindful of the site's rural setting, the ensuing discussion focused on the potential impact of the proposed driveway, summerhouse and tennis court on the surrounding area and how this could be mitigated through planning conditions.

### **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 could be determined with 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 but that there were material considerations that would justify departure from the Development Plan; and**
- (e) the officer's decision to refuse the application be reversed and planning permission be granted subject to conditions and informatives, for the reasons detailed in the Appendix to this Minute.**

*The meeting concluded at 10.50 am*



## **APPENDIX**

### **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:** 18/00012/RREF

**Planning Application Reference:** 17/01362/FUL

**Development Proposal:** Part change of use of paddock to form new access and drive to dwellinghouse, erection of gates and summerhouse and formation of new parking area and tennis court.

**Location:** Southbank, Bowden

**Applicant:** Mrs Sarah Wilkinson

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## **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 and informatives as set out below.

## **DEVELOPMENT PROPOSAL**

The application relates to the part change of use of paddock to form new access and drive to dwellinghouse, erection of gates and summerhouse and formation of new parking area and tennis court. The application drawings and documentation consisted of the following:

<b>Plan Type</b>	<b>Plan Reference No.</b>
Location Plan	1
Site Plan	2
Sections	3
Sections	4
Elevations	5
Specifications	6
Specifications	7
Elevations	8

Site Plan	9
Specifications	C11 A
Site Plan	1252 SO1 A
Site Plan	1252 SO2 A
Site Plan	1252 SO3 A
Specifications	Geocell Root Protection Details

## **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 18<sup>th</sup> June 2018.

After examining the review documentation at that meeting, which included: a) Notice of Review (including Decision Notice and Officer's Report); b) Additional Papers referred to in Officer's Report; c) Consultations; and d) List of Policies, the Review Body considered whether new information included by the applicant within the review documents met the test under Section 43B of the Act. This related to a new specification of ground reinforcement for tree protection. The Review Body considered that the test set by Section 43B had been satisfied and, therefore, had regard to the information in determining the case.

They noted the applicant's suggestion for a site visit but did not consider this necessary after viewing photographs and plans of the site and surroundings.

## **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: PMD2, PMD4, HD3, EP4, EP9, EP13 and IS7

### **Other Material Considerations**

- SBC Supplementary Planning Guidance on Placemaking and Design 2010
- SBC Supplementary Planning Guidance on Trees and Development 2008
- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006
- SBC Supplementary Planning Guidance on Landscape and Development 2008

The Review Body noted that the proposal was for planning permission to part change the use of a paddock to form a new access and drive to dwellinghouse, erection of gates and summerhouse and formation of new parking area and tennis court at Southbank, Bowden.

The Review Body firstly considered the issue of location outwith Bowden settlement boundary as defined in the Local Development Plan. Whilst they accepted that the proposals were a development that was outwith the defined boundary, they considered that the nature of the proposals did not conflict with the main aim of the relevant Policy PMD4 which particularly sought to contain built development such as housing. Members did not consider

that extension outwith the boundary to form a garden, driveway, tennis court and summerhouse represented a material breach of the Policy in comparison with development such as housing. Whilst they accepted that there were no exceptions criteria met by the proposals, they did not feel that the character of the village would be changed by development, of the type intended, outwith the boundary. There was also comparison with types of development that could be developed without planning permission outwith the settlement boundary, including agricultural buildings.

Members accepted that granting the change of use to become garden ground did not result in an amendment to the settlement boundary of Bowden but could result in such an amendment when the boundary is drawn up for any future Local Development Plan and that this may increase potential for development pressure for a house. However, they considered this to be a matter for determination at the time of any proposal being submitted in the future and that it should have no bearing on the decision relating to the current proposals.

The Review Body gave particular weight to the intention to provide off-road parking within the grounds of the property, noting that the proposals would improve local road safety, retain existing passing places on the public road, extend an existing passing place at the new access point and allow for retention of the existing stone wall. This part of the proposals did not concern them in relation to impacts on the Conservation Area or village setting, provided full details of the access, visibility splays, passing place extension, gates, driveway and parking were submitted and agreed by condition. Indeed, it was felt there could be a positive impact on the Conservation Area through encouragement of parking off-street away from the current parking area.

Members were more concerned over the impacts of the tennis court and summerhouse on the open setting of the village and Conservation Area, especially the screen fencing to be erected around the tennis court. However, with careful selection of native tree or hedge species that provide a year round screening, they considered that the visual impacts could be successfully mitigated and that the development could be sympathetically integrated into the Conservation Area and setting of the village. They also noted that existing trees would be retained and measures taken to ensure their retention when forming the parking area.

Members considered other issues could be addressed through planning conditions, including materials for the summerhouse, design and colour of fencing, ground levels and surface treatment for the tennis court.

## **CONCLUSION**

After considering all relevant information, the Local Review Body concluded that the development was not consistent with Policy PMD4 of the Development Plan but that there were material considerations that would justify departure from the Development Plan, these being that the main purpose of Policy PMD4 is to control the development of housing or other substantial built development outwith the development boundary and this was essentially a garden development and that the improvement to road safety as a result of taking parked cars off the main road justified the development. 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 take place except in strict accordance with a scheme of soft landscaping works, which has first been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
  - i. Tree/hedge planting to screen the tennis court fence and summerhouse
  - ii. Tree/hedge planting to screen the new driveway
  - iii. A programme for completion and subsequent maintenance.

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

2. No development shall commence until further details of the access driveway, passing place alteration, visibility splays, gates, parking and turning facilities within the site have been submitted to and approved in writing by the Planning Authority. Thereafter, the works shall be implemented in accordance with the agreed details and within an agreed timescale.

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

3. No development shall commence until further details of the location of trees within the site and proposals for protection of the trees and their Root Protection Areas in compliance with BS5837 are submitted to, and approved in writing by, the Planning Authority. Thereafter, the development to proceed in accordance with the approved details.

Reason: To safeguard existing trees within the site.

4. No development shall commence until further details of the fencing intended for the tennis court and driveway are submitted to, and approved in writing by, the Planning Authority. Thereafter, the fencing to be erected in accordance with the approved details.

Reason: To safeguard the visual amenity of the Conservation Area.

5. No development shall commence until further details of the proposed ground levels and surface treatment of the tennis court are submitted to, and approved in writing by, the Planning Authority. Thereafter, the tennis court to be erected in accordance with the approved details.

Reason: To safeguard the visual amenity of the Conservation Area.

6. No development shall commence until further details of the materials intended for the summerhouse are submitted to, and approved by, the Planning Authority. Thereafter, the summerhouse to be erected in accordance with the approved details.

Reason: To safeguard the visual amenity of the Conservation Area.

## INFORMATIVES

With regard to Condition 1, the new planting should be selected from appropriate native species to the area but still providing a year round screening.

With regard to Condition 2, the design of the new gates should respect the Conservation Area and semi-rural setting.

**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.....**19 June 2018

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