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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 November 2018 at 10.00 am

Present:- Councillors T. Miers (Chairman), S. Aitchison, A. Anderson, H. Laing (for paragraphs 3, 4 & 5), S. Mountford and E. Small

Apologies:- Councillors S. Hamilton and C. Ramage

Absent:- Councillor J. A. Fullarton

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

MEMBER

Having not been present at the site visits for the reviews of applications 18/00929/PPP and 18/00832/PPP, Councillor Laing did not take part in the determination of these reviews and left the Chamber during their consideration.

1. REVIEW OF 18/00929/PPP

With reference to paragraphs 1 and 3 of the Minute of 15 October 2018, there had been circulated copies of the request from Mr and Mrs Eric Forster, per Ferguson Planning, Shiel House, 54 Island Street, Galashiels, for review of refusal of the planning application in respect of the erection of a dwellinghouse on land North East of Ladywood, Lower Greenhill, Selkirk. The supporting papers included the Notice of Review (including the Decision Notice and Officer's Report); papers referred to in the Officer's Report; consultations; and a list of relevant policies. In accordance with the decision made at a Pre Examination meeting on 15 October 2018 the Local Review Body had carried out an unaccompanied site visit on 31 October 2018. In their initial discussion Members agreed the existence of a building group at Lower Greenhill and the extent of that group. They agreed that the site visit had been useful and had assisted in their determination of whether the proposal was an appropriate addition to the building group in terms of plot size, layout and character.

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 site visit and 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, informatives and a legal agreement, for the reasons detailed in Appendix I to this Minute**

2. REVIEW OF 18/00832/PPP

With reference to paragraph 2 of the Minute of 15 October 2018, there had been circulated copies of the request from Mr Mike Orr, per Mr Steven Irvine, Stainiebrae, Lower Greenhill, Selkirk, for review of refusal of the planning application in respect of erection of two dwellinghouses on land North East of Stainiebrae, Lower Greenhill, Selkirk. The supporting papers included the Notice of Review (including the Decision Notice, Officer's Report and consultations); papers referred to in the Officer's Report; a representation; and a list of relevant policies. In accordance with the decision made at a Pre Examination meeting on 15 October 2018 the Local Review Body had carried out an unaccompanied site visit on 31 October 2018. Members agreed that a building group existed at Lower Greenhill and that the site visit was useful in allowing them to consider how the proposed development would relate to the layout and character of the other dwellings within the group. In this respect, the ensuing discussion focussed on the boundary and topography of the proposed development site, the size of the plots in comparison to those of other dwellings within the group and the capacity of the 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 site visit and 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 and the application refused for the reasons detailed in Appendix II to this Minute.**

MEMBER

Councillor Laing returned to the meeting for consideration of the following reviews.

3. REVIEW OF 18/00635/FUL

There had been circulated copies of the request from J. S. Crawford Properties (Borders) Ltd, per Ferguson Planning, Shiel House, 54 Island Street, Galashiels, for review of refusal of the planning application for change of use from Class 4 to include Class 11 (Leisure) and Class 3 (Café) at Factory Plexus Facility, Tweedside Park, Tweedbank, Galashiels. The supporting papers included the Notice of Review (including the Decision Notice and Officer's Report); papers referred to in the Officer's Report; consultations; and a list of relevant policies. In considering this application Members noted that the proposals were contrary to the Local Development Plan and the recently adopted Supplementary Guidance and Simplified Planning Zone for the Central Borders Business Park. Members accepted that there was an apparent local demand for the gym and proposed soft play area and café and the potential economic benefits of the application. They also noted that part of the building had been vacant since 2014. However views were also expressed that this facility did not have to be located in a Business Park, that it was too soon to allow business space to be lost in this area and that this would be contrary to investment and regeneration objectives relating to the railway corridor. After lengthy debate, Members' opinion remained divided.

VOTE

Councillor Laing, seconded by Councillor Anderson, moved that the decision to refuse the application be reversed and the application approved.

Councillor Miers, seconded by Councillor Aitchison, moved as an amendment that the decision to refuse the application be upheld.

On a show of hands Members voted as follows:-

Motion - 2 votes

Amendment - 4 votes

The amendment was accordingly carried and the application refused.

DECISION

DECIDED 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 and the application refused for the reasons detailed in Appendix III to this Minute.**

4. REVIEW OF 18/00580/FUL

There had been circulated copies of the request from Miss Fiona Duff, per Christopher Thomson Design, 63 Queen Charlotte Street, Edinburgh, to review the grant of planning permission subject to conditions in respect of alterations and extension to dwellinghouse and erection of detached garage/workshop at Elsielea, 61 West High Street, Lauder. The supporting papers included the Notice of Review; Decision Notice; Officer's Report; papers referred to in the Officer's Report; consultations; and a list of relevant policies. In considering the application de novo, Members were content with the proposed alterations and extension to the dwellinghouse. They then turned their attention to the proposed erection of detached garage/workshop and in particular to the condition relating to the orientation of the building which was the subject of the request for review. Members had sympathy with the view of the applicant that the tall blank elevation of the proposed building would be better disguised from the High Street if placed as described in the plans submitted rather than reversing the building as required by the condition. However Members also expressed a general concern about the height and design of the proposed garage/workshop and questioned the height proposed and the choice of a mono-pitched roof as against a dual-pitched roof which they considered might better suit the character of the surrounding buildings and be lower in ridge height. After further discussion, Members agreed to further procedure and to request this information from the applicant before making a determination.

DECISION

AGREED:-

- (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 written submissions from the applicant in respect of the detached garage/workshop;**

- (c) to request further information from the applicant as to whether there was a particular reason for the height proposed and for the choice of a mono-pitched roof as against a dual-pitched roof which they considered may better suit the character of the surrounding buildings and be lower in ridge height; and
- (d) consideration of the review be continued on a date to be arranged.

5. **REVIEW OF 18/00644/PPP**

There had been circulated copies of the request from Mr, Mrs and Mr Archie, Helen & Hugh Stewart, per Farningham Planning Ltd, The Bourse, 47 Timber Bush, Leith, Edinburgh, to review refusal of the planning application for erection of dwellinghouse (renewal of planning permission 15/00036/PPP) on land North West of Chapel Cottage, Melrose. Included in the supporting papers were the Notice of Review (including the Officer's Report); Decision Notice; papers referred to in the Officer's Report; consultations; and a list of relevant policies. Members noted that previous consent had been granted in July 2015 for the same proposal as that now the subject of the appeal following refusal. In noting that the previous consent was in compliance with the Consolidated Local Plan in force at that time they recognised that the application to renew the planning permission had to be considered under the terms of the current Local Development Plan policies. Although the existence of a lodge was historically documented on this site, Members' ensuing discussion centred on the issue that, unlike the previous Local Development Plan, the current policies did not support development of a replacement house where no physical remains existed. Members' opinion remained divided about the interpretation of part of the current policy and about the weight that should reasonably be attached to the fact that a consent existed at the time of application for renewal.

VOTE

Councillor Mountford, seconded by Councillor Anderson, moved that the decision to refuse the application be reversed and the application approved.

Councillor Aitchison, seconded by Councillor Small, moved as an amendment that the decision to refuse the application be upheld.

On a show of hands Members voted as follows:-

*Motion - 3 votes
Amendment - 2 votes*

The motion was accordingly carried and the application approved.

DECISION

DECIDED 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 was contrary to the Development Plan but that there were material considerations that would justify departure from the Development Plan; and

- (d) 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 Appendix IV to this Minute**

The meeting concluded at 12.25 pm

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Appendix I

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: 18/00021/RREF

Planning Application Reference: 18/00929/PPP

Development Proposal: Erection of dwellinghouse

Location: Land North East of Ladywood, Lower Greenhill, Selkirk

Applicant: Mr & Mrs Eric Forster

DECISION

The Local Review Body reverses the decision of the appointed officer and indicates that it intends to grant planning permission for the reasons set out in this decision notice subject to conditions and informatives and the applicants entering into a Section 75 Agreement as set out below.

DEVELOPMENT PROPOSAL

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

Plan Type	Plan Reference No.
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Location Plan	
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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 November 2018. The review had previously been considered at a Pre Examination meeting during the Local Review Body meeting of 15th October 2018 where it was agreed to defer hearing the appeal until after an unaccompanied site visit had been carried out.

After examining the review documentation which included: a) Notice of Review (including Decision Notice and Officer's Report); b) Papers referred to in officer's report; c) Consultations; and d) List of Policies, and having carried out further procedure in the form of an unaccompanied site visit, the Review Body proceeded to determine 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, IS2, IS3, IS7 and IS9

Other Material Considerations

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

The Review Body noted that the proposal was for Planning Permission in Principle to erect a dwellinghouse on the site. They were of the opinion that the site visit carried out following the Pre-Examination Meeting was very useful in allowing them to understand the proposals and how the site would relate to other dwellings within the group.

Members firstly considered whether there was a building group present at Lower Greenhill and concluded that, in terms of Local Development Plan Policy, five houses currently existed and that those five houses constituted a building group. They also recognised that the group could expand by up to two houses and that the proposal for one house was within that scale of addition capacity.

Although accepting that there was not sufficient space to site a dwellinghouse within the westerly part of the site nearest the public road, they considered that the larger part of the site to the rear was still well related to the building group and was of adequate size to accommodate a dwellinghouse whilst still respecting the character of the building group. Members also felt the site was well contained and could enhance the group with appropriate screening.

Whilst they understood the appointed officer's concerns about a second line of housing being introduced into the group, the Review Body considered that the current character could accommodate the proposed development to create a clustered modern housing development that would be consistent with other similar hamlets in the Borders and that some of the existing houses were not in linear alignment and provided context to the proposal. Subject to appropriate siting and design at the next planning stage, to be controlled by condition, Members considered that the site was an appropriate addition and respected the character of the building group.

The Review Body also noted that there were no objections from Roads Planning to the proposal and sought clarification that development contributions would be required only for the Borders Railway and not for education.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was consistent with Policies PMD2 and HD2 of the Local Development Plan and relevant Supplementary Planning Guidance. The development was considered to be an appropriate addition to the building group, well related to, and in keeping with the character of, the group. Consequently, the application was approved.

DIRECTIONS

1. Application for approval of matters specified in the conditions set out in this decision shall be made to the Planning Authority before whichever is the latest of the following:
 - a. the expiration of three years from the date of this permission, or
 - b. the expiration of six months from the date on which an earlier application for approval of matters specified in the conditions set out in this decision notice was refused or dismissed following an appeal.

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

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

2. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the matters specified in the conditions set out in this decision.

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

CONDITIONS

1. No development shall commence until the details of the layout, siting, design and external appearance of the building(s), the means of access thereto and the landscaping of the site have been submitted to and approved in writing by the Planning Authority. Thereafter the development shall be carried out in accordance with the agreed details.

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

2. No development shall commence until all matters specified in conditions have, where required, been submitted to and approved in writing by the Planning Authority. Thereafter the development shall only take place in strict accordance with the details so approved.

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

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 trees to be retained, protected and, in the case of damage, restored
- location and design, including materials, of walls, fences and gates
- soft and hard landscaping works including establishment of firm planted boundaries to the plot
- existing and proposed services such as cables, pipelines, sub-stations
- A programme for completion and subsequent maintenance.

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

4. No development shall commence until the details of the access and the parking and turning facilities within the site have been submitted to and approved in writing by the Planning Authority. The details to include:

- a service layby, incorporating the existing access to Ladywood and the new access, as per specification DC – 2 or similar agreed
- provision for the disposal of surface water to prevent its discharge onto the adjacent public road.
- 2 no. parking spaces, not including any garage, and turning area to be provided within the curtilage of the site
- visibility at the access onto the public road to be improved by removing/cutting back the roadside hedge to provide splays of 2.4m by 90m

Thereafter, the works shall be implemented in accordance with the agreed details and within an agreed timescale.

Reason: To ensure the site is adequately serviced.

5. No development to commence until further details of the provision of foul and surface water drainage are submitted to, and approved by, the Planning Authority. The details should include evidence that arrangements are in place to ensure that the private drainage system will be maintained in a serviceable condition. Thereafter, development shall proceed in strict accordance with the approved details.

Reason: To ensure that satisfactory arrangements are made for the disposal of surface and foul water.

6. No development is to commence until a report has been submitted to and approved in writing by the Planning Authority, demonstrating the provision of an adequate water supply to the development in terms of quality and quantity. The report must also detail all mitigation measures to be delivered to secure the quality, quantity and continuity of water supplies to properties in the locality which are served by private water supplies and which may be affected by the development. The provisions of the approved report shall be implemented prior to the occupation of the building(s) hereby approved.

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.

INFORMATIVES

With regard to Condition 4, all work within the public road boundary must be undertaken by a contractor first approved by the Council. Any proposed gate to the access must open into the driveway away from the public road.

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 for the Borders railway.

N.B: This permission does not include any consent, approval or licence necessary for the proposed development under the building regulations or any other statutory enactment and the development should not be commenced until all consents are obtained.

Under The Control of Pollution Act 1974, the Council recommends the following hours for noisy construction-related work:

Monday-Friday 0700-1900

Saturday 0800-1300

Sunday and Public Holidays - no permitted work (except by prior agreement with the Council)

Contractors will be expected to adhere to the measures contained in BS 5228:2009 "Code of Practice for Noise and Vibration Control on Construction and Open Sites".

For more information or to make a request to carry out works outside the above hours, please contact an Environmental Health Officer at the Council.

Notice of Initiation of Development

Section 27 of the Town and Country Planning (Scotland) Act (as amended) requires that any person who has been granted planning permission (including planning permission in principle) and intends to start development must, once they have decided the date they will start work on the development, inform the planning authority of that date as soon as is practicable.

Notice of Completion of Development

Section 27B requires that any person who completes a development for which planning permission (including planning permission in principle) has been given must, as soon as practicable after doing so, give notice of completion to the planning authority.

When planning permission is granted for phased development then under section 27B(2) the permission is to be granted subject to a condition that as soon as practicable after each phase, other than the last, is completed, the person carrying out the development is to give notice of that completion to the planning authority.

In advance of carrying out any works it is recommended that you contact Utility Bodies whose equipment or apparatus may be affected by any works you undertake. Contacts include:

Transco, Susiephone Department, 95 Kilbirnie Street, Glasgow, G5 8JD

Scottish Power, Riccarton Mains Road, Currie, Edinburgh, EH14 5AA

Scottish Water, Developer Services, 419 Balmore Road, Possilpark, Glasgow G22 6NU

British Telecom, National Notice Handling Centre, PP404B Telecom House, Trinity Street, Stoke on Trent, ST1 5ND

Scottish Borders Council, Street Lighting Section, Council HQ, Newtown St Boswells, Melrose, TD6 0SA

Cable & Wireless, 1 Dove Wynd, Strathclyde Business Park, Bellshill, ML4 3AL

BP Chemicals Ltd, PO Box 21, Bo'ness Road, Grangemouth, FK2 9XH

THUS, Susiephone Department, 4th Floor, 75 Waterloo Street, Glasgow, G2 7BD

Susiephone System – **0800 800 333**

If you are in a Coal Authority Area (Carlops or Newcastleton), please contact the Coal Authority at the following address: The Coal Authority 200 Lichfield Lane, Berry Hill, Mansfield, Nottinghamshire NG18 4RG.

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.....26 November 2018

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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: 18/00025/RREF

Planning Application Reference: 18/00832/PPP

Development Proposal: Erection of two dwellinghouses

Location: Land North East of Stainie Brae, Lower Greenhill, Selkirk

Applicant: Mr Mike Orr

DECISION

The Local Review Body upholds and varies the decision of the appointed officer and refuses planning permission as explained in this decision notice and on the following grounds:

- 1 The proposed development is contrary to Adopted Local Development Plan Policy HD2 and the advice of Supplementary Planning Guidance - New Housing in the Borders Countryside (December 2008), in that: (i) the development is not sympathetic to the character of the building group and would not contribute positively to the sense of place of the existing building group; (ii) the Applicant has not demonstrated that there is any operational need for new dwellinghouses to be located at the site as a direct operational requirement of any agricultural, horticultural, forestry or other enterprise which is itself appropriate to the countryside; and (iii) the development would exceed the maximum number of houses allowed to be consented within the building group during the current Local Development Plan period when considered with any existing consent.

DEVELOPMENT PROPOSAL

The application relates to erection of two dwellinghouses. The application drawings and documentation consisted of the following:

Plan Type

Plan Reference No.

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 19th November 2018. The review had previously been considered at a Pre Examination meeting preceding the Local Review Body meeting of 15th October 2018 where it was agreed to carry out an unaccompanied site visit before considering the review.

After examining the review documentation at the meeting on 19th November, which included: a) Notice of Review (including Decision Notice, Officer's Report and Consultations); b) Papers referred to in officer's report; c) Representation; and d) List of Policies, and having carried out an unaccompanied site visit, the Review Body proceeded to determine the case. They noted the applicant's request for further procedure in the form of a hearing but did not consider this necessary after considering the case, visiting the site and 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: PMD1, PMD2, HD2, HD3, IS2, IS3, IS7 and IS9

Other Material Considerations

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

The Review Body noted that the proposal was for Planning Permission in Principle to erect two dwellinghouses on the site. They were of the opinion that the site visit carried out following the Pre-Examination Meeting was very useful in allowing them to understand the proposals and how the site would relate to other dwellings within the group.

Members firstly considered whether there was a building group present at Lower Greenhill and concluded that, in terms of Local Development Plan Policy, five houses currently existed and that these five houses constituted a building group. They recognised that the group could expand by up to two houses but that the proposal for two houses exceeded the scale of addition capacity once the consent granted on the adjoining site (18/00021/RREF) was taken into account.

The Review Body were also in agreement with the appointed officer that the development projected outwith the defensible boundaries of the building group into agricultural land, representing a drift of development with challenging topography and an inappropriate

backland nature. In particular, Members were concerned that the small size of the two plots would be out of character with the generous plot size and property spacings within the existing group, resulting in an impression of overdevelopment and close proximity to other houses.

Members did consider whether any adjustment of the application to limit it to one rather than two houses would remove their concerns but ultimately decided that it would be not be appropriate to amend the proposal in such a significant manner and it would be unlikely to resolve the issues relating to defensible boundaries, challenging topography and relationship with existing houses.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was contrary to the Development Plan and Supplementary Planning Guidance and that there were no other material considerations that would justify departure from the Development Plan. Consequently, the application was refused and an additional reason added to refer to exceeding of the permitted scale of addition within the building group.

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.....26 November 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: 18/00024/RREF

Planning Application Reference: 18/00635/FUL

Development Proposal: Change of Use from Class 4 to include Class 11 (Leisure) and Class 3 (Café)

Location: Factory Plexus Facility, Tweedside Park, Tweedbank

Applicant: J S Crawford Properties (Borders) Ltd

DECISION

The Local Review Body upholds the decision of the appointed officer and refuses planning permission as explained in this decision notice and on the following grounds:

- 1 The proposed development will conflict with Policies PMD3 and ED1 of the Scottish Borders Council Local Development Plan 2016 and Supplementary Guidance - Central Borders Business Park Tweedbank 2017, in that it would comprise uses which do not fall within the permitted uses for this Strategic Business and Industrial Site and which would not contribute positively to the efficient functioning of the allocated site or its future as a business park
- 2 The proposed development conflicts with Policy EP13 of the Scottish Borders Local Development Plan 2016 and Supplementary Planning Guidance Trees and Development 2008 in that it comprises car park alterations which potentially risk adversely affecting adjacent trees which are important to the amenity value of the business park and the application does not demonstrate that the trees will be adequately protected during construction of the car park alterations

DEVELOPMENT PROPOSAL

The application relates to Change of Use from Class 4 to include Class 11 (Leisure) and Class 3 (Café). The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	TB/PP/CoU/001
Existing Layout	TB/PP/CoU/002
Site Plan	TB/PP/CoU/003 rev A
Elevations	TB/PP/CoU/004 rev A
Floor Plans	TB/PP/CoU/005
Floor Plans	TB/PP/CoU/006
Floor Plans	TB/PP/CoU/007
Floor Plans	TB/PP/CoU/008
Sections	TB/PP/CoU/009

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 November 2018.

After examining the review documentation at that meeting, which included: a) Notice of Review (including Decision Notice and Officer's Report); b) Papers referred to in officer's report; c) Consultations; and d) List of Policies, the Review Body proceeded to determine 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: PMD2, PMD3, ED1, HD3, EP8, EP13, EP16, IS7 and IS9

Other Material Considerations

- Scottish Planning Policy 2014
- Strategic Development Plan (SESplan) 2013
- SBC Employment Land Audit 2016
- SBC Supplementary Guidance on Central Borders Business Park/SPZ 2017
- SBC Supplementary Planning Guidance on Trees and Development 2008
- SBC Supplementary Planning Guidance on Waste Management 2015

The Review Body noted that the proposal was for Change of Use of part of the building from Class 4 to include Class 11 (Leisure) and Class 3 (Café).

The Review Body firstly considered the proposals against Policies PMD3 and ED1 of the Local Development Plan together with the Supplementary Guidance on the Central Borders Business Park and the associated Simplified Planning Zone scheme. They noted that the

proposals were part retrospective with regards to the gym and that the uses fell outwith those normally sought within the Local Development Plan and Supplementary Guidance for a Strategic Business and Industrial Site. They also noted that the uses would occupy a limited part of the building and that the remaining employment uses would continue within the building.

Members discussed the terms of Policy ED1 in particular and how the proposed uses would comply with the use class restrictions. Whilst there was some sympathy that part of the building had been vacant since 2014 and that continuing vacancy was not contributing to the efficient functioning of the Business Park, the Review Body nevertheless felt that approval of the proposed uses would result in the loss of business space and that this would be both premature and undermine the aims of the Council's recently approved Supplementary Guidance and Simplified Planning Zone for the Business Park. Members felt that it was too soon to be allowing business space to be lost and that this could detrimentally impact on the overall aims of regeneration and investment based upon the railway presence. They also felt there could be more appropriate locations and opportunities for the uses as other areas are brought forward for development in the locality.

The Review Body did accept that the gym had a local demand and that there was support from Economic Development for this element. They also accepted that such a use, in itself, could have been considered to be in compliance with Policy ED1 in contributing to the efficient functioning of the Business Park. However, they also noted that the application was mixed use including a Children's Soft Play facility with associated café and that this could not be considered to contribute to efficient functioning. Although there was also a clear demand and Members accepted that a particular type of building with height was specifically required for the facility, they did not accept that the facility had to be located within a Business Park resulting in the loss of protected floorspace.

Members considered all other factors raised by the applicant including employment creation, claimed oversupply of industrial land and availability of suitable buildings. Whilst there was discussion and some sympathy with regard to these factors, the Review Body ultimately did not consider them to be sufficiently material to outweigh the terms of the Local Development Plan and Supplementary Guidance/SPZ.

The Review Body also noted the impacts of the proposed parking on trees and that the Appointed Officer considered the requirements of Policy EP13 had not been met by the proposal.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was contrary to the Development Plan and Supplementary Planning Guidance 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.....26 November 2018

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Appendix IV

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: 18/00030/RREF

Planning Application Reference: 18/00644/PPP

Development Proposal: Erection of dwellinghouse (renewal of planning permission 15/00036/PPP)

Location: Land North West of Chapel Cottage, Melrose

Applicant: Mr, Mrs and Mr Archie, Helen & Hugh Shaw Stewart

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 erection of a dwellinghouse. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Site Plan	9176/A/01-02 A
Other	ASK 140709/01

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 19th November 2018.

After examining the review documentation at that meeting, which included: a) Notice of Review (including officer's report); b) Decision Notice; c) Papers referred to in officer's

report; d) Consultations; and e) List of Policies, the Review Body proceeded to determine the case. They also noted the applicant's request for further procedure in the form of a site visit and hearing but did not consider these necessary after considering the case and 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: PMD1; PMD2, HD2, HD3, EP8, EP13, IS2, IS3, 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 Privacy and Sunlight 2006
- SBC Supplementary Planning Guidance on Trees and Development 2008
- SBC Supplementary Planning Guidance on Landscape and Development 2008
- SBC Supplementary Planning Guidance on Waste Management 2015
- SBC Supplementary Planning Guidance on Development Contributions 2011

The Review Body noted that the proposal was for planning permission in principle to erect a dwellinghouse on the site and that a previous consent had been granted for the same proposal in July 2015. Members understood that the previous consent was accepted by the Council as being in compliance with the Consolidated Local Plan in force at that time which accepted the erection of a replacement dwellinghouse on a site where only documentary evidence was verified of the existence of a previous dwellinghouse.

Members gave significant weight to the fact that this consent was still in existence at the time that the new application was submitted to renew. They understood that an alternative approach could have been to submit an application for the details of the design and siting in the form of an Application for Approval of Matters Specified as Conditions. However, as an application was submitted instead to renew the planning permission in principle, they agreed that the Appointed Officer correctly had to apply the current Local Development Plan Policy.

There was further discussion about the terms of Policy HD2 in relation to whether it continued to support dwellinghouses on the site of a former house where no physical evidence remained. Members noted that the former Policy D2 supported such cases but there was some debate about whether Clauses D and E of Policy HD2 contained the same support as contended by the applicant. In particular, the Review Body discussed the use of the term "original" building in criterion b) of Clause E. They also agreed that there was no building group present and that there was no submitted justification for occupation of the house for economic reasons.

Ultimately, Members concluded that HD2 did not clearly support development on the site of a former house where no physical remains exist. However, Members were of the opinion that considerable weight must still be attached to the fact that a consent existed at the time of application for renewal and that this should outweigh the terms of the Local Development Plan Policy in this instance.

It was accepted that the design and siting of the house, which should reflect the history of the site as a location for a lodge house, would be properly addressed at the stage of an application for Approval of Matters Specified as Conditions. Members also noted that development contributions had already been paid by legal agreement associated with the previous consent.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that whilst the development was not consistent with Policies PMD2 and HD2 of the Local Development Plan and relevant Supplementary Planning Guidance, the existence of a previous consent at the time of application for renewal was a significant material consideration which outweighed the Local Development Plan and Guidance in this instance.

DIRECTIONS

1. Application for approval of matters specified in the conditions set out in this decision shall be made to the Planning Authority before whichever is the latest of the following:
 - a. the expiration of three years from the date of this permission, or
 - b. the expiration of six months from the date on which an earlier application for approval of matters specified in the conditions set out in this decision notice was refused or dismissed following an appeal.

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

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

2. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the matters specified in the conditions set out in this decision.

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

CONDITIONS

1. No development shall commence until the details of the layout, siting, design and external appearance of the building(s), the means of access thereto and the landscaping of the site have been submitted to and approved in writing by the Planning Authority. Thereafter the development shall be carried out in accordance with the agreed details.

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

2. No development shall commence until all matters specified in conditions have, where required, been submitted to and approved in writing by the Planning Authority.

Thereafter the development shall only take place in strict accordance with the details so approved.

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

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):
 - a) existing and finished ground levels in relation to a fixed datum preferably ordnance
 - b) existing landscaping features and trees to be retained, protected and, in the case of damage, restored
 - c) prior to any works on the existing hedgerow, a detailed scheme for the replanting outwith the splay to be submitted to, and approved in writing by, the Planning Authority. Thereafter the replanting is to be carried out concurrently with the wider landscaping of the application site.
 - d) location and design, including materials, of walls, fences and gates
 - e) soft and hard landscaping works including establishment of firm planted boundaries to the plot
 - f) existing and proposed services such as cables, pipelines, sub-stations
 - g) A programme for completion and subsequent maintenance.

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

4. No development shall commence until the details of the access and the parking and turning facilities within the site have been submitted to and approved in writing by the Planning Authority. The details to include:
 - a) parking and turning for two vehicles, excluding garages, within the site
 - b) visibility splays (2.4m x 90m and 2.4m x 160m) to be provided at the main junction with the public road. Thereafter the splays are to be retained in perpetuity.
 - c) A programme for completion and maintenance.

Reason: In the interests of road safety on the junction of the Linthill estate road and the B6359.

5. No development to commence until further details of the provision of foul and surface water drainage are submitted to, and approved by, the Planning Authority. The details should include evidence that arrangements are in place to ensure that the private drainage system will be maintained in a serviceable condition. The development then to proceed in accordance with the approved details.

Reason: To ensure that satisfactory arrangements are made for the disposal of surface and foul water.

6. No development is to commence until a report has been submitted to and approved in writing by the Planning Authority, demonstrating the provision of an adequate water supply to the development in terms of quality and quantity. The report must also detail all mitigation measures to be delivered to secure the quality, quantity and continuity of water supplies to properties in the locality which are served by private water supplies and which may be affected by the development. The provisions of the approved report shall be implemented prior to the occupation of the building(s) hereby approved.

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.

7. No development shall commence until further details of the provision of waste storage are submitted to, and approved in writing by, the Planning Authority. The development then to proceed in accordance with the approved details.
Reason: To ensure that satisfactory arrangements are made for waste storage and collection.

INFORMATIVES

1. With regard to Condition 4, all work within the public road boundary must be undertaken by a contractor first approved by the Council. Any proposed gate to the access must open into the driveway away from the public road.
2. Please note that there may be the potential to encounter buried and unknown archaeology within the site. You would be advised to contact the Council Archaeology Officer should any be encountered.
3. Whilst not subject to a condition limiting materials or design, it should be noted that the Planning Authority would expect that any subsequent application for Approval of Matters Specified in Conditions, should propose a traditional lodge style dwellinghouse design, making use of traditional materials (stone and render walls, slated roof with appropriate eaves details and a steep roof pitch). Further advice is provided in the SPGs on Placemaking and Design and on New Housing in the Borders Countryside, available from the Council website: www.scotborders.gov.uk. With regards the design of a subsequent application for a dwelling on the plot, it should be noted that high quality contemporary design features that are sympathetic to the context will be considered, though a design statement in such cases would be recommended

N.B: This permission does not include any consent, approval or licence necessary for the proposed development under the building regulations or any other statutory enactment and the development should not be commenced until all consents are obtained.

Under The Control of Pollution Act 1974, the Council recommends the following hours for noisy construction-related work:

Monday-Friday 0700-1900

Saturday 0800-1300

Sunday and Public Holidays - no permitted work (except by prior agreement with the Council)

Contractors will be expected to adhere to the measures contained in BS 5228:2009 "Code of Practice for Noise and Vibration Control on Construction and Open Sites".

For more information or to make a request to carry out works outside the above hours, please contact an Environmental Health Officer at the Council.

Notice of Initiation of Development

Section 27 of the Town and Country Planning (Scotland) Act (as amended) requires that any person who has been granted planning permission (including planning permission in principle) and intends to start development must, once they have decided the date they will start work on the development, inform the planning authority of that date as soon as is practicable.

Notice of Completion of Development

Section 27B requires that any person who completes a development for which planning permission (including planning permission in principle) has been given must, as soon as practicable after doing so, give notice of completion to the planning authority.

When planning permission is granted for phased development then under section 27B(2) the permission is to be granted subject to a condition that as soon as practicable after each phase, other than the last, is completed, the person carrying out the development is to give notice of that completion to the planning authority.

In advance of carrying out any works it is recommended that you contact Utility Bodies whose equipment or apparatus may be affected by any works you undertake. Contacts include:

Transco, Susiephone Department, 95 Kilbirnie Street, Glasgow, G5 8JD
Scottish Power, Riccarton Mains Road, Currie, Edinburgh, EH14 5AA
Scottish Water, Developer Services, 419 Balmore Road, Possilpark, Glasgow G22 6NU
British Telecom, National Notice Handling Centre, PP404B Telecom House, Trinity Street, Stoke on Trent, ST1 5ND
Scottish Borders Council, Street Lighting Section, Council HQ, Newtown St Boswells, Melrose, TD6 0SA
Cable & Wireless, 1 Dove Wynd, Strathclyde Business Park, Bellshill, ML4 3AL
BP Chemicals Ltd, PO Box 21, Bo'ness Road, Grangemouth, FK2 9XH
THUS, Susiephone Department, 4th Floor, 75 Waterloo Street, Glasgow, G2 7BD
Susiephone System – **0800 800 333**

If you are in a Coal Authority Area (Carlops or Newcastleton), please contact the Coal Authority at the following address: The Coal Authority 200 Lichfield Lane, Berry Hill, Mansfield, Nottinghamshire NG18 4RG.

Notice Under Section 21 of the Town & Country Planning (Schemes of Delegation and Local Review procedure) (Scotland) Regulations 2008.

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.

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.....26 November 2018