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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 February 2019 at 10.00 am

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

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 when the reviews of applications 18/00956/FUL and 18/01215/FUL were first considered, Councillor Ramage did not take part in the determination of these reviews and left the Chamber during their consideration.

1. CONTINUATION OF REVIEW OF 18/00956/FUL

With reference to paragraph 3 of the Minute of 21 January 2019, in respect of the request from Mr and Mrs Alexis and Rose Kennedy, per Architeco Limited, 43 Argyll Street, Dunoon, for review of refusal of the planning application for erection of a dwellinghouse on land North West of Chapel Cottage, Melrose, there had been circulated copies of statements from officers on the new information submitted with the Notice of Review documentation and a response from the applicant. Also re-circulated were the review papers including the Notice of Review; Decision Notice; Officer's Report; papers referred to in the Officer's Report; consultations; and a list of policies. Members firstly noted that the principle for a dwellinghouse on this site had been established by a previous decision of the Local Review Body. Having noted the statements from officers on the new information submitted in respect of the impact of the proposed development on trees and hedging Members were content that the impact could be addressed with appropriate conditions. Similarly they accepted that the additional information, subject to conditions, had addressed the aspects of road safety at the junction of the access to the public road. They then turned their attention to the design of the house on this particular site and whether this respected the rural character of the area and its location in the Linthill Designed Landscape. Having regard to an informative which the Review Body had added to the planning permission in principle, which advised that a traditional lodge style dwellinghouse would be expected for this site, Members' opinion was divided as to whether the design submitted met that visualisation.

VOTE

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

Councillor Hamilton, seconded by Councillor Anderson, moved as an amendment that the officer's decision be varied and the application be refused for the reason that the design of the proposed dwellinghouse was not in keeping with the sense of place of the countryside character and setting of the site and surrounding area.

On a show of hands Members voted as follows:-

Motion - 2 votes

Amendment - 5 votes

The amendment was accordingly carried and the application refused.

DECISION

AGREED that:-

- (a) the review could be considered without the need for any further procedure on the basis of the additional written submissions and the papers submitted;**
- (b) the proposal would be contrary to the Development Plan and that there were no other material considerations that would justify departure from the Development Plan; and**
- (c) the officer's decision to refuse the application be varied and the application refused for the reason detailed in Appendix I to this Minute.**

2. CONTINUATION OF REVIEW OF 18/01215/FUL

With reference to paragraph 4 of the Minute of 21 January 2019, in respect of the request from Mr K Patterson, per Richard Amos Ltd, 2 Golden Square, Duns, to review the refusal of the planning application for extension to dwellinghouse at 10, Townhead Way, Newstead, there had been circulated copies of a statement from the Appointed Officer on the new information submitted with the Notice of Review and a response from the applicant. Also re-circulated were the review papers including Notice of Review (including the Decision Notice); Officer's Report; consultations; and a list of relevant policies. In their discussions Members had regard to the officer's submissions and accepted that there would be some loss of daylight to the adjoining neighbour's kitchen window and door. However, they also took into account mitigating factors including a letter of support from the affected neighbour, the modest scale of the extension, the improvement to privacy of the neighbouring property and that the impact of the extension on sunlight to the neighbour's window and door would be minimised due to the proposed building being located to the north of that property.

DECISION

AGREED

- (a) the review could be considered without the need for any further procedure on the basis of the additional written submissions and the papers submitted;**
- (b) the proposal would be in keeping with the Development Plan; and**
- (c) the officer's decision to refuse the application be reversed and planning permission be granted, subject to a condition, for the reasons detailed in Appendix II to this Minute**

MEMBER

Councillor Ramage re-joined the meeting.

3. REVIEW OF 18/01229/FUL

There had been circulated copies of the request from Wilson G Jamieson Ltd, per Gain Planning Services, 122, Scott Street, Galashiels, for review of refusal of the planning application for extension to provide an additional 7 No workshop units (Class 5/6), 1 No unit to provide dog daycare facility and change of use of paddock to dog exercise area at Storage Units, Farknowes, Langshaw Road, Galashiels. The supporting papers included

the Notice of Review; Decision Notice; Officer's Report; papers referred to in the officer's report; consultations; an objection; and a list of policies. In their initial discussion Members referred to the nature of the current development and business use of the site and whilst the site was located outside the settlement boundary of Galashiels they noted that, in terms of any effect on the rural character of the area, there was already a significant amount of development in that vicinity. Members accepted that there was a demand for small industrial units and commented on the suitability of the location for a dog daycare facility, being away from residential properties but not too far out of the town. There were, however, concerns expressed about the inclusion of a two storey unit in the proposals. After further discussion Members agreed that as this was a complex site they would prefer to carry out a site visit before making a decision.

DECISION

AGREED that:-

- (a) the request for a review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;**
- (b) the review could not be considered without further procedure in the form of a site visit; and**
- (c) an unaccompanied site visit be carried out on a date to be arranged and consideration of the review be continued to a future meeting.**

The meeting concluded at 11.50 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: 18/00038/RREF

Planning Application Reference: 18/00956/FUL

Development Proposal: Erection of dwellinghouse

Location: Land North West of Chapel Cottage, Melrose

Applicant: Mr & Mrs Rose and Alexis Kennedy

DECISION

The Local Review Body varies the decision of the appointed officer and refuses planning permission for the reason set out in this decision notice as set out below:

1. The proposed development is contrary in principle to Adopted Local Plan Policies HD2, PMD2, EP10 and the advice of Supplementary Planning Guidance - New Housing in the Borders Countryside (December 2008) and Supplementary Planning Guidance - Place-Making and Design (January 2010), in that it is not in keeping with the sense of place of the countryside character and setting of the site and the surrounding area, principally through the introduction of an unsympathetic and suburban form of development into an isolated rural location, which would be harmful to the visual amenities of the site and surrounding area; including the Linthill Designed Landscape.

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.
Location Plan	1427-02-01
Location Plan	1427-02-02A
Site Plan	1427-02-03

Floor Plans	1427-02-04
Floor Plans	1427-02-05
Roof Plan	1427-02-06
Elevations	1427-02-07
Sections	1427-02-08
Permaculture Zoning Plan	1427-02-18
Visibility Sightlines	1427-02-19

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 21 January 2019.

After examining the review documentation at that meeting, which included: a) Notice of Review; b) Decision Notice; c) Officer's Report; d) Papers referred to in report; e) Consultations and f) List of Policies, the Review Body considered whether certain matters included in the review documents constituted new evidence under Section 43B of the Act and whether or not this evidence could be referred to in their deliberations. This related to a tree survey and a drawing proposing visibility sightlines. Members considered that the information did meet the Section 43B test, was material to their consideration and could be considered. In order to allow the Appointed Officer, Landscape Architect and Roads Planning Officer to submit their views on the new information, they requested further procedure in the form of written submissions. Members disregarded a further piece of new evidence which related to a site plan with a boundary drawn along the driveway to the public road which was different from the boundary on the site plan submitted with the original application as it was not open to the applicant to amend the site boundary at this juncture.

The LRB reconvened to consider the Review, following further procedure, at its meeting on 18 February 2019. After examining the review documentation at that meeting which included a) Statement from Officers on New Information; b) Response from applicant; and c) Review Papers (including the Decision Notice and Officer's Report), the Review Body proceeded to determine the case. They noted the applicant's suggestion for further procedure but did not consider any further procedure necessary, including a site visit, 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: PMD1, PMD2, HD2, HD3, EP8, EP10, EP13, IS2, IS3, IS7 and IS9

Other Material Considerations

- SBC Supplementary Planning Guidance on Placemaking and Design 2010

- SBC Supplementary Planning Guidance on New Housing in the Borders Countryside 2008
- SBC Supplementary Planning Guidance on Privacy and Sunlight 2011
- 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 to erect a dwellinghouse North-West of Chapel Cottage, Linthill near Melrose.

The Review Body firstly considered the principle of a dwellinghouse on the site, applying Policy HD2 of the Local Development Plan and Supplementary Planning Guidance on “New Housing in the Borders Countryside”. Members noted that planning permission in principle had already been granted by the Review Body for a house on the site in relation to application reference 18/00644/PPP. This permission had granted planning permission in principle on the basis that the existence of a previous consent at the time of the application for a dwellinghouse on this site outweighed the terms of Policy HD2, which the Review Body determined did not support a dwellinghouse in this location. The Review Body, therefore, accepted the principle of a house and this addressed the Appointed Officer’s first reason for refusal. Whilst the additional hobby farming justification was noted, Members did not consider it necessary to give any weight to the justification as the principle of a replacement house had already been established and that consent was still extant therefore there was no need to consider an economic requirement justification.

The Review Body then considered the issue of the design and siting of the house, applying Policies PMD2, HD2 and EP10 of the Local Development Plan and Supplementary Planning Guidance on “New Housing in the Borders Countryside” and “Placemaking and Design”. Whilst some Members were not averse to the contemporary design in itself, others felt that the design was too modern and inappropriate for the site itself and did not comply with Policies, Guidance or meet the intentions of the Informative which the Review Body had added to the permission granted for application 18/00644/PPP specifically advising that the Review Body expected a traditional lodge style dwellinghouse design to be brought forward in any subsequent application. It was considered that the design failed to respect the rural character of the area and the Review Body felt that a more traditional approach was needed to a standard and quality that the site and setting demanded. The contemporary design and features were, ultimately, not considered to be sufficiently sympathetic to the character or context of the site, which is located in the Linthill Designed Landscape .

Members then considered the impacts of the development on the local landscape, particularly existing trees and hedging. Assessing the proposals against Policies PMD2, HD2 and EP13 in particular, it was noted that further information in the form of a tree survey had been submitted and that this had been accepted by both the Appointed Officer and the Landscape Architect. The Review Body were content that with appropriate conditions on new planting, tree retention and a slight movement of the site access, the additional information had addressed the third reason for refusal.

Members finally considered the aspects of road safety and, in particular, the achievement of satisfactory visibility at the junction of the driveway with the public road. Assessing the proposal against Policy PMD2, the Review Body noted that hedging had already been removed in a northerly direction and that the new information relating to a visibility sightline plan had been accepted by the Appointed Officer and Roads Planning Officer, subject to conditions. Members were content that the additional information, subject to conditions, had addressed the fourth reason for refusal.

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.....25 February 2019

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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: 18/00039/RREF

Planning Application Reference: 18/01215/FUL

Development Proposal: Extension to dwellinghouse

Location: 10 Townhead Way, Newstead

Applicant: Mr Kevin Patterson

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 the conditions as set out below.

DEVELOPMENT PROPOSAL

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

Plan Type	Plan Reference No.
Location Plan	18/B608/LC01
Elevations/Floor Plan	18/B608/SK02

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 21 January 2019.

After examining the review documentation at that meeting, which included: a) Notice of Review (including Decision Notice); b) Application referred to in Notice of Review; c) Officer's Report; d) Consultations and e) List of Policies, the Review Body considered

whether certain matters included in the review documents constituted new evidence under Section 43B of the Act and whether or not this evidence could be referred to in their deliberations. This related to information on daylight and impact on a neighbour's kitchen, a letter of support and an approved planning application for a similar proposal on a nearby property. Members considered that the information did meet the Section 43B test, was material to their consideration and could be considered. In order to allow the Appointed Officer to submit her views on the new information, they requested further procedure in the form of written submissions.

The LRB reconvened to consider the Review, following further procedure, at its meeting on 18 February 2019. After examining the review documentation at that meeting which included a) Statement from Appointed Officer on New Information; b) Response from applicant; and c) Review Papers (including the Decision Notice and Officer's Report), the Review Body proceeded to determine the case. They noted the applicant's suggestion for a hearing and 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, HD3, EP4 and EP9

Other Material Considerations

- SBC Supplementary Planning Guidance on Placemaking and Design 2010
- SBC Supplementary Planning Guidance on Privacy and Sunlight 2011
- BRE209 "Site Layout Planning for Daylight and Sunlight" 2011

The Review Body noted that the proposal was for planning permission to extend a dwellinghouse at 10 Townhead Way, Newstead.

The Review Body noted that the extension only required planning permission due to the location within the Conservation Area and that it would otherwise have been permitted development. Members also agreed with the Appointed Officer that there were no reasons to oppose the application for reasons of impact on the Conservation Area, given the modest scale, design and location of the extension.

The Review Body then considered the issue of receipt of light to the adjoining neighbour's kitchen window and door. They agreed that there would be some loss of light but that there were a number of mitigating factors that allowed them to consider the impacts were not sufficiently significant to oppose the application under Policy HD3. These related to the letter of support from the affected neighbour, the improvement to privacy of that neighbour, the flexibility within the SPG to allow modest home improvements and the fact that the extension was on the northern side of the affected window and door. They also noted that the affected door would be impacted less than the window in terms of amount of light lost. Members

considered that there would still be sufficient daylight received and that sunlight impacts were minimised by the northern location of the extension.

The Review Body then considered the issue of dominance and impact on the amenity of the neighbour. Although the difference in levels was noted, Members considered that the extension was modest in scale, designed around provision of a shower room and any impacts were subsequently limited. They noted that there were no windows facing the neighbour on the side wall of the extension and considered that, given the improvement in privacy and letter of support from the neighbour, any impacts of scale and amenity were acceptable in terms of Policy HD3.

CONCLUSION

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

DIRECTIONS

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

CONDITIONS

1. No development to be commenced until a sample of the wall render is submitted to, and approved by, the Planning Authority. The development then to proceed in accordance with the approved render.
Reason: To ensure a satisfactory form of development which contributes appropriately to its setting.

INFORMATIVES

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...25 February 2019

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