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SCOTTISH BORDERS COUNCIL
LOCAL REVIEW BODY

MINUTE of Meeting of the LOCAL REVIEW BODY held in Council Chamber, Council Headquarters, Newtown St Boswells, TD6 0SA on Monday, 15 April 2019 at 10.00 am

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Present:-	Councillors S. Hamilton (Chairman), S. Aitchison, J. A. Fullarton, H. Laing, S. Mountford, C. Ramage and E. Small
Apologies:-	Councillors T. Miers and A. Anderson
Also present:-	Councillors S. Bell and C. Hamilton.
In Attendance:-	Principal Planning Officer – Major Applications/Local Review, Lead Planning Officer (for review 18/00681/FUL. 19/00007/RREF), Solicitor (E. Moir), Democratic Services Team Leader, Democratic Services Officer (F. Walling).

CHAIRMAN
In the absence of Councillor Miers the meeting was chaired by Councillor S. Hamilton.

1. **REVIEW OF 17/01368/FUL**
There had been circulated copies of the request from Mr Mark Deans, 64 Weensland Road, Hawick, to review refusal of the planning application for variation of condition 4 of planning permission 17/01368/FUL to reinstate 2 windows in lieu of air conditioning units at Deans Bar, 3 Orrock Place, Hawick. The supporting papers included the Notice of Review; Decision Notice; Officer's Report; papers referred to in Officer's Report; Consultations; Objection; and a list of policies. Members noted that the application related to two proposals: to allow the installation of two windows (now retrospective) in the rear wall of the function room; and to vary condition 4 of the previous planning permission for the function room, to allow the reinstated windows to serve as the function room's ventilation in lieu of the ventilation system required under that planning consent. Also noted was the objection to the proposals by a neighbour who was concerned that he was subjected to an unacceptable level of noise from the function room exacerbated by the vented windows. Sympathy was expressed with the efforts made by the applicant to meet the requirements of the planning consent in respect of ventilation and noted that there had previously been windows, which had been blocked up, in the same position as those recently installed. With regard to the potential noise impacts of reinstating the windows on the residential amenity of neighbouring properties, Members referred to the difficulty of assessing the situation in view of the conflicting advice provided by experts in the form of the applicant's Noise Assessment Report and the Council's consultants who assessed that report. It was unanimously agreed that the Review Body could not come to a conclusion about the application without further information being provided by way of a hearing session, to which the applicant, Council's Environmental Health Officer and interested party should be invited.

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 hearing session;

(c) that the applicant, Council's Environmental Health Officer and interested party be invited to attend a hearing on a date to be arranged to provide information on:

- **The case for the reinstated windows providing a means of ventilation as a suitable alternative to the ventilation system required under Condition 4 of planning consent 16/00753/FUL; and**
- **The noise impacts of reinstating windows into the function room on the residential amenity of neighbouring residential properties.**

2. **REVIEW OF 18/00961/FUL**

There had been circulated copies of the request from Mrs Suzanne Currie, per Smith and Garratt Rural Asset Management, The Guildhall, Ladykirk, to review the refusal of the planning application for erection of a dwellinghouse with detached garage on Plot 3, land north east of the Old Church, Lamberton. Included in the supporting papers were the Notice of Review (including the Decision Notice, Officer's Report, HES consultation response, Community Council response, objections); papers referred to in the Officer's Report; consultations; further representations; and a list of policies. Members noted that full planning permission had previously been granted for the erection of a dwellinghouse at the proposed site and that the application under consideration sought approval for alternative siting and design of a house on the same site. The ensuing discussion focussed on the significant changes to the siting, orientation and design of the dwellinghouse and resulting potential impact on its relationship with the existing building group, the setting of the Lamberton Old Church Scheduled Monument, the right of way that crossed the site and the visual amenity of the surrounding area. As Members' opinion was divided on these issues a suggestion was made to hold a site visit.

VOTE

Councillor Fullarton, seconded by Councillor Laing, moved that an unaccompanied site visit be held.

Councillor Aitchison, seconded by Councillor Ramage, moved as an amendment that the review be determined without a site visit.

On a show of hands, Councillors voted as follows:-

Motion - 4
Amendment - 3

The motion was accordingly carried.

DECISION

(a) AGREED that the request for a review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;

(b) DECIDED that:-

(i) the review could not be considered without further procedure in the form of a site visit; and

(ii) an unaccompanied site visit be carried out on a date to be arranged and consideration of the review be continued to a future meeting.

3. **REVIEW OF 18/00681/FUL**

There had been circulated copies of the request from Mr and Mrs Ewan McCarthy, per Ferguson Planning, Shiel House, 54 Island Street, Galashiels, to review the refusal of the planning application for erection of a dwellinghouse with detached double garage and artist studio, associated access and infrastructure on site adjacent to No. 9, Caberston Avenue, Walkerburn. The supporting papers included the Notice of Review (including Decision Notice, Officer's report, consultation responses, general comment and objections); Papers referred to in officer's report; and a list of policies. In their initial discussion Members noted that the application site was outwith but adjoining the settlement boundary of Walkerburn as defined in the Local Development Plan. They concluded that the proposal did not meet any of the four exception criteria to justify approval outwith the development boundary but went on to debate whether the site represented a logical infill development opportunity. In this respect they noted the relationship of the site with the adjoining dwelling, Bellenden House. In further discussion they considered the design of the proposed house and the sustainable nature of the development. Particular concern was expressed about the vehicular access and junction with the A Class road and consideration was given as to whether the improvements required could be managed by 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) the review could be considered without the need for any further procedure on the basis of the papers submitted;

(c) the proposal was not in keeping with the Development Plan but material considerations outweighed this; and

(d) the officer's decision to refuse the application be reversed and planning permission be granted subject to conditions for the reasons detailed in Appendix I to this Minute

The meeting concluded at 12.00 pm

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APENDIX 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: 19/00007/RREF

Planning Application Reference: 18/00681/FUL

Development Proposal: Erection of dwellinghouse with detached double garage and artist studio, associated access and infrastructure

Location: Site Adjacent to 9 Caberston Avenue, Walkerburn

Applicant: Mr & Mrs Ewan McCarthy

DECISION

The Local Review Body reverses the decision of the appointed officer and grants planning permission for the reasons set out in this decision notice subject to conditions, informatives and the applicant entering into a Section 75 agreement as set out below.

DEVELOPMENT PROPOSAL

The application relates to the erection of a dwellinghouse, detached double garage, artist studio and associated access. The application drawings and documentation consisted of the following:

Plan Reference No.	**Plan Type.**
1713-L01	Location Plan
1713-L02	Block Plans
1713-L03	Site Plan
1713-L07	Sections
1713-L08	Floor Plans
1713-L09	Elevations
1713-L10	Floor Plans
1713-L11	Floor Plans
1713-L12	Elevations
1713-L014	Sections

1713-L15	Other
1713-L20	Elevations
L (90) 001 A	Other
L (90) 003	Other
	Landscaping

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 15th April 2019.

After examining the review documentation at that meeting, which included: a) Notice of Review (including Decision Notice); b) Officer's Report; c) Papers referred to in Officer's Report; d) Consultations; e) General comment; f) Objections; and g) 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: PMD1, PMD2, PMD4, PMD5, HD2, HD3, EP1, EP2, EP8, EP13, EP16, IS2, IS7, IS9 and IS13

Other Material Considerations

- SBC Supplementary Planning Guidance on Placemaking and Design 2010
- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006
- SBC Supplementary Planning Guidance on Development Contributions 2011

The Review Body noted that the proposal was for detailed planning permission for the erection of a dwellinghouse, garage and artist studio on land to the northern edge of Walkerburn, west of No 9 Caberston Avenue and east of the property known as Bellenden House. Access would be via Caberston Avenue to the south of the site.

Members noted that the application site was outwith but adjoining the settlement boundary of Walkerburn as defined in the Local Development Plan. From the supporting papers and the site photographs, they also had regard to the nearby Schedule Monument site (Purvishill), cultivation terraces and the adjoining dwelling known as Bellenden House. The Review Body gave significant weight to the presence of Bellenden in assessment of the proposal. The Review Body also noted the planning history on the site including previous refusal.

Members considered the proposal principally against Policy PMD4 of the Local Development Plan and, firstly, against each of the four exception criteria. The Review Body agreed that the proposed dwellinghouse was not a job-generating development in the countryside that has an

economic justification under Policy ED7 or HD2 and was not an affordable housing development justified under Policy HD1. They also agreed that the proposed house did not meet the remaining criteria of Policy PMD4.

The Review Body acknowledged that whilst the site was outwith the development boundary it did represent a logical infill development opportunity between the existing dwelling at No 9 Caberston Avenue and Bellenden House. Members then considered the secondary criteria under Policy PMD4 and accepted that they were met by the proposal, especially in relation to the site representing a logical extension to the settlement edge of Walkerburn. Members considered that with the reduction in size of the nearby Scheduled Monument site (Purvishill) the current settlement boundary appears illogical and should be re-drawn to reflect the extent of development either side of the appeal site.

Members acknowledged that Policy PMD5 was not appropriate in this case but considered that the proposed house would be a 'good fit' in terms of the established pattern of development locally, blending Bellenden into the settlement. They consider the proposals as a tasteful demonstration of modern architecture within the 'practical boundaries' of the settlement.

The Review body then considered the development under Policy PMD2 and concluded that the proposed house was sensitively designed for this site and that the sustainable nature of the plans (which include SUDs pond, the use of grey water and sedum roofs) respects the traditional form of the surrounding area. Members considered that the design fits in well with Bellenden House but acknowledged that the steeply sloping site may pose problems in terms of landscaping and setting the proposed buildings into the settlement.

The proposed vehicular access and in particular junction improvements with Caberston Avenue and the A72 were considered. The Review Body acknowledged that improvements are required at the junction with the A Class road and noted that the proposed improvements put forward to do not address the Roads Planning Services concerns. It was noted that these matters could be addressed by suspensive planning condition.

The Review Body then considered the proposed landscaping and noted that the steep slope did not contain specimen trees. Members felt that the applicant would need to be careful in terms of the proposed landscaping to ensure that the buildings can be set within the village. The Review Body were content that this matter could be handled by way of suspensive planning condition.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that whilst the proposed development would be located outwith the settlement boundary and would not meet the exceptions criteria under Policy PMD4, the application site would be a logical expansion of the settlement that outweighs the need to protect the development boundary.

DIRECTIONS

1. That the development to which this permission relates must be commenced within three years of the date of this permission.

CONDITIONS

1. No development shall commence until a detailed scheme of junction and road improvements have first been submitted to and approved in writing by the planning

authority. Thereafter no development shall take place except in strict accordance with the approved details. The approved junction and road improvements shall be completed prior to occupation of the dwellinghouse hereby approved.
Reason: In the interests of road safety

2. Two parking spaces, not including any garage, shall be included within the curtilage of the site prior to occupation of the dwelling hereby approved and shall be retained in perpetuity thereafter. The new access into the site must be at a gradient no greater than 1:18 over the initial length rising out to a gradient of no greater than 1:8 thereafter before flattening off again to 1:18 for the parking and turning area.
Reason: To ensure parking is made available clear of the carriageway and to ensure that the access is formed to an agreed specification.

3. A pre-commencement and post construction condition survey of Caberston Avenue (from the junction with the A72 and the site access) shall be submitted for the approval of the planning authority. Any defects identified through this process must be rectified to the satisfaction of the planning authority at the expense of the applicant within 3 months of the dwelling being habitable, unless otherwise agreed in writing with the planning authority. Any emergency repairs must be carried out within an agreed timescale relative to the severity of the situation.
Reason: In the interests of road safety and to ensure any defects caused by construction traffic are identified and rectified within an agreed timescale.

4. A sample of all materials to be used on all exterior surfaces of the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority before development.
Reason: The materials to be used require further consideration to ensure a satisfactory form of development, which contributes appropriately to its setting.

5. No development shall take place within the development site as outlined in red on the approved plan until the developer has secured a Written Scheme of Investigation (WSI) detailing a programme of archaeological works. The WSI shall be formulated and implemented by a contracted archaeological organisation working to the standards of the Chartered Institute for Archaeologists (CIfA). The WSI shall be submitted by the developer no later than 1 month prior to the start of development works and approved by the Planning Authority before the commencement of any development. Thereafter the developer shall ensure that the programme of archaeological works is fully implemented and that all recording, recovery of archaeological resources within the development site, post-excavation assessment, reporting and dissemination of results are undertaken per the WSI.
Reason: The site is within an area where development may damage or destroy archaeological remains, and it is therefore desirable to afford a reasonable opportunity to record the history of the site.

6. No drainage system other than the public mains sewer shall be used to service the property without the written consent of the Planning Authority.
Reason: To ensure that the development does not have a detrimental effect on public health.

7. Prior to occupation of the property written evidence shall be supplied to the planning Authority that the property has been connected to the public water drainage network.

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

8. No development is to commence until a report has been submitted to and approved in writing by the Planning Authority that the public mains water supply is available and can be provided for the development. Prior to the occupation of the building(s), written confirmation shall be provided to the Planning Authority that the development has been connected to the public mains water supply.
   Reason: To ensure that the Development is adequately serviced with a sufficient supply of wholesome water and there are no unacceptable impacts upon the amenity of any neighbouring properties.

9. No water supply other that the public mains shall be used to supply the Development without the written agreement of the Planning Authority.
   Reason: To ensure that the Development is adequately serviced with a sufficient supply of wholesome water and there are no unacceptable impacts upon the amenity of any neighbouring properties.

10. No development shall take place except in strict accordance with a scheme of hard and soft landscaping works, which has first been submitted to and approved in writing by the planning authority. Details of the scheme shall include (as appropriate):
    i. existing and finished ground levels in relation to a fixed datum preferably ordnance
    ii. existing landscaping features and vegetation to be retained and, in the case of damage, restored
    iii. location and design, including materials, of walls, fences and gates
    iv. soft and hard landscaping works
    v. existing and proposed services such as cables, pipelines, sub-stations
    vi. other artefacts and structures such as street furniture, play equipment
    vii. A programme for completion and subsequent maintenance.
    Reason: To ensure the satisfactory form, layout and assimilation of the development.

11. Unless otherwise agreed in writing and in advance by the Planning Authority, prior to any development commencing on site, a scheme will be submitted by the Developer (at their expense) to identify and assess potential contamination on site. **No construction work shall commence until the scheme has been submitted to, and approved, by the Council, and is thereafter implemented in accordance with the scheme so approved.**

    The scheme shall be undertaken by a competent person or persons in accordance with the advice of relevant authoritative guidance including PAN 33 (2000) and BS10175:2011 or, in the event of these being superseded or supplemented, the most up-to-date version(s) of any subsequent revision(s) of, and/or supplement(s) to, these documents. This scheme should contain details of proposals to investigate and remediate potential contamination and must include:-

    a) A desk study and development of a conceptual site model including (where necessary) a detailed site investigation strategy. The desk study and the scope and method of recommended further investigations shall be agreed with the Council **prior to** addressing parts b, c, d, and, e of this condition.

    and thereafter

    b) Where required by the desk study, undertaking a detailed investigation of the nature and extent of contamination on site, and assessment of risk such contamination presents.

c) Remedial Strategy (if required) to treat/remove contamination to ensure that the site is fit for its proposed use (this shall include a method statement, programme of works, and proposed validation plan).

d) Submission of a Validation Report (should remedial action be required) by the developer which will validate and verify the completion of works to a satisfaction of the Council.

e) Submission, if necessary, of monitoring statements at periods to be agreed with the Council for such time period as is considered appropriate by the Council.

Written confirmation from the Council, that the scheme has been implemented completed and (if appropriate), monitoring measures are satisfactorily in place, **shall be required by the Developer before any development hereby approved commences**. Where remedial measures are required as part of the development construction detail, commencement must be agreed in writing with the Council.
Reason: To ensure that the potential risks to human health, the water environment, property, and, ecological systems arising from any identified land contamination have been adequately addressed.

12. No development shall take place during the breeding bird season (March-August) unless wholly in accordance with a Species Protection Plan for breeding birds that shall first be submitted to and approved in writing by the Planning Authority.
Reason: In the interest of biodiversity and protected species.

13. No development shall commence until a Construction Management Plan has first been submitted to and approved in writing by the planning authority and thereafter no development shall take place except in strict accordance with the approved plan.
Reason: In the interests of residential amenity and to ensure that adequate access to existing properties is maintained.

14. The artist studio hereby approved shall at all times be used in connection with, and ancillary to, the dwelling approved under this consent and shall not be used for any commercial purposes unless an application for a change of use is first submitted to and approved by the planning authority.
Reason: To ensure effective control over the development and to restrict vehicle movements to that of a single dwelling unit.

INFORMATIVES

1. In relation to Condition 1, the existing junction of Caberston Avenue with the A72 shall be altered and widened by approximately 3m to the west, with improved junction radii and visibility to the west improved so that an emerging driver can see the junction warning sign from a distance of 2.4m back from the edge of the A72. Carriageway widening is required on Caberston Avenue between the properties known as Royston and 1 High Cottages. An additional on street parking bay shall be marked at the start of the existing parking bays, along with hatching to prevent further parking.
2. In relation to Condition 2, the first 5 metres of the new private access must be surface to the following specification “75mm of 40mm size single course bituminous layer blinded with bituminous grit all to BS 4987 laid on 375mm of 100mm broken stone bottoming blinded with sub-base, type 1.”

3. Stoves and Use of Solid Fuel

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

Accordingly this advice can assist you to avoid future problems.

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

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

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

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

The appliance should only burn fuel of a type and grade that is recommended by the manufacturer.
If you live in a Smoke Control Area you must only use an Exempt Appliance http://smokecontrol.defra.gov.uk/appliances.php?country=s and the fuel that is Approved for use in it http://smokecontrol.defra.gov.uk/fuels.php?country=s .

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

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

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

LEGAL AGREEMENT

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

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

1. If the applicant is aggrieved by the decision of the planning authority to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.

2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.

Signed..... Councillor S. Hamilton …
Chairman of the Local Review Body

Date…… ….18 April 2019

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