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SCOTTISH BORDERS COUNCIL LOCAL REVIEW BODY

MINUTE of Meeting of the LOCAL REVIEW BODY conducted remotely by Microsoft Teams Live Event on Monday, 13 July 2020 at 10.00 am

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

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

CHAIRMAN

The Chairman opened the meeting and welcomed Members of the Local Review Body and members of the public to the meeting. The meeting was being held remotely in order to adhere to guidance on public meetings and social distancing currently in place, due to the Covid-19 pandemic

1. REVIEW OF 20/00235/PPP.

There had been circulated copies of the request from Dr N. Miller, per Ferguson Planning, 54 Island Street, Galashiels, to review the decision to refuse the planning application for erection of a dwellinghouse and formation of access on land North West of Ramsacre, Thickside, Jedburgh. The supporting papers included the Notice of Review (including the Decision Notice and Officer's Report); papers referred to in the Officer's Report; Consultation; support comment; and a list of policies. In their initial discussion Members agreed that there was a building group in the vicinity of the proposed site and that there was capacity for an additional house. Their ensuing consideration focussed on the relationship of the site to the building group and the potential visual and landscape impact of a house on the proposed site. In doing so they noted the challenging nature of the site in terms of the sloping ground and proposed that the height of the design should be limited in order to be in character with the landscaped surroundings. Members' opinion was divided. Councillor Fullarton moved that the officer's decision be upheld and the application refused, but there was no seconder to this motion. In terms of the height limitation that should be added by condition to planning consent there was a vote as follows:

VOTE

Councillor Mountford, seconded by Councillor Hamilton, moved that a condition be added to limit the height of the design to 1½ storeys.

Councillor Ramage, seconded by Councillor Anderson, moved as an amendment that a condition be added to limit the height of the design to 1 storey.

Members voted as follows:

*Motion - 5 votes
Amendment - 4 votes*

The motion was accordingly carried.

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 in keeping with the Development Plan; and
- (d) the officer's decision to refuse the application be reversed and planning permission be granted, subject to conditions and informatives for the reasons detailed in Appendix I to this Minute.

2. **REVIEW OF 20/00283/FUL.**

There had been circulated copies of the request from Mr James Hewit, per Ferguson Planning, 54 Island Street, Galashiels, to review the decision to refuse the planning application for change of use of land to form motor vehicle display and form sales office from industrial unit (renewal of previous consent 16/01363/FUL) and erection of new sales building (retrospective) at Unit 1B and incorporating land to West of Riverside Works, Edinburgh Road, Jedburgh. 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 policies. Members noted that a previous temporary consent for use of the land and building for car sales had now expired but that, although apparently now occupied by a joinery business under Class 5, the premises had been occupied by the permitted use during the preceding three years without local opposition. Members also noted that the land was allocated as a District industrial and employment site but after consideration were of the opinion that the application met most of the criteria to justify uses other than Classes 4 – 6. They also took into account the prevailing situation of extreme economic fragility exacerbated by the Covid-19 crisis and in agreeing that planning consent was justified they agreed that this be on a temporary basis to avoid the permanent loss of allocated industrial and employment land at this site. Members also agreed that landscaping treatment imposed by condition to the previous consent, which had not been carried out, be added as a suspensive condition to this planning consent. They had no objection to the small sales building being retained permanently. With regard to the length of temporary consent that should be approved, opinion was divided:

VOTE

Councillor Fullarton, seconded by Councillor Laing, moved that planning permission be granted for a temporary period of five years.

Councillor Mountford, seconded by Councillor Small, moved as an amendment that planning permission be granted for a temporary period of ten years.

Members voted as follows:

Motion - 5 votes
Amendment - 4 votes

The motion was accordingly carried.

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 in keeping with the Development Plan; and**
- (d) **the officer's decision to refuse the application be reversed and planning permission be granted, subject to conditions and informatives for the reasons detailed in Appendix II to this Minute.**

ADJOURNEMENT

The meeting was adjourned at 12 noon for 20 minutes.

3. REVIEW OF 19/01579/FUL

There had been circulated copies of the request from Miss Penny Burgess, Towerbrae, 36 Tower Street, Selkirk, to review refusal of the planning application for change of use from residential flat to business use at 62 Shawburn Road, Selkirk. The supporting papers included the Notice of Review; Decision Notice; Officer's Report; papers referred to in the Officer's Report; Consultations; representation; and a list of policies. The Planning Advisor drew attention to information which had been submitted with the Notice of Review documentation but which had not been before the Appointed Planning Officer at the time of determination. This related to further background and personal information including a tax related document. Members agreed that the information was new but considered that it met the Section 43B test, was material to the determination of the Review and could be considered. Members noted that the application was retrospective as the business use described was already being carried out in the residential flat and that there was no evidence of negative impact on residential neighbours. Although they would prefer such business use to be located in a more appropriate industrial or mixed use surroundings, in accordance with the Local Development Plan, Members were sympathetic to the applicant's situation and, taking into account the current difficult economic climate, were prepared to show flexibility. They recognised that there was an economic benefit, in terms of viability, in allowing the business to continue at this location. After further consideration Members concluded that the use should be limited to a temporary period which would allow the applicant to grow her business and have the opportunity of moving to a more appropriate location in time.

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) **new evidence submitted with the Notice of Review in the form of background and personal information met the test set out in Section 43B of the Town and Country Planning (Scotland) Act 1997 and could be considered;**
- (c) **the review could be considered without the need for any further procedure on the basis of the papers submitted;**
- (d) **the proposal would be in keeping with the Development Plan; and**
- (e) **the officer's decision to refuse the application be reversed and planning permission be granted, subject to conditions and informatives for the reasons detailed in Appendix III to this Minute.**

4. REVIEW OF 19/01701/PPP.

There had been circulated copies of the request from Mr Alasdair Mackenzie, per Ferguson Planning, 54 Island Street, Galashiels, to review refusal of the planning application for erection of dwellinghouse on land North East of West Mains Farmhouse, Carlops. The supporting papers included the Notice of Review (including the Officer's Report); Decision Notice; papers referred to in the Officer's Report; Consultations; and a

list of policies. The Planning Advisor drew attention to new evidence, in the form of a sketch elevation of the proposed house. Members agreed that the information was new but considered that it met the Section 43B test, was material to the determination of the Review and could be considered. Members initially discussed whether there was a building group present in the vicinity of the site, noting that the surrounding houses were dispersed and that any historical link between them appeared to be tenuous. They also discussed other issues relating to the proposal, including possible impact on trees. Whilst noting the family circumstances put forward by the applicant Members also noted that there had been no economic case put forward to support a dwellinghouse on this site. Members' opinion was divided as follows:-

VOTE

Councillor Ramage, seconded by Councillor Anderson, moved that the decision to refuse the application be upheld.

Councillor Small, seconded by Councillor Miers, moved as an amendment that the decision to refuse the application be reversed and the application approved, subject to a tree survey being carried out.

Members voted as follows:

Motion - 5 votes

Amendment - 4 votes

The motion 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) new evidence submitted with the Notice of Review in the form of a sketch elevation of the proposed house met the test set out in Section 43B of the Town and Country Planning (Scotland) Act 1997 and could be considered;**
- (c) the review could be considered without the need for any further procedure on the basis of the papers submitted;**
- (d) the proposal would be contrary to the Development Plan and that there were no other material considerations that would justify departure from the Development Plan; and**
- (e) the officer's decision to refuse the application be upheld and the application be refused, for the reasons detailed in Appendix IV to this Minute.**

The meeting concluded at 1.45 pm



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: 20/00013/RREF

Planning Application Reference: 20/00235/PPP

Development Proposal: Erection of dwellinghouse and formation of access, landscaping and associated works

Location: Land North West of Ramsacre, Thickside, Jedburgh

Applicant: Dr N Miller

DECISION

The Local Review Body reverses the decision of the appointed officer and grants planning permission for the reasons set out in this decision notice subject to conditions and informatives as set out below.

DEVELOPMENT PROPOSAL

The application relates to the erection of a dwellinghouse and formation of access, landscaping and associated works. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	LP01
Proposed Site Plan	SP01

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 13th July 2020.

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) Consultation; d) Support Comment; and e) 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, HD2, HD3, EP3, EP9, EP13, IS2, IS7 and IS9

Other Material Considerations

- SBC Supplementary Planning Guidance on Placemaking & Design 2010
- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006
- SBC Supplementary Planning Guidance on Development Contributions 2011
- SBC Supplementary Planning Guidance on New Housing in the Borders Countryside 2008
- SBC Supplementary Planning Guidance on Landscape and Development 2008
- SBC Supplementary Planning Guidance on Trees and Development 2008
- Scottish Planning Policy 2014

The Review Body noted that the application was for the erection of a dwellinghouse and formation of access, landscaping and associated works on a site at Thickside, Jedburgh.

Members firstly considered whether there was a building group in the vicinity under Policy HD2 and also whether there was capacity for addition to any such group. They noted that there were three existing houses in the immediate vicinity, including one opposite the site. Members also noted that there were no existing permissions for any further houses at the group. They concluded that there was a building group present and that there was capacity for the addition of one house, in compliance with Policy HD2 and the relevant SPG.

Members then considered the relationship of the site with the group and whether it was within the sense of place and in keeping with its character, whilst noting that the application was for planning permission in principle and that the suggested precise position and design of house remained indicative. In this respect, they had regard to the positions of other houses in the group, especially "Ramsacre". They considered that the character of the group was one where houses were not particularly well related to each other and that the site was no less related in that respect. They concluded that the site was within the sense of place and an appropriate addition to the building group.

The planted boundary between the site and Thickside House was then considered but the Review Body felt this was not a strong division or edge to the group, being a single line of trees within a domestic garden. With appropriate new planting to the south-western edge of

the site, Members felt that the site could balance with “Ramsacre” and provide a finished edge to the building group towards Oxnam Road.

Members then considered the potential visual and landscape impact of the house and recognised the challenging nature of the site in terms of rising levels. They also noted that a neighbour has sought a single storey design. The sketch layout and design of the dwellinghouse provided Members with some assurance that, on such a sloping site, the height would be restricted and the parking would be provided adjoining the road. Nevertheless, they considered it important that the height of the design should be restricted to no more than 1½ storeys and that it was designed to be in character with the group and landscaped surroundings. The Review Body recommended a condition on the height and an applicant informative relating to appropriate supplementary planning guidance.

The Review Body finally considered other material issues relating to the proposal including tree protection, access improvement, water and drainage but were of the opinion that appropriate conditions could address them satisfactorily. They also noted that development contributions for education were not required at this location.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was consistent with Policy HD2 of the Local Development Plan and relevant Supplementary Planning Guidance. The development was considered to be an appropriate addition to an existing building group with impact on the landscape that can be mitigated by new planting and attention to height and design of the house. 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):
 - i. existing and finished ground levels in relation to a fixed datum preferably ordnance
 - ii. trees to be retained within the site
 - iii. existing landscaping features, hedgerows and trees to be retained, protected and, in the case of damage, restored
 - iv. location and design, including materials, of walls, fences and gates
 - v. soft and hard landscaping works including new planting within the site The landscaping shall include tree planting to form a strong boundary to the south-west of the site.
 - vi. existing and proposed services such as cables, pipelines, sub-stations
 - vii. A programme for completion and subsequent maintenance.

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

4. No development to be commenced until a tree survey, identifying any existing trees within and adjoining the site, is submitted to, and approved by, the Planning Authority. The identified trees then agreed for retention to be protected at all times during construction and building operations, by the erection of substantial timber fence around the trees, together with such other measures as are necessary to protect the trees and their roots from damage. Details of the methods it is proposed to use shall be submitted by the applicant to the Local Planning Authority and be approved by them in writing. The approved protective measures shall be undertaken before any works commence on the site and must, thereafter be observed at all times until the development is completed.

Reason: To ensure that adequate precautions are taken to protect trees during building operations.

5. No development to be commenced until further details of access and parking provision are submitted to, and approved in writing by, the Planning Authority. Thereafter the development to be completed in accordance with the approved details prior to occupation of the dwellinghouse unless otherwise agreed. The details shall include:

- i. A visibility splay of 2.4m x 160m to be formed to the north-west of the junction of the private road with the C41 public road.
- ii. 2 no. parking spaces, not including any garage, and turning area to be provided within the curtilage of the site and retained thereafter in perpetuity.

Reason: To ensure satisfactory form of access and adequate parking and turning provision, in the interests of road safety.

6. The dwellinghouse to be no greater in height than a 1½ storey design.

Reason: To safeguard the visual amenity of the area and minimise impact on the character of the building group and landscape.

7. No development to be commenced until the details of water and drainage provision are submitted to, and approved in writing by, the Planning Authority. Once approved, the development then to be completed in accordance with those details.

Reason: To ensure that the development is adequately serviced and in the interests of public health.

INFORMATIVES

1. The design of the dwellinghouse must adhere to the principles and guidance contained within the Council's Supplementary Planning Guidance on Housing in the Countryside and Placemaking and Design.

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 Regulation 22 of the Town & Country Planning (Schemes of Delegation and Local Review procedure) (Scotland) Regulations 2013.

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.....17 July 2020

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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: 20/00014/RREF

Planning Application Reference: 20/00283/FUL

Development Proposal: Change of use of land to form motor vehicle display and form sales office from industrial unit (renewal of previous consent 16/01363/FUL) and erection of new sales building (retrospective)

Location: Unit 1B and incorporating land to West of Riverside Works, Edinburgh Road, Jedburgh

Applicant: Mr James Hewit

DECISION

The Local Review Body reverses the decision of the appointed officer and grants planning permission for the reasons set out in this decision notice subject to conditions and informatives as set out below.

DEVELOPMENT PROPOSAL

The application relates to the change of use of land to form motor vehicle display and form sales office from industrial unit (renewal of previous consent 16/01363/FUL) and erection of new sales building (retrospective). The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	LOC Rev D
Proposed Block Plan	001 Rev H

PRELIMINARY MATTERS

The Local Review Body initially considered the review, which had been competently made, under section 43A (8) of the Town & Country Planning (Scotland) Act 1997 at its meeting on 13 July 2020. 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, ED1, EP1, EP2, EP3, EP13, HD3, IS5, IS7, IS8 and IS13

Other Material Considerations

- SBC Supplementary Planning Guidance on Placemaking & Design 2010
- SBC Supplementary Planning Guidance on Landscape and Development 2008
- SBC Supplementary Planning Guidance on Trees and Development 2008

The Review Body noted that the proposal was for change of use of land to form motor vehicle display and form sales office from industrial unit (renewal of previous consent 16/01363/FUL) and erection of new sales building (retrospective).

Members firstly considered the principle of the development under Policy ED1. They noted that a previous temporary consent for the use of the land and building had been granted but had now expired and that, at the time of the Case Officer site visit, the premises had been re-occupied by a joinery business under Class 5. The Review Body noted that the premises had been occupied by the permitted use of car sales during the preceding three years without local opposition.

Members noted that the land was allocated as a District industrial and employment site in Policy ED1 in the Local Development Plan and that, whilst Class 4-6 uses were preferred, other uses could be acceptable provided certain criteria were met. Members then considered these criteria and were of the opinion that most were met by the proposal. They felt that the industrial land supply at present in Jedburgh was sufficient and would not currently be prejudiced by loss of the site, there being other land and vacancies available for other users. They also recognised that there were employment benefits to allowing an alternative use of the site and that the use, in itself, would be compatible with other uses in the industrial estate. They were of the opinion that car sales could attract people into Jedburgh with the potential of spin-off trade whilst there. Members also noted that continued Class 4-6 use of the premises was possible even if permission for car sales was granted.

Overall, the Review Body considered that at a time of extreme economic fragility, with general concern at the challenging local economic and employment situation exacerbated by the Covid-19 crisis, there was justification to accept the proposed use when taking into account the criteria in Policy ED1. However, they also recognised that the purpose of Policy ED1 is to preserve long term land supply for industrial and employment land for economic recovery and that their encouragement for the proposed use was influenced by the current short term economic position. There was concern that such allocated land should not be lost in the longer term and that there was no evidence of marketability or lack of demand that would justify a permanent loss of industrial land. The Review Body, therefore, considered a temporary consent to be justified on a five year basis, imposed by condition

Members then considered the issue of landscaping and visual impact under Policy PMD2. They noted that an approved landscaping treatment of the edges of the site had not been carried out during the preceding three years, even though a condition had been imposed seeking its implementation. They considered that it was important to ensure the landscaping was carried out if this consent was granted. Given that the landscaping treatment was modest in scale and largely involved hedging and some shrubs and trees, they saw no reason why it could not be carried out at the outset and before the use was permitted to commence on the site. A suspensive condition was agreed in this regard which would ensure that the landscaping would be carried out as approved.

The Review Body finally considered other material issues relating to the proposal including the building extension, preservation of the Core Path, flooding, contamination and biodiversity but were of the opinion that appropriate conditions could address them satisfactorily. They had no objection to the small building extension being retained in perpetuity, its use reverting to Classes 4-6 should the permitted use not be extended beyond the temporary period.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that temporary consent for the development was consistent with Policies PMD2 and ED1 of the Local Development Plan, subject to the previously approved planting scheme being carried out before the development commences. The development was considered to be an appropriate use to be continued on a temporary basis, providing employment in a challenging economic climate. Consequently, the application was approved.

CONDITIONS

1. Consent is granted for a limited period of five years from the date of this consent and the approved use of the land and building shall cease before the expiry of the period unless a planning application to retain the permitted use has been submitted to and approved by the Planning Authority. In the event that no such planning application has been so approved, the use of the premises shall revert to its current lawful use under Classes 4-6 of the Use Class (Scotland) Order 1997. The small building extension shall be retained and shall revert to Class 4-6 use at the end of the aforementioned five year period, unless extension to the permitted use has been allowed.
Reason: To ensure that the proposed use of the building and land do not compromise the long term availability of available employment land in Jedburgh.
2. No development to be commenced until all new planting, as shown on Proposed Block Plan Rev H, is completed, notified to the Planning Authority and completion agreed in writing by them. These landscaping works will be maintained for a period of five years upon planting, during which time, all failed planting shall be replaced. The applicant shall notify the Planning Authority that the approved planting (as per the approved Landscape Plan) is available for inspection after this five year period, at which point, the approved landscaping scheme shall have been implemented and landscaping established in its entirety.
Reason: To ensure effective assimilation of the development to its surroundings.
3. The public path through the site, identified as Core Path 107, must be maintained open and free from obstruction in the course of development and in perpetuity. No stiles, gates, steps or barriers to access may be erected that would deter the potential future use.
Reason: To protect public access rights to this Core Path both during and after development.
4. Details of the position, size, colour, materials and method of illumination of any signage to be displayed on the building, within the site or on the site boundaries to be submitted to and approved in writing by the Planning Authority prior to any signage being displayed. Thereafter the works are to be carried out strictly in accordance with the approved details.

Reason: In accordance with the provisions of the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1994.

INFORMATIVES

1. The former use of the site is potentially contaminative and may have resulted in land contamination.

The land is not currently identified as contaminated land and the Council is not aware of any information which indicates the level of risk the potential contamination presents.

The historic use of the site is recorded within a Council database. This database is used to prioritise land for inspection within the Council's Contaminated Land duties. Should the applicant wish to discuss these duties their enquiry should be directed to Environmental Health.

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 Regulation 22 of the Town & Country Planning (Schemes of Delegation and Local Review procedure) (Scotland) Regulations 2013.

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.....17 July 2020

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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: 20/00015/RREF

Planning Application Reference: 19/01579/FUL

Development Proposal: Change of use from residential flat to business use

Location: 62 Shawburn Road, Selkirk

Applicant: Miss Penny Burgess

DECISION

The Local Review Body reverses the decision of the appointed officer and grants planning permission for the reasons set out in this decision notice subject to conditions and informatives as set out below.

DEVELOPMENT PROPOSAL

The application relates to the change of use from residential flat to business use. 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 initially considered the review, which had been competently made, under section 43A (8) of the Town & Country Planning (Scotland) Act 1997 at its meeting on 13 July 2020.

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 Officer's 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 further background and personal information including business and family histories and a tax related document. Members agreed that the

information was new but considered that it met the Section 43B test, was material to the determination of the Review and could be considered. The Review Body also noted that the applicant had requested further procedure in the form of written submissions, a hearing and a site visit. The Review Body did not consider further procedure necessary in this instance and 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: PMD5, ED2, HD3 and IS7

The Review Body noted that the proposal was to change the use of a residential flat to business use and that, as the use was being carried out, the application was retrospective. Members were clear that the use was located within a wholly residential area and that Policy ED2 would normally seek such business uses to be in more appropriate industrial or mixed use surroundings. However, they noted the full background to the use of the premises as explained by the applicant and also the various commitments and mitigation offered to minimise disturbance to her neighbours.

In the current fragile economic climate, the Review Body were sympathetic to the applicant's situation and immediate business needs for continued use of the premises, at least in the short term. They felt that in such difficult economic times, a more flexible approach may be necessary on occasion to support cases that may not previously have been supported. Taking into account the criteria in Policy ED2 used to assess business use within non-industrial areas, Members appreciated that although a modest one-person business, there was an economic benefit to allowing the business to continue as this could make a difference to viability. It was also apparent that the business was of a limited scale and nature that was not causing issues at present to the residential neighbours. Provided the use could be limited to a temporary period, then the Review Body felt that this would allow the applicant to continue to operate and grow her business whilst aiming to be taking on more appropriate premises in time. Members noted that the applicant herself had suggested a temporary consent and that this was also recommended by the Council's Economic Development Officer.

The Review Body then considered whether other controls were necessary to limit impacts on the residential neighbours and also what impacts other uses within the same Use Class could have. They acknowledged the concerns of the Appointed Officer over detrimental impacts caused by growth of the business or operation of other uses within the same Use Class. However, Members concluded that, provided conditions limited the use to that applied for and only for a limited period of five years, then there was no justification for consideration of other controls such as delivery and customer limitation.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was consistent with Policies ED2 and HD3 of the Local Development Plan, subject to consent for a temporary period and limits on the nature of the consented use and operating hours. The development was considered to be appropriate in a residential area for a temporary period and had been justified by supporting material. Consequently, the application was approved for a temporary period of five years.

CONDITIONS

1. Notwithstanding the terms of Class 4 of The Town and Country Planning (Use Classes) (Scotland) Order 1997, this consent is only for the use of the premises for online sales of vintage textiles, haberdashery and needlework supplies and not for any other use within Use Class 4 or any other Use Class.
Reason: To protect surrounding residential amenity.
2. Consent is granted for a limited period of five years from the date of this consent and the approved use of the premises shall cease before the expiry of the period unless a planning application to retain the permitted use has been submitted to and approved by the Planning Authority. In the event that no such planning application has been so approved, the use of the premises shall revert to its current lawful use as a residential flat.
Reason: To protect surrounding residential amenity.
3. The approved use of the premises to be operated only between the hours of 9am and 5pm Monday to Friday.
Reason: To protect surrounding residential amenity.

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 Regulation 22 of the Town & Country Planning (Schemes of Delegation and Local Review procedure) (Scotland) Regulations 2013.

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.....17 July 2020

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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: 20/00016/RREF

Planning Application Reference: 19/01701/PPP

Development Proposal: Erection of dwellinghouse

Location: Land North East of West Mains Farmhouse, Carlops

Applicant: Mr Alasdair Mackenzie

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 development would be contrary to policy HD2 of the Local Development Plan 2016 and New Housing in the Borders Countryside Guidance 2008 in that it would amount to sporadic residential development in a countryside location unrelated to a building group and an overriding economic case for a dwellinghouse has not been substantiated.
2. The development would be contrary to policy EP13 of the Local Development Plan 2016 and Trees and Development Guidance 2008 in that the applicant has failed to demonstrate that the development would not result in serious damage to trees which are of landscape value and there are no public benefits which would clearly outweigh their loss.

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.

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 13th July 2020.

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 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 sketch elevation of the proposed house. Members agreed that the information was new but considered that it met the Section 43B test, was material to the determination of the Review and could be considered. They 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: HD2, HD3, EP5, EP13, IS2, IS7 and IS9

Other Material Considerations

- SBC Supplementary Planning Guidance on Placemaking & Design 2010
- SBC Supplementary Planning Guidance on Development Contributions 2011
- SBC Supplementary Planning Guidance on New Housing in the Borders Countryside 2008
- SBC Supplementary Planning Guidance on Waste Management 2015
- SBC Supplementary Planning Guidance on Trees and Development 2008
- Scottish Planning Policy 2014
- Planning (Scotland) Act 2019
- National Planning Framework 3

The Review Body noted that the application was for the erection of a dwellinghouse at West Mains Farmhouse, Carlops.

Members firstly considered whether there was a building group present under Part A of Policy HD2. They noted the applicant's contention that there was an historical connection between the site, West Mains and other houses in the area built on land which was part of the original holding. They had regard to this and noted the houses in the submissions and on the photographs shown of the surroundings. Whilst, in certain cases, historical connection and relationship can be a relevant factor in determining the sense of place and boundaries of a building group, Members could not accept that there was a sufficiently strong relationship in this instance. They felt that the surrounding houses were well separated, dispersed and

sporadic and that the site was in a location where there was only one other house and some farm buildings. Members did not see any justification for considering the site to be part of a wider building group and felt that any previous historical connection was not obvious in terms of definition of sense of place. They concluded that the site was not part of any existing building group.

The Review Body then considered whether there was any justified economic case for a dwellinghouse on the site under Part F of Policy HD2. They noted that the application had not been justified on this basis and, although they noted the family circumstances and intentions of the application to occupy the house himself, they did not consider that there was sufficient economic case advanced to justify a need for a house on the site under Policy HD2.

The Review Body finally considered other material issues relating to the proposal including impact on trees, residential amenity, parking, impact on the Special Landscape Area, water and drainage. They considered that impact on the trees would have required further investigation but were of the opinion that appropriate conditions could address the other factors satisfactorily.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was contrary to the Development Plan and that there were no other material considerations that would justify departure from the Development Plan. Consequently, the application was refused for the reasons stated above.

Notice Under Regulation 22 of the Town & Country Planning (Schemes of Delegation and Local Review procedure) (Scotland) Regulations 2013.

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.
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Signed...Councillor T. Miers
Chairman of the Local Review Body

Date...7 August 2020

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