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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, 18 January 2021 at 10.00 am

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

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

MEMBERS

Having not been present when the following review was first considered, Councillors Anderson and Moffat left the meeting.

1. CONTINUATION OF REVIEW OF 20/00453/FUL

- 1.1 With reference to paragraph 3 of the Minute of 17 August 2020 and paragraph 3 of the Minute of 16 November 2020, the Local Review Body continued their consideration of the request for review of refusal of the application for demolition of a garage and erection of a dwellinghouse in garden ground of Clifton Cottage, High Street, Kirk Yetholm. Due to the ongoing Covid-19 restrictions which prevented a site meeting being held, Members had asked the Planning Advisor to take video footage of the site and immediate surroundings and to present this at an oral hearing session. Due to the dispute between the applicant's agent and one of the objectors over the accuracy of the measurements in producing the cross section to demonstrate the relationship of the proposed house with the neighbouring house to the north, Members had also requested the findings relating to the disputed measurements to be presented at the hearing in addition to the video footage.

HEARING SESSION

- 1.2 The applicant was represented at the hearing by agent Mr Tim Ferguson, of Ferguson Planning. Also in attendance was Mr Kristoffer Smith who had objected to the application and the Council's Architectural Manager Mr Ray Cherry, who was present to answer questions if required, relating to the disputed measurements in producing the cross section. The other interested parties had not responded to invitations to attend. Hearing statements by Ferguson Planning and Mr Smith had been circulated in addition to observations from Mr Cherry, on the methodology adopted to produce the measurements for the cross section.
- 1.3 The Planning Advisor, Mr Craig Miller, proceeded to present video footage of the site. He explained that he had taken the footage from a series of viewpoints suggested by interested parties, which he detailed on a map of the area. He also confirmed that, in response to the request by Members, the applicant had erected a temporary profile on the site, indicating the ridge height of the proposed dwellinghouse, to enable this to appear in the footage. Markings at metre intervals had helpfully been added to the profile, but Mr Miller explained that, due to being inserted into the ground, the measurement to the first mark was a few centimetres less than a metre and consequently the overall height of the profile was slightly less than the ridge height shown on the cross section. Following the presentation the Chairman gave Members and interested parties the chance to ask questions or ask for any part of the footage to be repeated. Mr Miller was commended for the video and the applicant was thanked for providing the temporary profile on the site.

- 1.4 The Chairman then invited Mr Ferguson to present his case in relation to the disputed measurements used to produce the cross section. Mr Ferguson referred to his hearing statement which he said sought to consolidate previous representations on the issue of the proposed dwelling's ridge and eaves height. He welcomed the observations of the Council's Architectural Manager that in his opinion best endeavours had been employed by the applicant's agent to provide the measurements requested. Mr Ferguson explained that a GPS unit was used to take measurements and each measurement was an average of three individual readings, all of which fell into a very narrow range. The measurements of Clifton Cottage were previously taken, prior to restrictions on movement owing to Covid-19, and subsequently used as reference points for the performance of the GPS unit. Each measurement taken on Clifton Cottage proved correct to within 2% tolerance of the professionally taken measurement. The statement detailed the relationship of the proposed dwelling's ridge height with ridge heights of nearby existing dwellings. The ridge of the proposed dwelling standing significantly shorter than 9 High Street but taller than Burnsyde served to illustrate the influence of the slope upon which all three sat. The broad parity of height with Clifton Cottage (with 38 cm discrepancy) showed the proportionate scale of the proposed dwelling. Mr Ferguson added that, if considered significant, the appellants were prepared to accept a condition requiring that the ridge height of the proposed dwelling be no taller than the ridge height of Clifton Cottage. In conclusion Mr Ferguson maintained that in his view the impact of the proposed dwelling on the streetscape was minimal.
- 1.5 When invited to present his case, Mr Smith said he did not have anything to add to his hearing statement which was before Members and which set out in detail his position with regard to his challenge about the accuracy of measurements taken to demonstrate the relationship of the proposed house with the neighbouring house to the north. Within the statement Mr Smith explained that he was not in a position to dispute the dimensions provided on the section drawing. Rather he questioned the accuracy of the submission based on, firstly, the difficulties in conducting accurate level surveys and the experience required to conduct such an exercise and secondly, the anomalies and inaccuracies in submissions. The statement went on to set out concerns about the accuracy of measurements undertaken at Burnsyde, the neighbouring house to the north of the site and questions about the mapping software used. Drawings were included to illustrate the possible effects on ridge height from inaccurate building measurements. It was pointed out in the statement that it would seem logical for the survey, used to produce the section, to have been carried out in accordance with the RICS guidance note 'Measured surveys of land, buildings and utilities, 3rd edition', a copy of which had also been circulated. In further discussion Mr Smith questioned the position of the temporary profile which had been erected on the site to demonstrate the height of the proposed dwellinghouse. He pointed out that there would need to be excavation works to adjust the level and that there would consequently be excavation of the access over the green space. In response, Mr Ferguson clarified that the existing access to the garage would be used and that, during the construction phase excavation would be internal to the site and within the parameter of the access.
- 1.6 The Council's Architectural Manager, Mr Ray Cherry, did not add to the observations he had provided, in relation to the methodology adopted for the survey of the site. In those observations, he put forward that the method of measurement seemed reasonable, although the description of 'GPS measurements' could mean a variety of options. Clarification of the particular device used would have dictated the tolerance of measurements. However Mr Cherry suggested that the approach taken appeared to have been a robust one that should have produced consistent results across the area in question. Mr Cherry outlined other information which would have been helpful, such as an indication of locations from where measurements were taken and level heights at key points, but he concluded by advising that it appeared the applicant's agent had employed their best endeavours to provide the information requested by the Local Review Body.

1.7 The Chairman thanked all parties for their attendance and submissions, closed the hearing session and asked the Local Review Body to reconvene to continue consideration of the case, based on the information received during the hearing and contained within all the documents circulated.

1.8 **CONTINUATION OF REVIEW**

Prior to discussion of the case, the Planning Advisor, summarised the background to the review and the information provided. Members discussed the application in detail, focussing on whether the site could be considered an infill location, whether the proposal was acceptable in terms of its height and mass and whether the proposal would preserve and enhance the amenity of the Conservation Area. In particular they took into account the footprint of the proposed house within the size of the plot, the slope of the site and potential impact of the proposed development on the surrounding street scene and historical setting. Members took into account the suggestion that the ridge height could be reduced to match Clifton Cottage opposite. After lengthy debate Members' opinion remained divided:

VOTE

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

Councillor Fullarton, seconded by Councillor Hamilton, moved as an amendment that the decision to refuse the application be reversed and the application approved.

Members voted as follows:-

*Motion - 5 votes
Amendment - 2 votes*

The motion was accordingly carried and the application refused,

DECISION

DECIDED that:-

- (a) the request for 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, the additional information provided and the oral Hearing session;**
- (c) the proposal would be contrary to the Development Plan and that there were no other material considerations that would justify departure from the Development Plan; and**
- (d) the officer's decision to refuse the application be upheld and the application be refused, for the reasons detailed in Appendix I to this Minute.**

The meeting concluded at 11.55 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: 20/00018/RREF

Planning Application Reference: 20/00453/FUL

Development Proposal: Demolition of garage and erection of dwellinghouse

Location: Garden ground of Clifton Cottage, High Street, Kirk Yetholm

Applicant: Mr & Mrs D & C Morrison

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. A dwellinghouse on this site would not comply with policy PMD5 of the Local Development Plan 2016 as it would detract from and harm the character and amenity of the surrounding area.
2. The proposals would not comply with Policy EP9 of the Local Development Plan 2016 in that there would be significantly harmful adverse impacts to Yetholm Conservation Area.
3. The proposals are contrary to Policy EP11 of the Local Development Plan 2016 in that there would be direct and indirect adverse impacts and harm caused to the public open space (the roadside verge and water pump) which front the site, to the detriment of the visual amenities of the area.
4. The proposals do not comply with Policy PMD2 and Policy PMD5 of the Local Development Plan 2016 and the Supplementary Planning Guidance on Placemaking and Design 2010 in that they do not respect the scale, form, and design of the surroundings, to the detriment of the visual amenities of the area.
5. Without further field evaluation, the development is contrary to Policy EP8 of the Local Development Plan 2016 in that there is a medium to high potential of the site yielding

archaeology of local or regional importance which could be harmed or destroyed by the development.

DEVELOPMENT PROPOSAL

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

Plan Type	Plan Reference No.
Location Plan	AH073 P03B
Site Plan	AH073 P02B
Floor Plans and Elevations	AH073 P01A
Shadow Plan	AH073 P03B
Site Sections Plan	AH073 S01A

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 17th August 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; d) Support Comments; e) Objections; f) General Comment; g) Additional representation from objector and response from applicant; and h) List of Policies, the LRB concluded that it did not have sufficient information to determine the Review with regard to the potential impacts of the scale and, especially, the height of the dwellinghouse on the character of the village. The Review Body requested further information be provided by the applicant on the ridge height of the proposed dwellinghouse and a drawing to show the levels/ridge height in comparison to the neighbouring house to the north. Members also decided to carry out an unaccompanied site visit to assess the development in the context of the surrounding area.

At its meeting on 16th November 2020, the Review Body were asked to consider the further procedure to be followed in terms of the unaccompanied site visit. The ongoing Covid-19 restrictions had delayed the visit and responses to risk assessments carried out, following a tightening of restrictions, led the Council to decide that a site visit could not be carried out. Members considered whether there were any alternative means of viewing the site. They concluded that video footage taken by the Planning Advisor and presented to the Review Body within an oral hearing session, open to all interested parties, was an appropriate alternative approach. Members also agreed that interested parties should be given the opportunity to suggest viewpoints and topics for the footage and that the applicant should be encouraged to erect a temporary profile on site, indicating the ridge height of the proposed dwellinghouse, to enable this to appear in the footage.

At the meeting on 16th November 2020, Members noted that the requested further information had also been submitted by the applicant in the form of a street section through the site, comparing ridge heights to those of surrounding houses. In noting that one of the objectors had questioned the survey methodology and accuracy of the submitted section, Members decided to seek further clarification from the Planning Officer on these matters, understanding that this may also necessitate the Officer seeking advice from an appropriately qualified colleague. The Review Body agreed that the advice should then be presented, with the video footage, at the hearing session, with opportunities for the applicant, third parties and the Planning Officer or colleague to participate in the session.

The hearing was held at 10am on Monday 18th January 2021, after which the Review Body re-convened to consider the case. Following the hearing, Members agreed that it had been very helpful viewing the video footage in place of a site visit and also understanding the technical details and arguments relating to the ridge height and associated section. Members then 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, PMD5, HD3, EP8, EP9, EP11, 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 Landscape and Development 2008
- SBC Supplementary Planning Guidance on Trees and Development 2008
- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006
- SBC Supplementary Planning Guidance on Green Space 2009
- Scottish Planning Policy 2014
- PAN 65 "Planning and Open Space"
- PAN 71 "Conservation Area Management"

The Review Body noted that the proposal was for planning permission to demolish a garage and erect a dwellinghouse on a site opposite Clifton Cottage, Kirk Yetholm.

In their initial consideration of the case at the 17th August 2020 LRB meeting, Members had identified that whilst the site was within the settlement boundary of Kirk Yetholm and could potentially be considered an infill location, there was concern as to whether the proposal and site were acceptable under the infill Policy PMD5. In particular, the Review Body expressed concerns over the scale of the development in height and mass, impact on key greenspace, the contribution of the site to the history of the village and whether the proposal would preserve and enhance the amenity of the Conservation Area under Policy EP9. Members realised there were many such issues to be considered and felt it was necessary to carry out a site visit and seek a cross section showing the relationship of the proposed house with the immediately adjoining house to the north, "Burnsyde".

Due to Covid-19 restrictions, Members subsequently agreed to carry out a virtual site visit by viewing video footage taken by the LRB Planning Advisor and to view this within a Hearing. They also heard statements and comments from the applicant's agent and an objector regarding the submitted cross section and differing opinions over the measurements and methodology used.

Following the Hearing, Members returned to their concerns over the scale, size and prominence of the proposed house on the site. They considered that the video footage, including the height marker and pegged out footprint, indicated a development of significant scale and mass for the sensitive location. The Review Body considered the house to be oversized in relation to the size of the plot, domineering and incongruous in the street scene and on the Conservation Area. The fact that there was a slope on the site also concerned Members in relation to overbearing impact and scale, despite the suggestion that the ridge height could be reduced to match with “Clifton Cottage” opposite. They identified that the site was a key component and part of the setting of the Conservation Area, the view of, and from, the village green being potentially dominated by the proposal. Ultimately, the Review Body felt that the proposal represented overdevelopment and was of excessive scale and mass on a constrained site, both contrary to infill Policy PMD5 and to Conservation Area Policy EP9.

Members were also concerned that the site was allocated Key Greenspace in the Local Development Plan under Policy EP11. Whilst they understood that the site no longer functioned as allotments, they were aware of the history of the site as part of a wider area of open space and allotments on this part of the High Street. They also noted that the proposal resulted in the loss of open space without adequate or acceptable replacement of the space.

The Review Body also considered the design of the dwellinghouse and external materials. They acknowledged that there had been efforts to fit the design and frontage in with the village and street scene but that, ultimately, the overdevelopment, scale and mass of the house on the site outweighed any benefits resulting from the design.

The Review Body then considered other issues relating to the proposal including parking and archaeology but saw no reason to vary those matters that contributed to the original reasons for refusal. Similarly, Members considered that other matters such as drainage and residential amenity could be addressed by conditions.

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.
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 Mountford
Chairman of the Local Review Body

Date.....21 January 2021

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