

# Public Document Pack

## SCOTTISH BORDERS COUNCIL LOCAL REVIEW BODY

MINUTE of Meeting of the LOCAL REVIEW  
BODY held via Microsoft Teams on Monday,  
18 October 2021 at 10.00 am.

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Present:- Councillors S Mountford (Chair), H. Laing, J. Fullarton, S. Hamilton, D. Moffat (from para 3), C. Ramage (from para 3), N. Richards and E. Small.

Apologies:- Councillor A. Anderson.

In Attendance:- Principal Planning Officer (C. Miller), Managing Solicitor (R. Kirk), Democratic Services Team Leader, Democratic Services Officer (F. Henderson).

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### MEMBERS

Having not been present when the following review was first considered Councillors Moffat and Ramage did not take part in the determination of applications 21/00013/RCOND and 21/00486/FUL and left the Meeting prior to their consideration.

#### 1. CONTINUATION OF REVIEW 21/00137/FUL

With reference to paragraph 3 of the Minute of 16 August 2021, there had been re-circulated copies of the request from Mr Bradley Clarke, per Ferguson Planning, Shiel House, 54 Island Street, Galashiels to review Condition 2 attached to the planning permission granted for the erection of ancillary accommodation to dwellinghouse and installation of 12KW ground mounted solar array at Penvalla, Broughton. The supporting papers included the Notice of Review; Decision Notice; Officer's Report; papers referred to in the Officer's Report; Consultations and a list of policies. Also circulated were copies of further information requested by the Local Review Body, in the form of written submissions about the Local Review Statement - Lawful Use of Annex as Holiday Accommodation from the Council's Roads and Planning Officers and a further response to those submissions from the applicant. Members noted that the Review was submitted in relation to a condition attached to a planning permission but that, as the Review was not resulting from refusal of a Section 42 application, Members were required to re-assess the whole development and decision on a De Novo basis, not only in relation to the condition which was sought to be varied. The Review Body, therefore, firstly considered the principle of an ancillary building within the grounds of Penvalla and had no issues with the design or siting of the building, nor with the installation of ground-mounted solar panels, which they noted were permitted development in any case. Members considered that the main issue related to the proposed usage of the annex and the wording of Condition 2 which was imposed on the planning permission to regulate the occupancy. Whilst there was acceptance that the annex required some form of control over occupation to enable it to remain in character and ancillary to the main dwellinghouse, Members noted that the Planning Officer had imposed Condition 2 to restrict occupancy only to members of the same household at Penvalla. Following consideration of all relevant information, the Local Review Body concluded that the development was consistent with Policies PMD2 and PMD5 of the Local Development Plan. The development was considered to be appropriate infill and ancillary development within the grounds of a dwellinghouse, remaining within character and scale given the limitations of the existing access. Members did agree that the occupancy could be extended to include occupancy from outwith the household of Penvalla. However, Members were not agreed on the wording of Condition 2 as detailed in the vote below.

## **VOTE**

*Councillor Laing, seconded by Councillor Fullarton moved that the condition be re-worded to allow Friends and Family use of the Annex, but that commercial letting not be permitted without a further application.*

*Councillor Small, seconded by Councillor Richards, moved as an amendment that the condition be removed and commercial letting allowed.*

*Members voted as follows:-*

*Motion - 4 votes*

*Amendment - 2 votes*

*The Motion was accordingly carried and the condition amended.*

## **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 and the comments from the Officers on new information;**
- (c) the proposal would be consistent with the Local 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 approve the development subject to Condition 2 be overturned and varied and grants planning permission for the reasons set out in Appendix I to this Minute.**

## **2. CONTINUATION OF REVIEW - 21/00486/FUL**

With reference to paragraph 5 of the Minute of 16 August 2021, there had been re-circulated copies of the request from Mr S Lamb, 3 Rowan Court, Cavalry Park, Peebles to review the decision to refuse the planning application for the Change of Use of part of the ground floor to Class10 – Non-residential institutions and the conversion of the loft to accommodate additional office space, Class 4 – Business. The supporting papers included the Notice of Review; Decision Notice; Officer's Report; papers referred to in the Officer's Report; Consultations and a list of policies. Also circulated were copies of further information in the form of DDL Care Hub Ltd – Business Plan and Cavalry Park – List of Companies; and responses requested by the Local Review Body to the additional information from the Council's Planning Officers and Chief Social Work Officer with a further response to those submissions from the applicant. . Following consideration of all relevant information, the Local Review Body concluded that the development was consistent with Policies ED1 and PMD3 of the Local Development Plan. The development was considered to be a complimentary use within Cavalry Park, created replacement Class 4 use on the first floor and offered significant community benefits that outweighed the need to retain Class 4 use on the ground floor. Consequently, the application was approved.

## **DECISION**

### **AGREED 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 and the comments from the Officers on new information;
- (c) the proposal would be consistent with policies ED1 and PMD3 of the Local Development Plan; and
- (c) the officer's decision to refuse the application be reversed and planning permission be granted, subject to conditions for the reasons detailed in Appendix II to this Minute.

### 3. **REVIEW OF 20/01620/PPP**

There had been circulated copies of the request from Mr Bruce Weir, per Ferguson Planning, 54 Island Street, Galashiels to review the decision to refuse the planning application for the Erection of 4 no. dwellinghouses with associated infrastructure and access on Land South of Crunzion Cottage, Earlston Road, Stow. 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 replies; Objection comments; further objection comments and Applicant Response; Additional information replies and List of policies. After considering all relevant information, the Local Review Body concluded that the development was contrary to Policy PMD4 of the Local Development Plan 2016 in that it would be located outside the settlement boundary of the village and did not meet the exceptions contained within Policy PMD4, particularly in that strong reasons had not been given to demonstrate that there was a shortfall identified by the Council through the housing land audit with regard to the provision of an effective five year housing land supply. Furthermore, PMD2 of the Local Development Plan 2016. This conflict with the Local Development Plan was not overridden by other material considerations.

#### **DECISION**

##### **AGREED 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;
- (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 III to this Minute.

### 4. **REVIEW OF 20/01327/FUL AND 21/00019/RREF**

There had been circulated copies of the request from John Patterson, 16 Riverside View, East Broomlands, Kelso to review the decision to refuse the planning application for the development of a single dwellinghouse and parking on Land Adjacent to Carnlea, Main Street, Heiton. The supporting papers included the Notice of Review; Decision Notice; Officer's Report; Objection comments, further objection comments and Applicants Response, General comments received, other information and a list of policies. The Planning Adviser drew attention to information, in the form of Land Register of Scotland – Land certificate version 12/09/2006; Letters from Scottish Water dated 20 April 2004 and 24 February 2005; Excerpts from The Robert Burns Annual and Chronicle 1948 and Excerpts from the Federation Year Book 1951 which had been submitted with the Notice of review documentation but which had not been before the Appointed Officer at the time of determination. 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.

However, they also agreed that the new information could not be considered without affording the planning officer and roads officer an opportunity of making representations on the new information so agreed that the application be continued for further procedure.

#### **DECISION**

##### **AGREED 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) new evidence submitted with the Notice of Review in the form of Land Register of Scotland – Land certificate version 12/09/2006; Letters from Scottish Water dated 20 April 2004 and 24 February 2005; Excerpts from The Robert Burns Annual and Chronicle 1948 and Excerpts from the Federation Year Book 1951 met the test set in Section 43B of the Town and Country Planning (Scotland) Act 1997 and was material to the determination;**
- (c) the review could not be considered without the need for further procedure in the form of written submissions;**
- (c) the Planning Officer and Roads Officer be given the opportunity to comment on the new evidence submitted with the Notice of Review.**
- (d) consideration of the review be continued to a future meeting on a date to be confirmed.**

*The meeting concluded at 12.05 pm*



**SCOTTISH BORDERS COUNCIL  
LOCAL REVIEW BODY DECISION NOTICE**

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**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**

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**Local Review Reference:** 21/00013/RCOND

**Planning Application Reference:** 21/00137/FUL

**Development Proposal:** Erection of ancillary accommodation to dwellinghouse and installation of 12KW ground mounted solar array

**Location:** Penvalla, Broughton

**Applicant:** Mr Bradley Clarke

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**DECISION**

The Local Review Body overturns and varies the decision of the appointed officer and grants planning permission for the reasons set out in this decision notice subject to conditions as set out below including amendment to Condition 2 of the original consent 21/00137/FUL.

**DEVELOPMENT PROPOSAL**

The application relates to the erection of ancillary accommodation to the dwellinghouse and installation of 12KW ground mounted solar array at Penvalla, Broughton. The application drawings and documentation consisted of the following:

**Plan Type**

**Plan Reference No.**

Plan and Elevation  
Section  
Tree Plan

P001 Rev P5  
Solar panel specification  
PL102 Rev P1

**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 16<sup>th</sup> August 2021.

After examining the review documentation at that meeting, which included a) Notice of Review (including the Decision Notice and Officer's Report); b) Papers referred to in Officer's Report; c) Consultations; and d) 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 information in the form of the "Local Review Statement - Lawful Use of Annex as Holiday Accommodation" and the request to vary condition 2 to seek holiday accommodation, which was in addition to the ancillary residential request.

Members agreed that the information was new and considered that it met the Section 43B test, that it was material to the determination of the Review and could be considered. However, there was a requirement for further procedure in the form of written submissions to enable the Planning Officer and Roads Planning Officer to comment on the new information.

The Review was, therefore, continued to the Local Review Body meeting on 18<sup>th</sup> October 2021 where the Review Body considered all matters, including responses to the further information from the Planning Officer and Roads Planning Officer, and the applicant's reply to those responses. The Review Body 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, EP4, EP13, IS7, IS9 and ED9

### **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 Trees and Development 2008
- SBC Supplementary Planning Guidance on Renewable Energy 2017
- SBC Supplementary Planning Guidance on SUDS 2020

The Review Body noted that the proposal was for the erection of ancillary accommodation to a dwellinghouse and installation of 12KW ground mounted solar array at Penvalla, Broughton.

Members noted that the Review was submitted in relation to a condition attached to a planning permission but that, as the Review was not resulting from refusal of a Section 42 application, Members were required to re-assess the whole development and decision on a De Novo basis and not only in relation to the condition which was sought to be varied.

The Review Body, therefore, firstly considered the principle of an ancillary building within the grounds of Penvalla and had no issues with the design or siting of the building, nor with the installation of ground-mounted solar panels, which they noted were permitted development in any case.

Members considered that the main issue related to the proposed usage of the annex and the wording of Condition 2 which was imposed on the planning permission to regulate the occupancy. Whilst there was acceptance that the annex required some form of control over occupation to enable it to remain in character and ancillary to the main dwellinghouse, Members noted that the Planning Officer had imposed Condition 2 to restrict occupancy only to members of the same household at Penvalla.

The Review Body noted the Appointed Officer's reasons for such restriction but agreed with the applicant that the occupancy could be relaxed to allow for friends and family to visit and stay in the annex on a non-commercial basis. In considering the nature and capacity of the existing access onto the A701, Members did not consider relaxing the occupancy in this manner would result in any significant increase in vehicular traffic using the access and thus there would be no detrimental impact on road safety. They drew a comparison with having friends and family visiting and staying in the main dwellinghouse, thus creating the same level of traffic. For this reason, the Review Body were content to allow amendment of Condition 2 as suggested by the applicant, removing reference to occupation within the same household and replacing it with wording ensuring the occupation would be incidental to the residential occupation of the main dwellinghouse.

However, the Review Body did consider that further amendment to Condition 2 to allow commercial holiday occupancy, as suggested by the applicant, would change the nature of the annex and would increase usage of the existing access, which they viewed to be limited and potentially unable to safely accommodate such increased usage. Whilst they noted that closure of the existing access and formation of a new access had been proposed initially before being withdrawn from the planning application, they considered that any proposal for holiday use would need to be the subject of a new planning application with re-assessment of the access provision.

The Review Body finally considered other material issues relating to the proposal including impacts within the National Scenic Area, retention of trees, residential amenity, water and drainage but were of the opinion that appropriate conditions could address them satisfactorily.

## **CONCLUSION**

After considering all relevant information, the Local Review Body concluded that the development was consistent with Policies PMD2 and PMD5 of the Local Development Plan. The development was considered to be appropriate infill and ancillary development within the grounds of a dwellinghouse, remaining within character and scale given the limitations of the existing access. Consequently, the application was approved.

## **DIRECTIONS**

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

## **CONDITIONS**

1. The development hereby permitted shall not be carried out otherwise than in complete accordance with the plans and specifications approved by the planning authority.  
Reason: To ensure that the development is carried out in accordance with the approved details.

2 The occupation of the approved annex shall be restricted to use incidental to the residential occupation of the principal dwelling.

Reason: The planning authority considers that the development hereby permitted is the maximum that can be reasonably allowed without causing detriment to road safety through an intensification of use of the road/access by increased vehicle movements.

3 No development shall be commenced until a detailed 'method statement' in relation to all works within the root protection area (RPA) of retained trees has been submitted to and approved in writing by the planning authority. Specific issues to be dealt with in the method statement:

a) A scaled plan (minimum of 1:200) showing the position, size, RPA, species and unique identification reference of each retained tree affected by the works and including details of the extent and nature of all works within the RPA of retained trees. The Tree Protection Plan (as required in BS 5837:2012) to be submitted should show location of all tree protection in relation to the proposed

development, fencing and with hatching or other to show ground protection and there should be a statement about hand digging only within RPAs - when excavations are absolutely necessary;

b) a written statement detailing the proposed works including hand digging, use of filter cloth, timber edging, cellular ground reinforcement, porous surfaces etc. as relevant;

c) a specification for protective fencing to safeguard trees during the construction phases and a plan indicating the alignment of the protective fencing;

d) a specification for ground protection within RPAs.

The development thereafter shall be implemented in strict accordance with the approved details.

Reason: To ensure that the trees to be retained and which are of value to the national scenic area will not be damaged during construction operations.

4 No development should commence until evidence has been provided to the planning authority that the ancillary building is to be connected to the public water supply and foul drainage system, unless otherwise agreed in writing with the planning authority. Thereafter, the ancillary building shall not be occupied until the connections are made to those networks.

Reason: To ensure that the development is adequately serviced with a sufficient supply of wholesome water and to ensure that the development does not have a detrimental effect on amenity and public 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, 4<sup>th</sup> 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.

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### **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 S Mountford  
Chairman of the Local Review Body

**Date.....**

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**SCOTTISH BORDERS COUNCIL  
LOCAL REVIEW BODY DECISION NOTICE**

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**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**

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**Local Review Reference:** 21/00015/RREF

**Planning Application Reference:** 21/00486/FUL

**Development Proposal:** Part change of ground floor to Class 10 and alterations to form additional office space from ground floor

**Location:** 3 Rowan Court Suite, 3 Cavalry Park, Peebles

**Applicant:** Mr Stephen Lamb

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**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 as set out below.

**DEVELOPMENT PROPOSAL**

The application relates to part change of ground floor to Class 10 and alterations to form additional office space from ground floor at 3 Rowan Court Suite, 3 Cavalry Park, Peebles. The application drawings and documentation consisted of the following:

<b>Plan Type</b>	<b>Plan Reference No.</b>
Location Plan	PA01
Site Plan	PA02
Existing Ground Floor Plan	PA03
Existing Elevations	PA04
Proposed Ground Floor Plan	PA05
Proposed First Floor Plan	PA06
Proposed Elevations	PA07

**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 16<sup>th</sup> August 2021.

After examining the review documentation at that meeting, which included a) Notice of Review (including the Decision Notice and Officer's Report); b) Papers referred to in Officer's Report; c) Consultations; and d) 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 information in the form of DDL Care Hub Ltd – Business Plan and Cavalry Park – List of Companies.

Members agreed that the information was new and considered that it met the Section 43B test, that it was material to the determination of the Review and could be considered. However, there was a requirement for further procedure in the form of written submissions to enable the Planning Officer, Economic Development and the Social Work Chief Officer to comment on the new information.

The Review was, therefore, continued to the Local Review Body meeting on 18<sup>th</sup> October 2021 where the Review Body considered all matters, including responses to the further information from the Planning Officer, Social Work Chief Officer, and the applicant's reply to those responses. The Review Body also noted that the applicant had requested further procedure in the form of a hearing but did not consider it 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: PMD1, PMD2, PMD3, PMD5, ED1, IS7 and IS9

### **Other Material Considerations**

- Scottish Planning Policy 2014
- Circular 4/1998 "Use of Conditions in Planning Permission"

The Review Body noted that the proposal was for part change of ground floor to Class 10 and alterations to form additional office space from ground floor at 3 Rowan Court Suite, 3 Cavalry Park, Peebles.

Members noted that the proposal was for Class 10 use to replace Class 4 use on the ground floor of the building and that Class 4 use would be created within a new first floor to be formed within the roofspace of the building. It was noted that Class 10 use was not within the general Class 4 use required by Policy ED1 of the Local Development Plan on a Strategic High Amenity site such as Cavalry Park and Members stressed the importance of retaining

employment and industrial land, given the identified shortfall in industrial land supply in the Tweeddale area.

Nevertheless, the Review Body noted that the specific use proposed on the ground floor was a day care service for members of the public with ancillary office accommodation and were of the opinion that the supporting submissions had demonstrated a clear local need for the facility in the area. Members noted that the applicant was a current and well respected operator and that the proposals were acknowledged to be in line with health and social care objectives in the area. The Review Body also noted that there would be job creation from the proposals and that, provided the use was limited to that specifically applied for, there would be a complimentary relationship between the proposed use and other uses within Cavalry Park. For these reasons, Members considered that the proposal complied with Policies ED1 and PMD3 of the Local Development Plan, especially given the demonstrated local community benefits of the development which allowed an exception to be considered under Policy PMD3.

The Review Body also noted the mitigation measures proposed and accepted by the applicant to minimise the loss of Class 4 floorspace at the site. Firstly, they accepted that there would be replacement Class 4 floorspace created on the first floor of the building and that, together with a small area retained on the ground floor, the loss of such floorspace would not be significant. Members were not persuaded that such first floor accommodation would be less attractive than ground floor use as suggested by the Appointed Officer. Furthermore, Members noted that the applicant would accept other conditions on the timing of the Class 10 use to ensure the Class 4 accommodation in the roofspace was completed first and the reversion back to Class 4 use should the Class 10 use cease operation. Subject to conditions covering these controls and a condition relating to separation of the Class 10 use from the small area of retained Class 4 use on the ground floor, the Review Body were satisfied that the applicant had proposed sufficient mitigation to outweigh the impacts of the partial loss of Class 4 floorspace.

The Review Body finally considered other material issues relating to the proposal including parking provision, design, water and drainage but accepted that these issues were addressed by the development and did not materially affect their determination of the Review.

## **CONCLUSION**

After considering all relevant information, the Local Review Body concluded that the development was consistent with Policies ED1 and PMD3 of the Local Development Plan. The development was considered to be a complimentary use within Cavalry Park, created replacement Class 4 use on the first floor and offered significant community benefits that outweighed the need to retain Class 4 use on the ground floor. Consequently, the application was approved.

## **DIRECTIONS**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with Section 58 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

## **CONDITIONS**

1. The Class 10 use on the ground floor not to be operational until the Class 4 accommodation on the upper floor is completed and available for occupation.

Reason: To maintain the supply of business and employment floorspace on an allocated Strategic High Amenity Site.

2. Within a six month period of the cessation of the Class 10 use on the ground floor, or subject to any alternative period agreed in writing with the Planning Authority, the use shall revert to Class 4 Business Use and any proposals for uses outwith Class 4 shall require new planning applications.

Reason: To maintain the supply of business and employment floorspace on an allocated Strategic High Amenity Site.

3. The use hereby approved to be only for day care services for members of the public with ancillary office accommodation. Any other proposal within Class 10 of the Schedule to The Town and Country Planning (Use Classes) (Scotland) Order 1997 or any other Use Class is not permitted without an application for planning permission being firstly submitted and subsequently granted.

Reason: To ensure that the specific use hereby granted is implemented within the building in compliance with the supporting case and community benefits outlined as part of the proposal.

4. No commencement of the Class 10 use on the ground floor should occur until a scheme of details are submitted to, and approved in writing by the Planning Authority, detailing how the Class 4 usage of part of the ground floor is separated and isolated from the Class 10 use.

Reason: To maintain the supply of business and employment floorspace on an allocated Strategic High Amenity Site.

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**

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### **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, 4<sup>th</sup> 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.

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### **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 S Mountford  
Chairman of the Local Review Body

**Date.....**

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**SCOTTISH BORDERS COUNCIL  
LOCAL REVIEW BODY DECISION NOTICE**

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**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**

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**Local Review Reference:** 21/00018/RREF

**Planning Application Reference:** 20/01620/PPP

**Development Proposal:** Erection of 4 no. dwellinghouses with associated infrastructure and access

**Location:** Land South of Crunzion Cottage, Earlston Road, Stow

**Applicant:** Mr Bruce Weir

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**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 PMD4 of the Local Development Plan 2016 in that it would be located outside the settlement boundary of the village and does not meet the exceptions contained within Policy PMD4, particularly in that strong reasons have not been given to demonstrate that there is a shortfall identified by the Council through the housing land audit with regard to the provision of an effective five year housing land supply. Furthermore, it would not represent a logical extension of the built-up area and would not be sympathetic to the character of the settlement or achieve visual cohesion with it. The resulting development would have an unacceptably adverse effect on the character of the settlement at this location, thus also conflicting with Policy PMD2 of the Local Development Plan 2016. This conflict with the Local Development Plan is not overridden by other material considerations.

**DEVELOPMENT PROPOSAL**

The application relates to the erection of 4 no. dwellinghouses with associated infrastructure and access at Land South of Crunzion Cottage, Earlston Road, Stow. The application drawings and documentation consisted of the following:

**Plan Type**

**Plan Reference No.**

Location Plan	1279 pl 00
Block Plan	1279 pl 01 Rev F
House Type A	1279 HT A
House Type B	1279 HT B
Garage Elevation	1279 Garage 01
Site Survey	01A
Culvert Sections	0001 P5
Block Plan	1279 Scheme.2 01
Block Plan	1279 Scheme.3 01

## **PRELIMINARY MATTERS**

The Local Review Body considered the review, which had been competently made, under section 43A (8) of the Town & Country Planning (Scotland) Act 1997 at its meeting on 18<sup>th</sup> October 2021.

After examining the review documentation at that meeting, which included a) Notice of Review (including the Decision Notice and Officer's Report); b) Papers referred to in Officer's Report; c) Objection comments; d) Further Objection comments and applicant's response; e) Additional information; f) Consultation Replies; g) Correspondence and h) 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, HD1, HD2, HD3, HD4, EP1, EP2, EP3, EP8, EP9, EP13, EP15, IS2, IS3, IS7, IS8 and IS9

### **Other Material Considerations**

- SBC Supplementary Planning Guidance on Affordable Housing 2015
- 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
- SBC Supplementary Planning Guidance on Waste Management 2015
- SBC Supplementary Planning Guidance on Biodiversity 2005
- SBC Supplementary Planning Guidance on SUDS 2020
- Scottish Planning Policy 2014
- SESPlan 2013
- SBC Proposed Local Development Plan 2

The Review Body noted that the proposal was for planning permission in principle for the erection of 4 no. dwellinghouses with associated infrastructure and access at Land South of Crunzion Cottage, Earlston Road, Stow.

The Review Body noted that Stow was a defined settlement in the Local Development Plan and that the site lay immediately outwith the settlement boundary. The most relevant Policy was considered to be Policy PMD4 relating to development outwith development boundaries. Members were aware that development would not normally be approved under Policy PMD4 unless one of four qualifying criteria were met. Whilst they considered all criteria, including economic justification, community benefit and affordable housing, Members considered the most pertinent criterion to be that relating to the claimed shortfall in the five year effective housing land supply, given this was the main exception to PMD4 claimed by the applicant.

The Review Body noted the submissions and calculations put forward by both the applicant and Forward Planning with regard to effective housing land supply, including the Reporter's decision on land at Venlaw in Peebles, and considered that the matter had been investigated in significant detail during the processing of the application and Review. After full consideration of all of the submissions, Members were of the opinion that there had been no strong reason submitted under Criterion c) of Policy PMD4 to demonstrate that the application for four houses should be allowed outwith the Stow settlement boundary as an exception to that Policy. The Review Body considered that, under PMD4, it was for the Council to identify if there was a shortfall in the 5 year effective housing land supply and, as Forward Planning had not identified a shortfall, Members accepted the position of the Council on the issue. They also took into account the Reporter's decision at Venlaw and the SPP advice on sustainability but concluded that the case made by Forward Planning was robust and that there was no justification to allow an exception to PMD4 based upon housing land availability.

Members did assess the proposal against the other qualifying criteria within Policy PMD4 but did not consider the development to be affordable housing, nor were there any economic or community benefits demonstrated to the extent that would justify developing outwith the settlement boundary of Stow. Whilst the Review Body accepted that the arrival of the railway station might lead to increased development pressures in the local area, they did not consider that overriding reasons had been advanced to justify a development outwith the defined settlement boundary in this instance.

The Review Body also assessed the proposal against the secondary criteria within Policy PMD4, together with Policies PMD1, PMD2 and relevant criteria on the site and development's relationship with the adjoining settlement and built fabric. Members considered that the site was an open field, detached from the settlement and with potentially major impacts on Stow. They did not consider that the development met with the secondary criteria in Policy PMD4 nor with the relevant criteria in Policies PMD1 and PMD2.

The Review Body finally considered other material issues relating to the proposal including road and pedestrian access, drainage, residential amenity, trees and ecology but were of the opinion that the issues did not influence the overall decision on the Review and could have been controlled by appropriate conditions and a legal agreement, had the proposal been supported.

## **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.

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**Signed.....**  
Councillor S Mountford  
Chairman of the Local Review Body

**Date.....**

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