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SCOTTISH BORDERS COUNCIL LOCAL REVIEW BODY

MINUTES of Meeting of the LOCAL REVIEW
BODY held in Via Microsoft Teams on
Monday, 15 November 2021 at 10.00 am

Present:- Councillors S. Mountford (Chairman), D. Moffat, S. Hamilton (from para 2) ,
H. Laing, C. Ramage, N. Richards, E. Small

Apologies:- Councillors A. Anderson, J. Fullarton

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

1. **MEMBER**

Having not been present when the following review was first considered Councillor Hamilton did not take part in the determination and left the Meeting prior to its consideration.

1. **CONTINUATION OF REVIEW OF 21/00244/FUL**

- 1.1 With reference to paragraph 1 of the Minute of 13 September 2021, the Local Review Body continued their consideration of the request from AB Wight Engineering Ltd c/o Murray Land & Buildings, Hillside, Dean Place, Newstead, Melrose TD6 9RL, to review refusal of the planning application for the erection of a new agricultural machinery dealership premises at Slater's Yard, Charlesfield, St Boswells TD6 0HH. Clarification had been requested by Members, in the form of an unaccompanied site visit and hearing session regarding:-

- the availability of Industrial land within Charlesfield Industrial Estate, St. Boswells and surrounding area;

Following the hearing session Members of the Local Review Body would consider all aspects of the review with no further input from the hearing attendees.

HEARING SESSION

- 1.2 The appellants Mr Gary Wight and Mr Andrew Wight together with their Agent Mr Jamie Murray were in attendance at the Hearing to present their case. Speaking on behalf of Scottish Borders Council's Forward Planning Service was Mr Charles Johnston, Principal Officer, Plans and Research. A Hearing statement on behalf of the appellants had been circulated. A statement by Mr Johnston had also been circulated.
- 1.3 Mr Murray, on behalf of his clients explained that the Industrial Land within Charlesfield Industrial site had been divided into Zones and was owned by three owners. Zone A was for sale as the former owners Alexander Inglis & Son, grain merchants had entered administration, but the use of the land would remain the same. The land east was effectively a ransom strip and would be sold as part of the whole grain plant, neither land parcels in Zone A had been marketed or available prior to the former owners entering administration and there was nothing to suggest that this would change. Zone B was owned by Iona Environmental Infrastructure Holdco Ltd who owned and ran St Boswells Biogas Plant. Part of the larger southern parcel was under planning application for a distillery and was only ever likely to be developed by the owners of the land for their own

use, it was not available to third parties and none of it had been marketed for sale or let in the local plan period. Zone C was owned by James McCorquodale and was not readily developable without significant infrastructure installation, based on a larger development and was therefore not available in the short or medium term. Whilst an Employment Land Audit was carried out by SBC in 2019, this was not a suitable rebuttal to the lack of land's availability. A survey or box ticking exercise cannot get away from the fact that the land had not been marketed for sale or let in this period to date. Furthermore, discussions by the Applicants with the three landowners, advised that none of these sites were available to them in the short to medium term. Whilst the zoning of land had a place and it was a requirement of the Town & Country Planning (Scotland) Act, to include a Local Development Plan with policies, it did not offer any guarantees that the land zoned would become what it had been zoned for, or that it would be available to third parties, nor did the timeline have any real bearing. The council had sought to purchase land elsewhere in the recent past to control the outcome of their local plan, however, that did not always work as location, availability and the market dictated. Furthermore, there was vacant, serviced business land throughout the Scottish Borders, particularly in the southern and eastern parts of the region, as evidenced by the Council's own website advertisements and had been the case for some time. Whilst it was ideological to afford business and employment land opportunities in all of these towns, it also showed that location was key to business, and that the market dictated. There was a distinct lack of land availability in and around Charlesfield Industrial Estate and the Applicant had taken the opportunity to purchase a site with an existing use. Although the site did not meet with all of the Council's Local Development Plan policies, it was trumped by Slaters Yard's established and existing use and the Local Plan's failure to provide alternative sites for development. The Charlesfield Extension land might end up being used for Employment, but only being available to the existing owners or large developers. Therefore, it had ultimately failed to provide business land opportunities to local businesses in a timeous manner.

- 1.4 Mr Johnston explained that Scottish Planning Policy (SPP) set out the Scottish Government's planning policies in relation to economic development. SPP required local authorities to allocate sites appropriate for a range of business sectors and business sizes in the plan area. The Local Development Plan (LDP) provided this, identifying land across the Scottish Borders. Allocating such sites as part of the LDP was a lengthy process involving the identification of the most appropriate sites having undertaken detailed consultation with a range of bodies and the public. Importantly, the Council's Economic Development team fed into this process in terms of considering available land, land take-up and where new allocations needed to be sought. In essence the LDP process ensured land was specifically allocated across the region for a wide range of business and industrial uses, in order to try to ensure business and industrial development did not take place in an uncoordinated piecemeal fashion throughout the rural countryside within inappropriate locations. LDP Policies ED2 and ED7 referred to those points and were referred to in the Planning Case Officer's report. The LDP process and ultimate Plan adoption, which included all allocated sites and planning policies, was ultimately signed off by Scottish Ministers. Over the years the allocated business and industrial site at Charlesfield had proved to be an area which had successfully accommodated many businesses and continued to do so.
- 1.6 In order to comply with the national and local policy requirements and help guide the LDP, the Forward Planning team carried out an annual Employment Land Audit (ELA). The ELA was a key survey in helping give an up to date position across the Region in terms of business and industrial land provision. It monitored the supply, take-up and status of business and industrial land within the Scottish Borders, in accordance with SPP. The monitoring process allowed the LDP process the opportunity to allocate land where a shortfall was identified.
- 1.7 Mr Johnston went on to explain that a number of factors might come into play when considering the availability of land for purchase. The appellants had made reference to this in their LRB submission and the following paragraphs make reference to relevant

procedures and matters to be considered as well as responding to the appellants comments. In the first instance it was always advised that any party wishing to set up a new business or to relocate should contact the Council at an early stage in order to discuss potential sites to ascertain any issues to be addressed. The ELA was a key document in helping find potential sites. This procedure proved successful in working together to help and identify suitable sites which satisfied all parties and was the advice and preferred practice as opposed to purchasing a piece of land and then seeking consent for proposals which might raise a number of major issues. The Council's Economic Development team would take a lead on this. In this instance there were no records of the applicants having contacted the Council to discuss potential sites prior to contacting Development Management to arrange a site meeting to discuss the site in question. A number of issues were subsequently raised and the appellants were advised that the site proposals did not comply with planning policy, although it was understood the appellants proceeded to purchase the site. As stated in the Planning Case Officer's report little information was submitted at the planning application stage confirming why alternative sites were not able to be pursued. This would have been helpful and expected as part of the application submission in order to confirm why the site purchased was the only available option. It was contended that there was a considerable amount of available business and industrial land at Charlesfield as detailed in Appendix 3 to the report. It was however acknowledged the definition and interpretation of immediately available land could be subjective, and it was understood why the amount stated at the planning application stage, 11.5ha taken from the 2019 Audit, could be challenged. Some of the land could be argued to be incorporated within the 1 to 5 year period. Having checked the history of the categorisation of sites, up until 2013 sites in Charlesfield within the allocation zEL19 were categorised as being available between 1 to 5 years. However, in 2014 the Council's Economic Development team advised that given the planning application for the anaerobic digestion plant had been approved and a related application had been submitted for the access road which opened up land in the vicinity, the categorisation should be changed to being immediately available. Consequently that categorisation had continued within subsequent audits and remained the case.

- 1.8 However, whether land was categorised to be immediately available or would be available at some point after that, critically if there was a genuine interest in developing land, parties, including the Council when contacted, could come together to discuss steps in order that sites could hopefully be made available and developed sooner than perhaps anticipated. The Council was unsure how long the appellants had been seeking a new site, but often it must be accepted that choosing a site could take a period of time involving detailed consideration of a range of sites and issues with help and input from other parties. The Council was always eager to get involved in helping identify an appropriate site for any party in the normal manner. This might involve discussions with relevant bodies, including the South of Scotland Enterprise (SOSE), to acquire land and develop it. Just because land may not be immediately available did not mean that circumstances could not be changed and sites could be released and developed. Many other allocations in the LDP were in other uses / ownerships at present, housing allocations for example, but that did not mean if an interested party came forward they could become a priority to be developed. It should also be noted that whilst there may be costs involved in setting up necessary infrastructure in Charlesfield to service the site, which was common practice for many industrial sites, the site subject to this appeal also required work to be carried out to install necessary services into the site.
- 1.9 On being given the opportunity to ask questions, Members asked whether Zone 3 would have the necessary infrastructure. The Appellants were asked if they had sought advice from Scottish Borders Council prior to purchasing the land at Charlesfield. Mr A Wight advised that they had been very involved with everyone at Charlesfield since 2007 and had regular conversations with the owners over that time. They had viewed the site history and as it was a brown field site and had previously had a planning application against it, had made their own decision to proceed. They had been unaware that there was a process to follow. In response to a question as to whether they had considered

sites further afield, Mr A Wight advised that they had not and explained that the customer base was very specific and they were convinced that their customer base would not move with them should they re-locate.

- 1.10 Mr Murray sought clarification of the classification of land being available as having spoken to land owners there was no land available, however, it was classed as immediately available. Mr Johnston advised that working together with SBC Planning and Economic development can enable land to be made available. Mr Johnston questioned the Appellants as to what was meant by the statement that the east land parcel of land in Zone A was a ransom strip as Zone A had been sold to a new owner. Mr Johnston had not doubt that the Appellants had spoken to the owners, however there was no evidence.
- 1.11 After the parties involved had given closing summaries of their submissions, the Chairman closed the Hearing session and the Local Review Body reconvened to continue consideration of the review. Members agreed that both the unaccompanied site visit which they had undertaken and the Hearing had been useful in providing further information. Despite the information supplied, Members remained unclear about land available within Charlesfield and after discussion Members concluded that they could not make a determination without further procedure and clarification on these matters.

VOTE

Councillor Moffat, seconded by Councillor Richards moved that the Appeal be upheld and the Officers decision overturned.

Councillor Laing, seconded by Councillor Small moved as an amendment that the matter be further continued to allow the Appellants and their Agent to meet with the Planning Officer and a representative from Economic Development with a view to the submission of a position statement.

As the meeting was conducted by Microsoft Teams members were unable to vote by the normal show of hands and gave a verbal response as to how they wished to vote the result of which was as follows:-

Motion – 3 votes

Amendment – 3 votes

As there was an equality of votes, the Chairman exercised his casting vote in favour of a continuation.

DECISION

AGREED that:-

- (a) **the review could not be determined without further procedure in the form of written submissions from the Applicants and Planning Officer as follows;**
- **further written information on the Industrial Land available within Charlesfield Industrial Site, following a meeting with a view to the submission of a position statement, which may be a single statement agreed by both parties or two separate statements; and**
 - **the Meeting to include the Applicants, Agent, Planning Officer and a representative from Economic Development.**
- (d) **the review be continued on a date to be arranged.**

2. REVIEW OF 21/00839/PPP

There had been circulated copies of the request from Mr Trevor Jackson, per Ferguson Planning, 54 Island Street, Galashiels to review the decision to refuse the planning in

principle application for the erection of dwellinghouse, formation of new access and associated work on Plot 1, Site Adjacent to Stroma, Charlesfield St Boswells. The supporting papers included the Notice of Review; Decision Notice; Officers report; papers referred to in the Officer's Report; objection comments, consultation replies, additional information and List of Policies. Members firstly considered whether there was a building group in the vicinity under Clause A of Policy HD2 and noted that there were a number of existing houses in the immediate vicinity alongside the road to the north of the site, together with a further dwellinghouse known as "Westlea" formed from a conversion adjoining the site to the south-west. After considering all relevant information, the Local Review Body concluded that the development was consistent with Policies HD2 and HD3 of the Local Development Plan and relevant Supplementary Planning Guidance. There was a difference of opinion amongst Members as to whether or not development was considered to be an appropriate infill addition between the building group and the industrial estate, and if any impacts from the industrial estate being known to incoming residential occupants were able to be mitigated.

VOTE

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

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

As the meeting was conducted by Microsoft Teams members were unable to vote by the normal show of hands and gave a verbal response as to how they wished to vote the result of which was as follows:-

Motion - 2 votes

Amendment - 4 votes

The amendment was accordingly carried and the application approved, subject to Conditions and a legal agreement to secure developer contributions.

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

3. REVIEW OF 21/00840/PPP

There had been circulated copies of the request from Mr Trevor Jackson, per Ferguson Planning, 54 Island Street, Galashiels to review the decision to refuse the planning in principle application for the erection of dwellinghouse, formation of new access and associated work on Plot 2, Land South of The Bungalow Charlesfield, St Boswells. The supporting papers included the Notice of Review; Decision Notice; Officers report; papers referred to in the Officer's Report; objection comments, consultation replies, additional information and List of Policies. After considering all relevant information, the Local Review Body concluded that the development was consistent with Policies HD2 and HD3 of the Local Development Plan and relevant Supplementary Planning Guidance. There

was a difference of opinion amongst Members as to whether or not development was considered to be an appropriate infill addition between the building group and the industrial estate, and if any impacts from the industrial estate being known to incoming residential occupants were able to be mitigated.

VOTE

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

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

As the meeting was conducted by Microsoft Teams members were unable to vote by the normal show of hands and gave a verbal response as to how they wished to vote the result of which was as follows:-

Motion - 2 votes

Amendment - 4 votes

The amendment was accordingly carried and the application approved, subject to Conditions and a legal agreement to secure developer contributions.

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

4. REVIEW OF 21/00074/FUL

There had been circulated copies of the request from Mr Ehsan Alanizi, per Stuart Patterson Building & Timber Frame Design to review the decision to refuse the planning application for the alterations and extension to dwellinghouse at Whinfield, Chesters Brae, Chesters, Hawick. The supporting papers included the Notice of Review; Decision Notice; Officers report; papers referred to in the Officer's Report; additional Information and List of Policies. The Planning Adviser drew attention to new evidence on the site, in the form of a supporting letter from the applicant's employer, Jedburgh Family Dental Practice. 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. After considering all relevant information, the Local Review Body concluded that consent for the development was consistent with Policies PMD2 and HD3 of the Local Development Plan and relevant Supplementary Planning Guidance. The property was not listed or within a conservation area and the development was considered to be an appropriate extension to Whinfield Cottage which would retain the original stone work of the cottage and would have a natural slate roof. The Members noted the existence of a variety of building styles and forms in the immediate vicinity and did not consider that the proposed alterations and extension would have an adverse impact on the neighbouring properties. The application was therefore approved subject to the conditions listed in the Appendix.

DECISION

AGREED:-

- (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 a supporting letter from the applicant's employer, Jedburgh Family Dental Practice 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 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, for the reasons detailed in Appendix III to this Minute.**

The meeting concluded at 1.00 pm

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

**APPEAL UNDER SECTION 43A (8) OF THE TOWN AND COUNTRY PLANNING
(SCOTLAND) ACT 1997**

**THE TOWN AND COUNTRY PLANNING (SCHEMES OF DELEGATION AND LOCAL
REVIEW PROCEDURE) (SCOTLAND) REGULATIONS 2013**

Local Review Reference: 21/00022/RREF

Planning Application Reference: 21/00839/PPP

Development Proposal: Erection of dwellinghouse, formation of new access and associated work

Location: Plot 1 Site adjacent Stroma, Charlesfield Industrial Estate, Charlesfield

Applicant: Mr Trevor Jackson

DECISION

The Local Review Body reverses the decision of the appointed officer and indicates that it intends to grant planning permission for the reasons set out in this intentions notice subject to conditions, informative and the applicants entering into a Section 75, or other suitable Legal Agreement, as set out below.

DEVELOPMENT PROPOSAL

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

Plan Type	Plan Reference No.
Location Plan	10103/01 Rev A
Block Plan	10103/02 Rev D
Block Plan	10103/03 Rev D
Cross Section	10103/04 Rev D

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 15th November 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) Additional Information; d) Objection Comments; e) Consultation Replies; and f) 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, ED1, HD2, HD3, HD4, EP3, EP8, EP13, IS2, IS3, IS7, IS9 and IS13

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 New Housing in the Borders Countryside 2008
- Scottish Planning Policy 2014
- SESPlan 2013

The Review Body noted that the proposal was for the erection of a dwellinghouse with formation of new access and associated works at Plot 1, Site adjacent Stroma, Charlesfield Industrial Estate, St Boswells.

Members firstly considered whether there was a building group in the vicinity under Clause A of Policy HD2. They noted that there were a number of existing houses in the immediate vicinity alongside the road to the north of the site, together with a further dwellinghouse known as "Westlea" formed from a conversion adjoining the site to the south-west. Members were satisfied that this constituted a building group under Clause A of Policy HD2. In terms of whether there was capacity for the group to be expanded, the Review Body also noted that there were no existing permissions for any further houses at the group and they concluded that, subject to the site being considered to be an acceptable addition to the group, there was capacity for the development 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 group's sense of place and in keeping with its character. In this respect, they had regard to the position of the site which they noted lay between the houses fronting the public road and the industrial estate and buildings to the rear. Rather than consider the site to be backland development as contended by the Appointed Officer, the Review Body were more of the opinion that the site represented an infill opportunity between two developed areas, the context for residential development already being present in the form of the conversion to form "Westlea". The provision of a further detached house within its own curtilage was seen as consistent with the current character of other houses within the group, which were noted as all being detached within their own curtilage. For these reasons, the Review Body did not

consider the group to be complete and viewed the site as a clear further infill opportunity within the sense of place and character of the group.

Members then considered the issue of residential amenity in relation to the adjoining industrial estate. They noted the proximity of the industrial estate and whilst accepting that the nature of impacts could change depending on the adjoining industries, the Review Body were of the opinion that noise assessment had already been undertaken, mitigation measures proposed and that such measures could be considered at the next planning stage when the siting and design of the house and boundaries would be decided. Members also noted that “Westlea” adjoined the industrial estate, setting a context for residential use. It was also considered that anyone occupying a new house would be aware of the potential impacts from the industrial estate.

The Review Body finally considered other material issues relating to the proposal including access, water, drainage, contamination, trees, hedges and ecological matters but were of the opinion that appropriate conditions could address them satisfactorily. They also noted that development contributions for education and the Borders Railway would also be required, to be secured by legal agreement.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was consistent with Policies HD2 and HD3 of the Local Development Plan and relevant Supplementary Planning Guidance. The development was considered to be an appropriate infill addition between the building group and the industrial estate, any impacts from the industrial estate being known to incoming residential occupants and able to be mitigated. Consequently, the application was approved subject to conditions and legal agreement.

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, including new tree planting adjoining the industrial estate, 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 tree planting within the site, including along the industrial estate boundary
 - 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. The existing trees and boundary hedging should be retained in perpetuity. They should be protected at all times during construction and building operations, by the erection of substantial timber fence around the trees and hedging, together with such other measures as are necessary to protect the trees, hedges 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 and hedges 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. The main access to include visibility splays of 2.4m by 120m in both directions, a 6m initial width, surface water drainage interception and provision for service vehicles, including construction and levels details.
- 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. 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.

7. No development to be commenced until a scheme of waste storage has been submitted to, and approved in writing by, the Planning Authority. Once approved, provision to be made in accordance with the approved details prior to occupation of the dwellinghouse.

Reason: To ensure adequate provision for waste storage within the site.

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

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

- a) A desk study and development of a conceptual site model including (where necessary) a detailed site investigation strategy. The desk study and the scope and method of recommended further investigations shall be agreed with the Council prior to addressing parts b, c, d, and, e of this condition. and thereafter
- b) Where required by the desk study, undertaking a detailed investigation of the nature and extent of contamination on site, and assessment of risk such contamination presents.
- c) Remedial Strategy (if required) to treat/remove contamination to ensure that the site is fit for its proposed use (this shall include a method statement, programme of works, and proposed validation plan).
- d) Submission of a Validation Report (should remedial action be required) by the developer which will validate and verify the completion of works to a satisfaction of the Council.
- e) Submission, if necessary, of monitoring statements at periods to be agreed with the Council for such time period as is considered appropriate by the Council.

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

9. Any existing trees or hedges proposed for removal shall not be removed until appropriate breeding bird surveys are carried out, submitted and subsequently approved in writing by the Planning Authority.

Reason: To safeguard potential ornithological interests at the site.

Informative

The development shall be carried out in accordance with all regulations relating to any bats encountered on the site. Please contact Nature Scot if evidence of bats is noted pre-commencement of development.

LEGAL AGREEMENT

The Local Review Body required that a Section 75, or other suitable legal agreement, be entered into to secure developer contributions for Earlston High School, St Boswells Primary School and the Borders Railway.

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:

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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 H Laing
Chairman of the Local Review Body

Date.....

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

**APPEAL UNDER SECTION 43A (8) OF THE TOWN AND COUNTRY PLANNING
(SCOTLAND) ACT 1997**

**THE TOWN AND COUNTRY PLANNING (SCHEMES OF DELEGATION AND LOCAL
REVIEW PROCEDURE) (SCOTLAND) REGULATIONS 2013**

Local Review Reference: 21/00023/RREF

Planning Application Reference: 21/00840/PPP

Development Proposal: Erection of dwellinghouse, formation of new access and associated work

Location: Plot 2 Land South of The Bungalow, Charlesfield Industrial Estate, Charlesfield

Applicant: Mr Trevor Jackson

DECISION

The Local Review Body reverses the decision of the appointed officer and indicates that it intends to grant planning permission for the reasons set out in this intentions notice subject to conditions, informative and the applicants entering into a Section 75, or other suitable Legal Agreement, as set out below.

DEVELOPMENT PROPOSAL

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

Plan Type	Plan Reference No.
Location Plan	10103/01 Rev A
Block Plan	10103/02 Rev D
Block Plan	10103/05 Rev D
Cross Section	10103/04 Rev D

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 15th November 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) Consultation Replies; e) Additional Information and f) 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, ED1, HD2, HD3, HD4, EP3, EP8, EP13, IS2, IS3, IS7, IS9 and IS13

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 New Housing in the Borders Countryside 2008
- Scottish Planning Policy 2014
- SESPlan 2013

The Review Body noted that the proposal was for the erection of a dwellinghouse with formation of new access and associated works at Plot 2, Land South of The Bungalow, Charlesfield Industrial Estate, St Boswells.

Members firstly considered whether there was a building group in the vicinity under Clause A of Policy HD2. They noted that there were a number of existing houses in the immediate vicinity alongside the road to the north of the site, together with a further dwellinghouse known as "Westlea" formed from a conversion to the south-west. Members were satisfied that this constituted a building group under Clause A of Policy HD2. In terms of whether there was capacity for the group to be expanded, the Review Body also noted that there were no previous existing permissions for any further houses at the group and they concluded that, subject to the site being considered to be an acceptable addition to the group, there was capacity for the development in compliance with Policy HD2 and the relevant SPG, even after taking into account their decision to approve a dwellinghouse on Plot 1.

Members then considered the relationship of the site with the group and whether it was within the group's sense of place and in keeping with its character. In this respect, they had regard to the position of the site which they noted lay between the houses fronting the public road and the industrial estate and buildings to the rear. Rather than consider the site to be backland development as contended by the Appointed Officer, the Review Body were more of the opinion that the site represented an infill opportunity between two developed areas, the context for residential development already being present in the form of the conversion to form "Westlea". The provision of a further detached house within its own curtilage was seen as consistent with the current character of other houses within the group, which were noted as

all being detached within their own curtilage. For these reasons, the Review Body did not consider the group to be complete and viewed the site as a clear further infill opportunity within the sense of place and character of the group.

Members then considered the issue of residential amenity in relation to the adjoining industrial estate. They noted the proximity of the industrial estate and whilst accepting that the nature of impacts could change depending on the adjoining industries, the Review Body were of the opinion that noise assessment had already been undertaken, mitigation measures proposed and that such measures could be considered at the next planning stage when the siting and design of the house and boundaries would be decided. Members also noted that “Westlea” adjoined the industrial estate, setting a context for residential use. It was also considered that anyone occupying a new house would be aware of the potential impacts from the industrial estate.

The Review Body finally considered other material issues relating to the proposal including access, water, drainage, contamination, trees, hedges and ecological matters but were of the opinion that appropriate conditions could address them satisfactorily. They also noted that development contributions for education, affordable housing and the Borders Railway would also be required, to be secured by legal agreement.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was consistent with Policies HD2 and HD3 of the Local Development Plan and relevant Supplementary Planning Guidance. The development was considered to be an appropriate infill addition between the building group and the industrial estate, any impacts from the industrial estate being known to incoming residential occupants and able to be mitigated. Consequently, the application was approved subject to conditions and legal agreement.

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, including new tree planting adjoining the industrial estate, 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 tree planting within the site, including along the industrial estate boundary
- 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. The existing trees and boundary hedging should be retained in perpetuity. They should be protected at all times during construction and building operations, by the erection of substantial timber fence around the trees and hedging, together with such other measures as are necessary to protect the trees, hedges 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 and hedges 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. The main access to include visibility splays of 2.4m by 120m in both directions, a 6m initial width, surface water drainage interception and provision for service vehicles, including construction and levels details.
- 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. 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.
7. No development to be commenced until a scheme of waste storage has been submitted to, and approved in writing by, the Planning Authority. Once approved, provision to be made in accordance with the approved details prior to occupation of the dwellinghouse.
Reason: To ensure adequate provision for waste storage within the site.
8. Unless otherwise agreed in writing and in advance by the Planning Authority, prior to any development commencing on site, a scheme will be submitted by the Developer (at their expense) to identify and assess potential contamination on site. No construction work shall commence until the scheme has been submitted to, and approved, by the Council, and is thereafter implemented in accordance with the scheme so approved.

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

- a) A desk study and development of a conceptual site model including (where necessary) a detailed site investigation strategy. The desk study and the scope and method of recommended further investigations shall be agreed with the Council prior to addressing parts b, c, d, and, e of this condition. and thereafter
- b) Where required by the desk study, undertaking a detailed investigation of the nature and extent of contamination on site, and assessment of risk such contamination presents.
- c) Remedial Strategy (if required) to treat/remove contamination to ensure that the site is fit for its proposed use (this shall include a method statement, programme of works, and proposed validation plan).
- d) Submission of a Validation Report (should remedial action be required) by the developer which will validate and verify the completion of works to a satisfaction of the Council.
- e) Submission, if necessary, of monitoring statements at periods to be agreed with the Council for such time period as is considered appropriate by the Council.

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

9. Any existing trees or hedges proposed for removal shall not be removed until appropriate breeding bird surveys are carried out, submitted and subsequently approved in writing by the Planning Authority.
Reason: To safeguard potential ornithological interests at the site.

Informative

The development shall be carried out in accordance with all regulations relating to any bats encountered on the site. Please contact Nature Scot if evidence of bats is noted pre-commencement of development.

LEGAL AGREEMENT

The Local Review Body required that a Section 75, or other suitable legal agreement, be entered into to secure developer contributions for Earlston High School, St Boswells Primary School, affordable housing and the Borders Railway.

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.

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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 H Laing
Chairman of the Local Review Body

Date.....

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**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: 21/00024/RREF

Planning Application Reference: 21/00074/FUL

Development Proposal: Alterations and extension to dwellinghouse

Location: Whinfield, Chesters Brae, Chesters, Hawick

Applicant: Mr Ehsan Alanizi

Date Review Received: 22 Sep 2021

Decision Date: 15 November 2021

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 and subject to the direction and conditions set out below.

DEVELOPMENT PROPOSAL

Plan Type	Plan Reference No.
Location Plan	21-714-4002
Existing Layout	21-714-1001
Proposed Plans	21-714-1002
Proposed Plans	21-714-2001
Proposed Elevations	21-714-2003
Proposed Site Plan	21-714-4001
Proposed Sections	214-714-3002

PRELIMINARY MATTERS

The Local Review Body considered the review, which had been competently made, under section 43A (8) of the Town & Country Planning (Scotland) Act 1997 at its meeting on 15th November 2021.

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) Additional Information; 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 a supporting letter from the applicant's employer, Jedburgh Family Dental Practice. 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.

The Review Body considered there was no need for any further procedure 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: PMD2 and HD3

Other Material Considerations

- SBC Supplementary Planning Guidance on Placemaking and Design 2010

The Review Body noted that the application was for a two storey extension of Whinfield, Chesters Brae, Chesters. The property was not listed or in a conservation area and Members determined there was scope to alter and extend the property to provide a larger family house.

Members considered that the existing side extension to the property was unattractive and that the property would benefit from its removal. In terms of the proposed extension, they were content that the design approach, which effectively built over and to the eastern side of the Whinfield and which incorporated the original cottage but clearly delineated the old from the new building, was acceptable. Members concluded that the extension would be sympathetic to the character of the existing cottage and was of an appropriate scale and form.

In coming to this view, the Review Body gave significant weight to the existence of a variety of building styles and forms in the immediate vicinity of the property. They concluded that the extended house would be acceptable in this context in terms of its

scale, massing and would be in sympathy with the surroundings, conforming to existing character and sense of place. Members agreed that there would be no adverse impact on neighbouring properties and were pleased to see that the stone work of the original cottage would be retained and that the property would have a natural slate roof.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was consistent with Policies PMD2 and HD3 of the Local Development Plan and relevant Supplementary Planning Guidance. The development was considered to be an appropriate extension to Whinfield that would provide an attractive family home and which would be sympathetic to the original cottage and the locality more generally. 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, including the retention of the original walls of Whinfield, approved by the Local Planning Authority.
Reason: To ensure that the development is carried out in accordance with the approved details.
2. Notwithstanding the description of the materials in the application, no development shall be commenced until precise details of the materials to be used in the construction of the external walls and roofs of the buildings have been submitted to and approved in writing by the Local Planning Authority, and thereafter no development shall take place except in strict accordance with those details.
Reason: The materials require further consideration to ensure a satisfactory form of development, which contributes appropriately to its setting.

INFORMATIVES

N.B: This permission does not include any consent, approval or licence necessary for the proposed development under the building regulations or any other statutory enactment and the development should not be commenced until all consents are obtained.

Under The Control of Pollution Act 1974, the Council recommends the following hours for noisy construction-related work:

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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.

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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 H Laing

Chairman of the Local Review Body

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