



**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: 21/00019/RREF

Planning Application Reference: 20/01327/FUL

Development Proposal: Erection of dwellinghouse

Location: Land Adjacent Carnlea, Main Street, Heiton

Applicant: Mr Mark Graham

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 proposed development would not comply with Policies PMD2: Quality Standards and PMD5: Infill Development of the Local Development Plan 2016 in that the development would result in additional vehicular traffic on a substandard access to the detriment of road safety, both vehicular and pedestrian, and it has not been demonstrated that the improvements required to upgrade the access, as specified, can be carried out.

DEVELOPMENT PROPOSAL

The application relates to the erection of a dwellinghouse on land adjacent Carnlea, Main Street, Heiton. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	PDK-20-137-001
Elevations	006-01
Elevations	007-01
Roof Plan	008-01
Site Plan and Section	009-02
Privacy and Overlooking Plan	010-02

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 18th 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) Objections; c) Further Objection Comments and Applicant's Response; d) General Comment; e) Other Information; and f) List of Policies, 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 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.

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 Officer to comment on the new information.

The Review was, therefore, continued to the Local Review Body meeting on 13th December 2021 where the Review Body considered all matters, including responses to the further information from the Planning Officer and Roads 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 written submissions, a hearing and a site visit 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: PMD2, PMD5, HD3, HD4, EP13, IS2, IS7 and IS9

Other Material Considerations

- SBC Supplementary Planning Guidance on Placemaking & Design 2010
- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006
- SBC Supplementary Planning Guidance on Development Contributions 2011
- SBC Supplementary Planning Guidance on Landscape and Development 2008

The Review Body noted that the proposal was for planning permission to erect a dwellinghouse on land adjacent to Carnlea, Main Street, Heiton. Members noted that the site lay within the settlement boundary for Heiton as defined in the Local Development Plan and that, in many respects, the development was an appropriate infill opportunity in keeping with

the surroundings and in compliance with the relevant Policies PMD2 and PMD5. The Review Body had no general objections to the siting or design of the dwellinghouse and agreed with the Appointed Officer in these respects.

The Review Body also understood that the site had accommodated a residential property in the past according to information in the background papers, that previous planning permissions had been granted and that land registration documents appeared to confirm a right of access from the site to the A698. However, Members were also aware that such rights should not override all other material considerations and, in this respect, were of the opinion that the development would generate increased traffic utilising an inadequate and unsafe access onto the A698. They considered that traffic generation and volumes would be greater for the new development and on the A698 compared to those that would have existed when the site accommodated the previous property. As a consequence, there were greater road safety concerns over the proposal.

The Review Body agreed with the Roads Officer that the access road was narrow with very limited junction visibility, inadequate junction radii and poor surface condition. They noted that several properties already used the access road/junction and that the addition of a further property would result in the need for road improvements which could not be achieved within the applicant's ownership. Although Members did acknowledge the benefits of the creation of a turning head for the access road and the possibility that the current trial 20mph speed limit on the A698 may be made permanent, they did not consider these benefits outweighed the inadequacies of the current access and junction. For reasons of road safety, they agreed with the Roads Officer and concluded that the proposal was not in compliance with Local Development Plan Policies PMD2 and PMD5.

The Review Body finally considered other material issues relating to the proposal including residential amenity impacts, water, drainage and developer contributions 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.

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

1. If the applicant is aggrieved by the decision of the planning authority to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.
2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in

its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.

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

Date.....

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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**

Local Review Reference: 21/00025/RREF

Planning Application Reference: 21/00726/PPP

Development Proposal: Erection of dwellinghouse

Location: Plot 5 Land South West of Hume Bank, Hume Hall Holdings, Greenlaw

Applicant: Mrs C Redpath

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 proposed development would be contrary to Policy HD2 and Policy ED10 of the Scottish Borders Local Development Plan 2016, as well as the Council's adopted Supplementary Planning Guidance 'New Housing in the Borders Countryside 2008' in that it would not relate well to an existing building group, it would break into an undeveloped field and the application site would be disproportionately large within this context and so the development would be detrimental to the character of the building group. In addition, the development would result in the permanent loss of prime quality agricultural land.

DEVELOPMENT PROPOSAL

The application relates to the erection of a dwellinghouse at Plot 5 Land South West of Hume Bank, Hume Hall Holdings, Greenlaw. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	19/B472/PL01
Existing Site Plan	19/B472/PL02
Proposed Site Plan	19/B472/PL03

PRELIMINARY MATTERS

The Local Review Body considered the review, which had been competently made, under section 43A (8) of the Town & Country Planning (Scotland) Act 1997 at its meeting on 13th December 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; and e) List of Policies, the Review Body noted that the applicant had requested further procedure in the form of a site inspection 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, HD2, HD3, ED10, EP3, IS2, IS7 and IS9

Other Material Considerations

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

The Review Body noted that the proposal was for planning permission in principle for the erection of a dwellinghouse at Plot 5 Land South West of Hume Bank, Hume Hall Holdings, Greenlaw.

Members firstly considered whether there was a building group in the vicinity under Clause A of Policy HD2. They noted that the majority of the existing houses in the immediate vicinity lay to the north-west of the minor public road adjoining the site, although Members also noted two houses on the same side of the road as the site and other houses bordering the main B Class Road. In terms of the number of houses and their arrangement, the Review Body were satisfied that this constituted a building group under Clause A of Policy HD2. With regard to 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, whether it was within the group's sense of place and in keeping with its character. In this respect, the Review Body were in agreement with the Appointed Officer that the site would appear isolated and visually

detached from the core area of the building group, being poorly related to the existing buildings. They were concerned that, although on the same side of the road as “Glenholly” and “13 Hume Holdings”, the site was separated from the latter by an area of agricultural land not within the application site and the site would, therefore, appear to be a detached incursion into an undeveloped field, outwith the character and sense of place of the building group. Members considered that this sense of detachment and lack of sympathy with character was emphasised by the large site size and the inability to ensure development of the site would be accompanied by development of the adjoining plot at Review. Members also considered the previous refusal on the site in 2020 to be a material factor, albeit noting the size of the site had been reduced. The Review Body concluded that the application was contrary to Clause A of Local Plan Policy HD2 on building group addition. They also noted there was no justification submitted to comply with Clause F in relation to economic need for the dwellinghouse.

Members then considered the issue of loss of prime agricultural land which is protected by Policy ED10. Whilst noting that the site was reduced in size from the previously refused application in 2020 and the applicant’s claims that the land was not currently part of an arable operation, the Review Body still considered that the site constituted permanent loss of prime agricultural land and they did not agree that the application met any of the exceptions under Policy ED10. Members also felt that the incursion of the plot into the field and retention of the intervening gap with 13 Hume Hall Holdings could lead to further difficulties of farming the land and may exacerbate the loss of prime agricultural land. The Review Body concluded that the application was contrary to Policy ED10.

The Review Body finally considered other material issues relating to the proposal including residential amenity, landscape impacts, access, water, drainage, ecological matters and developer contributions 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.

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

1. If the applicant is aggrieved by the decision of the planning authority to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.
2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of

the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.

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

Date.....

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REVIEW PROCEDURE) (SCOTLAND) REGULATIONS 2013**

Local Review Reference: 21/00026/RREF

Planning Application Reference: 21/00727/PPP

Development Proposal: Erection of dwellinghouse

Location: Plot 4 Hume Bank, Hume Hall Holdings, Greenlaw

Applicant: Mrs C Redpath

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 proposed development would be contrary to Policy HD2 and Policy ED10 of the Scottish Borders Local Development Plan 2016, as well as the Council's adopted Supplementary Planning Guidance 'New Housing in the Borders Countryside 2008' in that it would not relate well to an existing building group, it would break into an undeveloped field and the application site would be disproportionately large within this context and so the development would be detrimental to the character of the building group. In addition, the development would result in the permanent loss of prime quality agricultural land.

DEVELOPMENT PROPOSAL

The application relates to the erection of a dwellinghouse at Plot 4 Hume Bank, Hume Hall Holdings, Greenlaw. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	19/B472/PL04
Existing Site Plan	19/B472/PL05
Proposed Site Plan	19/B472/PL06

PRELIMINARY MATTERS

The Local Review Body considered the review, which had been competently made, under section 43A (8) of the Town & Country Planning (Scotland) Act 1997 at its meeting on 13th December 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; and e) List of Policies, the Review Body noted that the applicant had requested further procedure in the form of a site inspection 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, HD2, HD3, ED10, EP3, IS2, IS7 and IS9

Other Material Considerations

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

The Review Body noted that the proposal was for planning permission in principle for the erection of a dwellinghouse at Plot 4 Hume Bank, Hume Hall Holdings, Greenlaw.

Members firstly considered whether there was a building group in the vicinity under Clause A of Policy HD2. They noted that the majority of the existing houses in the immediate vicinity lay to the north-west of the minor public road adjoining the site, although Members also noted two houses on the same side of the road as the site and other houses bordering the main B Class Road. In terms of the number of houses and their arrangement, the Review Body were satisfied that this constituted a building group under Clause A of Policy HD2. With regard to 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, whether it was within the group's sense of place and in keeping with its character. In this respect, the Review Body were in agreement with the Appointed Officer that the site would appear isolated and visually detached from the core area of the building group, being poorly related to the existing buildings. They were concerned that, although on the same side of the road as "Glenholly"

and “13 Hume Holdings”, the site was separated from the latter by an area of agricultural land not within the application site and by Plot 5 which had been refused. The Review Body considered that the site would, therefore, appear to be a detached incursion into an undeveloped field, outwith the character and sense of place of the building group. Members considered that this sense of detachment and lack of sympathy with character was emphasised by the large site size and the fact that development of Plot 5 had now been refused at Review. Members also considered the previous refusals on the site in 2004 and 2020 to be a material factor, albeit noting the size of the site had been reduced. The Review Body concluded that the application was contrary to Clause A of Local Plan Policy HD2 on building group addition. They also noted there was no justification submitted to comply with Clause F in relation to economic need for the dwellinghouse.

Members then considered the issue of loss of prime agricultural land which is protected by Policy ED10. Whilst noting that the site was reduced in size from the previously refused application in 2020 and the applicant’s claims that the land was not currently part of an arable operation, the Review Body still considered that the site constituted permanent loss of prime agricultural land and they did not agree that the application met any of the exceptions under Policy ED10. Members also felt that the incursion of the plot into the field and retention of the intervening gap with 13 Hume Hall Holdings could lead to further difficulties of farming the land and may exacerbate the loss of prime agricultural land. The Review Body concluded that the application was contrary to Policy ED10.

The Review Body finally considered other material issues relating to the proposal including residential amenity, landscape impacts, access, water, drainage, ecological matters and developer contributions 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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1. If the applicant is aggrieved by the decision of the planning authority to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.
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of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.

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

Date.....

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