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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, 21 February 2022 at 10.00 am

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

Apologies:- Councillor S. Mountford.

In Attendance:- Lead Planning Officer (C. Miller), Solicitor (S. Thompson), Democratic
Services Team Leader (L McGeoch), Democratic Services Officer (F.
Henderson).

MEMBERS

Having not been present when the following review was first considered, Councillor Fullarton left the meeting.

ORDER OF BUSINESS

The Chairman varied the order of business as shown on the agenda and the Minute reflected the order in which the items were considered at the meeting.

1. CONTINUATION OF REVIEW - 21/00027/RCOND

With reference to paragraph 4 of the Minute of 13 December 2021, there had been re-circulated copies of the request from Mr Richard Amos Ltd, 2 Golden Square, Duns to review the decision to impose a temporary three month consent by attaching Condition 2 on the planning permission for the erection of a glazed covered Pergola to Existing Outside Seating Area (part retrospective) at the Waterloo Arms, Chirnside, Duns. The supporting papers included the Notice of Review (including the Decision Notice and Officer's Report); Papers referred to in the Officer's report; Objection comments; Consultation replies; further objection comments and Applicant Response and List of policies. Also circulated were copies of further information requested by the Local Review Body, in the form of responses from the Council's Environmental Health Officer to pictures illustrating an increase in height of the fencing panels to the rear of the existing seating area to mitigate noise. Following consideration of all relevant information, the Local Review Body concluded that the development was consistent with Policies PMD2, HD3 and EP7 of the Local Development Plan. The development was considered to be an appropriate structure within the grounds of a public house, without adverse impact on listed building character. Members did not consider the potential consequent noise impacts on residential amenity as a result of the pergola to justify either removal of the structure or further temporary permission, especially as the seating area already existed and an increase in the existing fence height could be required by condition. 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 further procedure on the basis of the papers submitted;
- (c) the proposal would be consistent with Policies PMD2, HD3 and EP7 of the Local Development Plan; and
- (d) the officer's decision to approve the application subject to Condition 2 be overturned for reasons detailed in Appendix I to this Minute.

MEMBER

Councillor Fullarton joined the meeting prior to consideration of the following review.

2. REVIEW OF 21/00031/RREF

There had been circulated copies of the request from Mr Conrad Campbell, 2 Winston Road, Galashiels to review the decision to refuse the planning application for the erection of summer house and formation of off street parking (retrospective) at 2 Winston Road, Galashiels. 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. The Planning Advisor drew attention to new evidence on the site, in the form of letters of support. This information had been submitted with the Notice of Review but had not been before the Appointed Planning Officer at the time of determination. The Review Body considered that the new evidence met the test set out in Section 43B of the Town and Country Planning (Scotland) Act 1997, and that this new information was material to the determination of the review and could be considered. After considering all relevant information, the Local Review Body concluded that the development was consistent with Policies PMD2, HD3 and IS7 of the Local Development Plan and relevant Supplementary Planning Guidance. The development was considered to be an appropriate garden building, well designed and in keeping with the character of the surrounding area. The provision of off-street parking was also of benefit both to road safety and visual amenity in terms of the street scene. Consequently, the application was approved subject to conditions.

VOTE

Councillor Moffat, seconded by Councillor Richards moved that the outer colour of the summer house remain as it was.

Councillor Ramage, seconded by Councillor Small moved as an amendment that the outer colour be changed to Mahogany.

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 – 5 votes

Amendment – 2 votes

The motion was accordingly carried.

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 new information submitted with the Notice of Review documentation in the form of letters of support met the test set out 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 consistent with Policies PMD2, HD3 and IS7 of the Local Development Plan and relevant Supplementary Planning Guidance; and**
- (e) **the officer's decision to refuse the application be overturned for reasons detailed in Appendix II to this Minute.**

3. **REVIEW OF 21/00033/RREF**

There had been circulated copies of the request from Mr and Mrs H Lovatt, c/o Suzanne McIntosh Planning Limited, 45C Bath Street, Portobello, Edinburgh to review the decision to refuse the planning application for the modification of condition 2 of planning permission 12/01191/PPP in respect of extension to period of permission. The supporting papers included the Notice of Review; Decision Notice; Officer's Report; Consultations and a list of policies. The Review Body were advised that this review had been withdrawn at the request of the Agent.

**DECISION
WITHDRAWN.**

4. **REVIEW OF 21/00034/RREF**

There had been circulated copies of the request from Mr Lee Tickhill, 15 Howdenburn Court, Jedburgh to review the decision to refuse the planning application for change of use of Amenity land to garden ground and erection of bike/log store. The supporting papers included the Notice of Review; Decision Notice; Officer's Report; papers referred to in the Officer's Report; Consultations, Objection comments, support comments and a list of policies. The Review Body queried whether the structure had been built on land which was not in the Applicants ownership and sought further information in terms of what utilities, if any were contained below the structure within the grass verge.

VOTE

Councillor Anderson, seconded by Councillor Ramage moved that the Officers' decision be upheld.

Councillor Small, seconded by Councillor Fullarton moved as an amendment that the application be continued for further information regarding location of utilities.

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 – 4 votes

The amendment was accordingly carried.

**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 not be considered without the need for further procedure in the form of written submissions;**

- (c) the Roads Officer be given the opportunity to submit information on what utilities, if any, were contained below the structure.**
- (d) consideration of the review be continued to a future meeting on a date to be confirmed.**

5. REVIEW OF 21/00035/RREF

There had been circulated copies of the request from Buccleuch Estates Ltd c/o Ferguson Planning, 54 Island Street, Galashiels to review the decision to refuse the planning application for the conversion of existing barn to Residential dwelling with associated amenity, parking, infrastructure and access. The supporting papers included the Notice of Review; Decision Notice; Officer's Report; papers referred to in the Officer's Report; Consultations, additional information, objection comments, general comments and a list of policies. After considering all relevant information, the Local Review Body concluded that the proposal was contrary to Part C of policy HD2 of the Local Development Plan 2016 in that the building had little architectural or historic merit and was not physically suited for residential use. The structural survey had not demonstrated that the building was capable of conversion without significant demolition and changes to the structure. The proposal was also contrary to policy PMD2 of the Local Development Plan 2016 as the development would not be compatible with or respectful to the neighbouring built form. The scale, massing and height would result in a building out of character, unattractive and overbearing in relation to existing houses in the village. The Local Review Body also concluded that as the proposal intended works and demolition to an extent that represented new-build replacement, the development was contrary to policy PMD4 of the Local Development Plan 2016 as the site was outwith the development boundary for Eckford and the proposal did not satisfy the criteria within the policy for exceptional circumstances. Members also considered that the proposal would result in the loss of prime agricultural land, contrary to policy ED10 of the Local Development Plan and did not meet any of the exceptions in that policy.

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 further procedure on the basis of the papers submitted;**
- (c) The proposal was contrary to policies PMD4, Part C of policy HD2, policy PMD2 and to policy ED10 of the Local Development Plan 2016.**
- (d) the officer's decision to refuse the application be upheld, for the reasons detailed in Appendix III to this Minute.**

The meeting concluded at 12.50 pm



**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: 21/00027/RCOND

Planning Application Reference: 21/00965/FUL

Development Proposal: Erection of glazed covered pergola to existing outside seating area
(part retrospective)

Location: Waterloo Arms, Chirnside, Duns

Applicant: Waterloo Arms

DECISION

The Local Review Body overturns 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 21/00965/FUL by omission.

DEVELOPMENT PROPOSAL

The application relates to the erection of a glazed covered pergola to an existing outside seating area at the Waterloo Arms, Chirnside. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	L01
Proposed Layout	P01
Existing Layout	EX01
Photographs	

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 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; e) Further Representations; and f) List of Policies, the Review Body considered whether certain matters included in the review documents constituted new evidence under Section 43B of the Act and whether or not this evidence could be referred to in their deliberations. This related to further information in the form of an annotated photograph offering to raise the height of the existing fence to the rear of the outdoor seating area in order to attempt to reduce disturbance and noise impacts.

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 Appointed Officer and Environmental Health to comment on the new information and also to advise on whether a Noise Impact Assessment would be required.

The Review was, therefore, continued to the Local Review Body meeting on 21st February 2022 where the Review Body considered all matters, including responses to the further information from Environmental Health and the applicant's reply to that response. 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: PMD1, PMD2, HD3, EP7 and IS7

The Review Body noted that the proposal was for the erection of a glazed covered pergola to an existing outside seating area at the Waterloo Arms, Chirnside. Members noted that the pergola had been largely erected apart from the full roof covering.

The Review Body 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 the pergola within the grounds of the public house and had no issues with the design or siting of the structure, nor did they consider there were any adverse effects on the listed buildings adjoining. In terms of it being an appropriate structure in design, siting and visual impacts, Members had no issue and considered it in compliance with Policies PMD2 and EP7. The Review Body, therefore, were content with lifting of the temporary consent imposed by the original Condition 2 for these reasons, thus enabling the pergola to be retained permanently.

Members then considered the key issue of impacts on residential amenity, noting that this was the reason that Condition 2 had been imposed on the original consent, following advice and an objection from Environmental Health. The Review Body noted that the three month period granted by the condition for the pergola had now expired and that the applicant had submitted

the Review to seek omission of Condition 2, thereby allowing the pergola to remain permanently.

Members noted that both Policies PMD2 and HD3 of the Local Development Plan sought to avoid incompatible neighbouring uses and adverse impacts on existing residential amenity. All submissions relating to this issue were fully considered, including the revised responses to the Review submission and amended fence plan from the applicant, neighbours and Environmental Health. Members also noted the advice that a Noise Impact Assessment would not be appropriate in this instance.

Given the recent difficult times for the hospitality industry caused by the pandemic, the Review Body could understand the reasons why the pergola was erected to improve the outdoor seating area for patrons and were generally sympathetic to the proposal for this reason. After careful consideration of the potential impacts on residential amenity, the Review Body understood that there would be noise impacts from the outdoor seating area but they were not convinced that the pergola, in itself, would increase impacts to a level that would justify refusal and seeking its removal. They understood that this was already an existing outdoor seating area and that other forms of covering that would not require planning permission, such as parasols, would also encourage people to sit in the area and cause an element of outdoor noise impact. They also considered that houses being in close proximity to a public house would inevitably lead to a level of noise impact.

However, Members also noted and welcomed the offer from the applicant to raise the height of the rear fence to the height of the pergola. Whilst the comments from Environment Health were noted on this matter, Members still considered it to be necessary in order to assist with noise mitigation. In agreeing to the omission of the original Condition 2 and allowing the pergola to become permanent, the Review Body required a new condition to secure the fence extension within a timescale to be set by the Appointed Officer. It was considered that any further issues over noise impacts and disturbance to residential amenity would be a matter for Environmental Health under their specific legislation.

The Review Body finally considered all other material issues relating to the proposal, including issues of smoking under the pergola, but were of the opinion that these were matters that were either not influential in their decision or could be addressed under the auspices of Environmental Health.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was consistent with Policies PMD2, HD3 and EP7 of the Local Development Plan. The development was considered to be an appropriate structure within the grounds of a public house, without adverse impacts on listed building character. Members did not consider the potential consequent noise impacts on residential amenity as a result of the pergola to justify either removal of the structure or further temporary permission, especially as the seating area already existed and an increase in the existing fence height could be required by condition. Consequently, the application was approved.

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. Within one month of this consent, further details of the proposed fence height increase to the rear of the pergola/seating area to be submitted to, and approved in writing by, the Planning Authority. The fence increase then to be carried out in full accordance with the approved details, within a timescale set by the Planning Authority.

Reason: To assist in mitigating impacts on adjoining residential amenity

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

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

Monday-Friday 0700-1900

Saturday 0800-1300

Sunday and Public Holidays - no permitted work (except by prior agreement with the Council)

Contractors will be expected to adhere to the measures contained in BS 5228:2009 "Code of Practice for Noise and Vibration Control on Construction and Open Sites".

For more information or to make a request to carry out works outside the above hours, please contact an Environmental Health Officer at the Council.

Notice of Initiation of Development

Section 27 of the Town and Country Planning (Scotland) Act (as amended) requires that any person who has been granted planning permission (including planning permission in principle) and intends to start development must, once they have decided the date they will start work on the development, inform the planning authority of that date as soon as is practicable.

Notice of Completion of Development

Section 27B requires that any person who completes a development for which planning permission (including planning permission in principle) has been given must, as soon as practicable after doing so, give notice of completion to the planning authority.

When planning permission is granted for phased development then under section 27B(2) the permission is to be granted subject to a condition that as soon as practicable after each phase, other than the last, is completed, the person carrying out the development is to give notice of that completion to the planning authority.

In advance of carrying out any works it is recommended that you contact Utility Bodies whose equipment or apparatus may be affected by any works you undertake. Contacts include:

Transco, Susiephone Department, 95 Kilbirnie Street, Glasgow, G5 8JD

Scottish Power, Riccarton Mains Road, Currie, Edinburgh, EH14 5AA

Scottish Water, Developer Services, 419 Balmore Road, Possilpark, Glasgow G22 6NU

British Telecom, National Notice Handling Centre, PP404B Telecom House, Trinity Street, Stoke on Trent, ST1 5ND

Scottish Borders Council, Street Lighting Section, Council HQ, Newtown St Boswells, Melrose, TD6 0SA

Cable & Wireless, 1 Dove Wynd, Strathclyde Business Park, Bellshill, ML4 3AL

BP Chemicals Ltd, PO Box 21, Bo'ness Road, Grangemouth, FK2 9XH

THUS, Susiephone Department, 4th Floor, 75 Waterloo Street, Glasgow, G2 7BD

Susiephone System – **0800 800 333**

If you are in a Coal Authority Area (Carlops or Newcastleton), please contact the Coal Authority at the following address: The Coal Authority 200 Lichfield Lane, Berry Hill, Mansfield, Nottinghamshire NG18 4RG.

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

1. If the applicant is aggrieved by the decision of the planning authority to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.
 2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.
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Signed...Councillor S Hamilton
Acting Chairman of the Local Review Body

Date 8 March 2022

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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: 21/00031/RREF

Planning Application Reference: 21/01012/FUL

Development Proposal: Erection of summer house and formation of off-street parking
(retrospective)

Location: 2 Winston Road, Galashiels

Applicant: Mr Conrad Campbell

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 the erection of a summerhouse and formation of off-street parking (retrospective). The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	LOC-01
Existing and Proposed Plans and Elevations	PL-01
Photographs	

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 21st February 2022.

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) Consultation Replies; 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 three support letters from neighbouring proprietors and to an offer from the applicant to make external changes to the summerhouse. Members agreed that the external change offer was already a matter that the Appointed Officer had considered in determining the original application and was, therefore, not new evidence. However, Members agreed that the three support letters were new and met the Section 43B test, as they were material to the determination of the Review and could be considered. 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, HD3, IS7 and IS9

Other Material Considerations

- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006

The Review Body noted that the proposal was for the erection of a summerhouse, boundary fencing and formation of off-street parking at a ground floor flat at 2 Winston Road, Galashiels. Members noted that the work had been carried out and the application was, therefore, retrospective.

Taking into account the requirements of Local Development Plan Policies PMD2, HD3 and IS7, Members were aware that the location was on the corner of two public roads and noted from the photographs that there was an element of on-street parking which both potentially impaired road safety and also had an adverse visual impact. The Review Body considered that providing two further off-street spaces improved the road safety and visual impacts at this prominent location, subject to the conditions required by the Roads Planning Officer. Members also felt that the positive aspects of the parking provision helped outweigh any adverse impacts caused by the summerhouse.

Members then considered the summerhouse and the key issues of visual impact and prominence. They understood that Policies PMD2 and HD3 required development to be in sympathy and character with its residential surroundings and they carefully considered the corner location of the garden ground, the visibility and prominence from both Winston Road and Kenilworth Avenue and the scale, form and materials of the summerhouse. They also took into account the applicant's offer to change colours or make other external alterations.

The Review Body fully understood the concerns of the Appointed Officer over prominence and visual impact, recognising that there was significant visual impact from the public roads in the vicinity. Members debated the potential incongruity of the summerhouse which they would have preferred in a rear garden location but, ultimately, felt that there were mitigating circumstances that made the impacts acceptable on balance. These related to the larger scale

and modern architecture of the surroundings, the quality of the summerhouse design and materials and the limitations facing the applicant in the occupation of a ground floor flat having prominent garden ground facing two public roads. Members also noted that the applicant had not been aware of the need for planning permission, due both to the forward location of the summerhouse and the fact that the property was a flat.

In accepting there were mitigating factors that outweighed the prominence and adverse impacts of the summerhouse in this particular location, the Review Body then debated the issue of external appearance and colour, given the applicant's offer to make changes. After full discussion, there was no consensus on whether a darker or lighter colour would lessen the visual impacts and Members ultimately accepted the external appearance and colour of the summerhouse without further amendment, recognising that the material was natural timber, the summerhouse was well designed and there was insufficient space for screen planting.

The Review Body finally considered other material issues relating to the proposal, including potential impacts on residential amenity and the details of the parking spaces, but the issues did not influence their determination of the Review, also noting that neighbours were in support of the development and that the parking space details could be addressed by conditions.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was consistent with Policies PMD2, HD3 and IS7 of the Local Development Plan and relevant Supplementary Planning Guidance. The development was considered to be an appropriate garden building, well designed and in keeping with the character of the surrounding area. The provision of off-street parking was also of benefit both to road safety and visual amenity in terms of the street scene. Consequently, the application was approved subject to conditions.

CONDITIONS

1. The footway crossing must be constructed as per SBC standard detail DC10, or equal as approved in writing with the Planning Authority within six months of this consent.
Reason: To ensure the integrity of the existing public footway is maintained.
2. The off street parking must be constructed as per drawing PL-01 prior to the completion of the development and must not be used for the purposes of vehicle parking until such time as it is completed.
Reason: To ensure the parking area is fit for purpose and constructed accordingly.
3. Upon completion, the parking area shown on drawing PL-01 must be kept clear from obstruction and be available for vehicle parking at all time in perpetuity.
Reason: To ensure the development hereby approved is used as intended and the dwelling is served by two parking spaces in perpetuity.

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, 4th Floor, 75 Waterloo Street, Glasgow, G2 7BD
Susiephone System – **0800 800 333**

If you are in a Coal Authority Area (Carlops or Newcastleton), please contact the Coal Authority at the following address: The Coal Authority 200 Lichfield Lane, Berry Hill, Mansfield, Nottinghamshire NG18 4RG.

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

1. If the applicant is aggrieved by the decision of the planning authority to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.
 2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.
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Signed...Councillor S Hamilton
Acting Chairman of the Local Review Body

Date 8 March 2022

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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: 21/00034/RREF

Planning Application Reference: 21/00448/FUL

Development Proposal: Change of use of amenity land to garden ground and erection of bike/log store (retrospective)

Location: Land East of 15 Howdenburn Court, Jedburgh

Applicant: Mr Lee Albert Tickhill

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 is not in accordance with Policy PMD2 (Quality Standards) of the Local Development Plan 2016 in that the structure obstructs visibility on this corner and it is in close proximity to passing vehicles, adversely impacting on road safety. In addition, the siting of the structure within the road verge prevents new services from being installed and access for maintenance of existing services placed within the verge. Granting permission would set a dangerous precedent for similar structures in the road verge in the locale.

DEVELOPMENT PROPOSAL

The application relates to the change of use of amenity land to garden ground and erection of bike/log store (retrospective) on land east of 15 Howdenburn Court, Jedburgh. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	
Proposed Floor Plan	02
Front Elevation	03
Side Elevation	04

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 21st February 2022.

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) Support Comment and f) List of Policies, the Review Body considered the issue of whether any public utilities lay within the road verge below the bike/log store. Members decided there was a requirement for further procedure in the form of written submissions to enable the Roads Officer to confirm what utilities were present.

The Review was, therefore, continued to the Local Review Body meeting on 18th April 2022 where the Review Body considered all matters, including confirmation of the utilities from the Roads Officer and the applicant's reply to that response. The Review Body also noted that the applicant had requested further procedure in the form of written submissions 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: PMD1, PMD2 and HD3

Other Material Considerations

- SBC Supplementary Planning Guidance on Placemaking and Design 2010
- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006

The Review Body noted that the proposal was for planning permission to erect a bike/log store at 15 Howdenburn Court, Jedburgh. Members noted that the works had been carried out and that the application at Review was, therefore, retrospective.

The Review Body had no issue with the design or scale of the log store, noting that its appearance was in keeping with the boundary treatment of other properties in the vicinity. They also noted that the store was located on former amenity ground and that the owner of the ground had been served the appropriate notice when the planning application was lodged. Members concluded that in terms of residential amenity, the store was in compliance with Local Development Plan Policies PMD2 and HD3.

However, the Review Body noted that the store had been erected within road verge, close to a road junction. Members were aware that the Appointed and Roads Officers considered the structure would interfere with road safety by impacting on sightlines and increasing collision risk due to lack of clearance space with the road carriageway.

The Review Body also noted that the structure potentially affected access to road services and infrastructure. Having queried the presence of services and receiving confirmation from the Roads Officer that the verge contained street lighting cables and Scottish Water apparatus, Members agreed that obstruction of access to such services was not acceptable and prejudicial to road safety. They also agreed with the Appointed Officer that allowing development within road verge would set a precedent for impacting on such services. The Review Body, therefore, agreed with the concerns of the Appointed and Roads Officers, concluding that the bike/log store was contrary to the road safety requirements of Local Development Plan Policy PMD2.

The Review Body finally considered all other material issues but concluded that these issues did not influence their overall decision on the Review that the decision of the Appointed Officer be upheld.

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 Hamilton
Vice Chairman of the Local Review Body

Date 16 May 2022

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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: 21/00035/RREF

Planning Application Reference: 21/00734/FUL

Development Proposal: Change of use of agricultural building and alterations to form dwellinghouse

Location: Land North East of Gamekeeper's Cottage, Eckford

Applicant: Buccleuch Estates Ltd

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 proposal is contrary to policy PMD4 of the Local Development Plan 2016 as the site is outwith the development boundary for Eckford and the proposal does not satisfy the criteria within the policy for exceptional circumstances. No material considerations have been identified which would outweigh the need to consider this proposal in accordance with policies of the Local Development Plan 2016.
2. The proposal is contrary to Part C of policy HD2 of the Local Development Plan 2016 in that the building has no architectural or historic merit and is not physically suited for residential use. The structural survey has not demonstrated that the building is capable of conversion without significant changes to the structure. The conversion would not be in keeping with current scale of the building. The development would be tantamount to rebuilding or replacement.
3. The proposal is contrary to policy PMD2 of the Local Development Plan 2016 as this pattern of development would not be compatible with or respectful to the neighbouring built form or settlement pattern. The scale, massing and height would result in an appearance which is not designed in sympathy with Scottish Borders architectural styles.

4. The proposal is contrary to policy ED10 of the Local Development Plan 2016 in that the change of use of prime quality agricultural land to garden ground would result in the permanent loss of prime agricultural land.

DEVELOPMENT PROPOSAL

The application relates to the change of use of an agricultural building and alterations to form a dwellinghouse at Land North East of Gamekeeper's Cottage, Eckford. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Existing Ground Floor Plan	10093-0-01
Existing Elevations	10093-0-02
Existing Elevations	10093-0-03
Existing Sections	10093-0-04
Location Plan	10093-0-05
Proposed Plans	10093-0-10
Proposed Plans	10093-0-11
Proposed Roof Plan	10093-0-12
Proposed Sections	10093-0-13
3D View	10093-0-14
Proposed Elevations	10093-0-15
Proposed Elevations	10093-0-16
Proposed Site Plan	10093-0-17

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 21st February 2022.

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 Comments; f) General Comments; and g) 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, ED10, HD2, HD3, HD4, EP2, EP3, EP8, EP13, IS2, IS7, IS8, IS9 and IS13

Other Material Considerations

- SBC Supplementary Planning Guidance on Development Contributions 2011

- SBC Supplementary Planning Guidance on New Housing in the Borders Countryside 2008
- SPP 2014
- SBC LDP 2
- SESPlan 2013
- General Permitted Development and Use Classes (Scotland) Amendment Order 2020
- Appeal Decision PPA-140-2088 Venlaw Peebles

The Review Body noted that the proposal was for planning permission to change the use of an agricultural building and carry out alterations to form a dwellinghouse at Land North East of Gamekeeper's Cottage, Eckford.

Members firstly noted that as the building lay outwith the defined settlement boundary of Eckford in the Local Development Plan, the development must be considered against Part C of Policy HD2 which refers to conversion of existing buildings to houses in the countryside. The Review Body assessed the proposals against that part of the Policy but also the relevant criteria within Policy PMD2, as well as the detailed guidance in the Housing in the Countryside Supplementary Planning Guidance and the Farm Steading Conversions Advice Note at Appendix 2 of the SPG.

Referring to the three tests under Part C of Policy HD2, the Review Body firstly considered whether the building had sufficient architectural and historic merit to demonstrate that it was capable of conversion and suitable for the purpose intended. Members were wholly supportive of conversion of buildings in general but felt that the building needed to be appropriate in the first instance. Members were firmly of the opinion that this building had little character or merit, that it represented an overbearing and large scale building in the locality with metal cladding exterior and that there was little architectural or visual benefit to be gained by attempting to convert it. Whilst they accepted that the applicant had made considerable efforts in the details of the bold design and external treatment, the Review Body ultimately agreed with the Appointed Officer that the building was of insufficient architectural and historic merit to justify or suit the intended purpose.

Members then considered the second requirement of Part C of Policy HD2 which requires the building to be substantially intact and able to be converted without significant demolition. They noted that a Structural Survey had been submitted as required by the Policy but also that the Appointed Officer noted wholesale changes and removals of the exterior of the building fabric and also that there were doubts over whether the structural timbers required strengthening or replacement. The Review Body considered all the details but concluded that the proposals had not clearly demonstrated there would be anything other than significant elements of demolition, and this further indicated the unsuitability of the building for conversion.

Members then considered the third and final requirement of Part C of Policy HD2 which requires the details of any conversion work to be within both character and scale of the existing building. The Review Body agreed with the Appointed Officer that the building had very little character or merit and that the wholesale changes to the exterior, with new metal/timber cladding and additional glazing, did not retain what character it had.

Taking all these fundamental requirements into account under Policy HD2 and the SPG, Members then considered the impacts of the proposed conversion on the local community and surrounding environment, applying Policy PMD2. They noted the local opposition to converting the building and the design of the conversion. They also noted local opinion that it would be better to consider new-build development, including addressing the issue of drainage capacity which seemed to be preventing consideration of new-build housing. Taking into account the requirements of the Placemaking and Design section of Policy PMD2, the Review

Body considered the building to be overbearing and large scale in Eckford, the details of the new external treatment exacerbating the incongruity of the building scale, form and design, so close to other houses of smaller and more traditional design in the village. Members concluded that the proposal would result in a building out of character, unattractive and overbearing, contrary to the requirements of Policy PMD2 which seek compatibility and respect with neighbouring built forms.

The Review Body then assessed the application under Policy PMD4 relating to development being contained within settlement boundaries. They noted that Eckford has a settlement boundary defined in the Local Development Plan and Members also noted the position with regard to development history, service constraints and considerations relating to extending the boundary under the Proposed Local Development Plan process. It was noted that both the agricultural building and Eckford Cottage lay directly outwith the current defined settlement boundary and that the applicant had claimed Policy PMD4 did not relate to conversions but only new-build. However, the Review Body were in agreement with the Appointed Officer that the proposed development intended works to the existing building to an extent that represented significant levels of demolition and new-build replacement. Members, therefore, considered the development to be contrary to Policy PMD4 and they did not feel that any of the qualifying exception tests were met under that Policy.

Members then considered the issue of loss of prime agricultural land which is protected by Policy ED10. The Review Body noted that the Appointed Officer had opposed the development for the scale of prime agricultural land lost due to curtilage. Whilst acknowledging that the applicant had offered to reduce the curtilage, Members could understand why the scale of the curtilage was as originally proposed, commensurate with the scale of the building being converted. Consequently, the Review Body agreed with the Appointed Officer that the loss of prime land was permanent and large scale, did not comply with any of the exceptions under Policy ED10 and, therefore, contravened the Policy.

The Review Body finally considered other material issues relating to the proposal including residential amenity, ecology, landscape, access, water, drainage, developer contributions, renewable technologies and claimed housing land shortfall. They were of the opinion that the issues either did not influence the overall decision on the Review or could have been controlled by appropriate conditions and a legal agreement had the proposal been supported. They also did not accept that permitted development rights for conversion of agricultural buildings into houses had material significance in this particular case due to the host building being much larger than qualifying buildings with such rights.

CONCLUSION

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

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

1. If the applicant is aggrieved by the decision of the planning authority to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant

may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.

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Signed Councillor S Hamilton
Acting Chairman of the Local Review Body

Date 8 March 2022

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