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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 March 2022 at 10.00 am

- Present:- Councillors S Mountford (Chair), J. Fullarton, H. Laing, S. Hamilton, C. Ramage, N. Richards, and E. Small.
- Apologies:- Councillors A. Anderson, D. Moffat.
- In Attendance:- Principal Planning Officer, Planning Officer (S. Shearer para 5), Solicitor (S. Thompson), Democratic Services Team Leader, Democratic Services Officer (F. Henderson).

1.0 REVIEW OF 21/01262/FUL

There had been circulated copies of the request from Timber Bush Associates Ltd, 2 Seton West Mains, Tranent to review the decision to refuse the planning application for the removal of condition 2 of planning permission 18/01000/FUL pertaining to use of holiday let accommodation at Warlawbank Steading, Reston. The supporting papers included the Notice of Review (including the Decision Notice and Officer's Report); Papers referred to in the Officer's report; additional information; Further representations and Agent Response; consultation replies; objections, and list of policies. 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.

DECISION

AGREED that:-

- (a) the request for review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;**
- (b) the review could be considered without the need for any further procedure on the basis of the papers submitted;**
- (c) the proposal was contrary to the Local Development Plan and there were no other material considerations that would justify departure from the Development Plan.**
- (d) the officer's decision to refuse the application be upheld and the application refused for the reasons set out in Appendix I to this Minute.**

2. REVIEW OF 21/01270/FUL

There had been circulated copies of the request from Ferguson Planning, 54 Island Street, Galashiels to review the decision to refuse the application for change of use from Industrial (Class4,5,6) to a functional Fitness Gym (Class11) at Unit B, Whinstone Mill, Netherdale Industrial Estate, Galashiels. The supporting papers included the Notice of Review (including the Decision Notice and Officer's Report); Papers referred to in the Officer's report; additional information; consultation replies; general comments, further representations and list of policies. The Planning Adviser drew attention to information, in the form of testimonials from Members of the Gym which had been submitted with the Notice of Review

documentation but which had not been before the Appointed Officer at the time of determination. Members agreed that the information was new but considered that it met the Section 43B test, was material to the determination of the Review and could be considered. However, they also agreed that the matter could not be considered without enabling the Planning Officer and Economic Development Service to respond to the details of the vacant and available industrial and commercial premises list provided by the applicant, therefore, agreed that the application be continued for further procedure in the form of written submission from the Planning Officer and Economic Development.

DECISION

AGREED that:-

- (a) the request for review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;**
- (b) new evidence submitted with the Notice of Review in the form of testimonials from gym members met the test set in Section 43B of the Town and Country Planning (Scotland) Act 1997 and was material to the determination;**
- (c) the review could not be considered without the need for further procedure in the form of written submissions;**
- (d) the Planning Officer and Economic Development be given the opportunity to comment on the available industrial and commercial premises list provided by the applicant.**
- (e) consideration of the review be continued to a future meeting on a date to be confirmed.**

DECLARATION OF INTEREST

Councillor Richards declared an interest in the following item of business in terms of Section 5 of the Councillors Code of Conduct and left the meeting during the discussion.

3. REVIEW OF 20/00796/FUL

There had been circulated copies of the request from Malcolm McEwen Designs, 11 Forest Road, Bonchester Bridge, and Hawick to review the decision to refuse the planning application for the erection of single storey cottage on land west of Causewayfoot Cottage, Wolflee, and Hawick. The supporting papers included the Notice of Review (including the Decision Notice and Officer's Report); Papers referred to in the Officer's report; Additional Information; Consultation replies; general comments and List of policies. Members agreed that the site was an acceptable addition to the building group, in compliance with Policy HD2 and the relevant SPG. The Review Body also did not consider there was justification to seek amendment to design in this location. Members then considered the issue of flood risk and compliance with Policy IS8. Members were particularly concerned about safe access and egress during a flood. The Review Body gave significant weight to the fact that both SEPA and the Flood Risk Officer had objected, but also noted that the applicant would be willing to provide a more detailed Flood Risk Assessment to attempt to address the objections. After considering all relevant information, the Local Review Body concluded that the more detailed Assessment could be included within the submission of any revised planning application and that the development was contrary to the Development Plan and there were no other material considerations that would justify departure from the Development Plan. Consequently, the application was refused.

DECISION

AGREED that:-

- (a) the request for review had been competently made in terms of Section 43A**

of the Town and Country Planning (Scotland) Act 1997;

- (b) the review could be considered without the need for any further procedure on the basis of the papers submitted;
- (c) the proposal was contrary to the Local Development Plan and there were no other material considerations that would justify departure from the Development Plan.
- (d) the officer's decision to refuse the application be upheld and varied for the reasons set out in Appendix II to this Minute.

MEMBER

Councillor Richards re-joined the meeting.

4. REVIEW OF 21/01132/FUL

There had been circulated copies of the request from Lisa Dawkins, 58 George Street, Peebles EG45 8DN to review the decision to refuse the retrospective planning application for the Erection of a pergola and fence at 58 George Street, Peebles. The supporting papers included the Notice of Review (including the Decision Notice and Officer's Report); Papers referred to in the Officer's report and list of policies. After considering all relevant information, the majority of Members 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.

VOTE

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

Councillor Fullarton, seconded by Councillor Richards moved as an amendment that the Officers decision be overturned and the front fence be replaced with vertical slats and the pergola be retained but roof material changed to slate colouring.

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 – 4 votes

Amendment – 3 votes

The motion was accordingly carried.

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 further procedure on the basis of the papers submitted;
- (c) the development was contrary to the Development Plan and that there were no other material considerations that would justify departure from the Development Plan
- (d) the decision of the appointed officer be upheld and the application refused, for the reasons detailed in Appendix III to this Minute.

5. **REVIEW OF 21/00312/AMC**

There had been circulated copies of the request from Keith Renton Architects, Humestanes, Hume Hall Holdings, Greenlaw, Duns to appeal a planning condition attached to planning permission 21/00321/AMC for the Erection of new dwellinghouse with garage (approved of all matters specified in condition of planning permission 18/01632/PPP) on Land North of Old Manor Inn, Lanton. The supporting papers included the Notice of Review (including the Decision Notice and Officer's Report); Papers referred to in the Officer's report; consultation replies and List of Policies. After considering all the information, the Local Review Body considered that the development was consistent with relevant policies of the Local Development Plan and that there were no other material considerations that would justify departure from the Development Plan. Consequently, the application was approved subject to the conditions.

DECISION

AGREED that:-

- (a) **the request for review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;**
- (b) **the review could be considered without the need for any further procedure on the basis of the papers submitted;**
- (c) **that the development was consistent with relevant policies of the Local Development Plan and that there were no other material considerations that would justify departure from the Development Plan.**
- (d) **the decision of the appointed officer be overturned and planning permission granted subject to conditions, for the reasons detailed in Appendix IV 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: 22/00001/RREF

Planning Application Reference: 21/01262/FUL

Development Proposal: Removal of Condition 2 of planning permission 18/010000/FUL
pertaining to use as holiday let accommodation

Location: Warlawbank Steading, Reston

Applicant: Ms Louise Weddell

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 removal of Condition 2 of planning permission 18/01000/FUL would be contrary to Local Development Plan 2016 policies PMD2 (Quality Standards), HD2 (Housing in the Countryside), HD3 (Protection of Residential Amenity) and IS2 (Development Contributions) as the Planning Authority would lose control over the consented use of the development for holiday let purposes. The use of the development for residential purposes would be incompatible with neighbouring farm uses, with unacceptable levels of amenity for occupants, and would result in the creation of a new residential unit without addressing deficiencies in local education created as a result of the development. Other material considerations do not justify a departure from the Development Plan in this case.

DEVELOPMENT PROPOSAL

The application relates to the removal of Condition 2 of planning permission 18/010000/FUL pertaining to use as holiday let accommodation at Warlawbank Steading, Reston. The application drawings and documentation consisted of the following:

Plan Type

Plan Reference No.

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 March 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) Further representations and Agent response; e) Consultation Replies; f) Objection 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: PMD2, ED7, HD2, HD3, IS2, IS7, IS9 and IS13

Other Material Considerations

- SBC Supplementary Planning Guidance on Housing in the Countryside 2008
- SBC Supplementary Planning Guidance on Developer Contributions 2021
- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006
- PAN 4/1998 Use of Conditions

The Review Body noted that the proposal was for planning permission to seek the removal of Condition 2 of planning permission 18/010000/FUL pertaining to use as holiday let accommodation at Warlawbank Steading, Reston. Whilst Members understood that in considering a Section 42 application they would be entitled to consider the principle of the development under certain circumstances, they noted that the consent had not lapsed and there was also insufficient evidence to show that the consent was incapable of being implemented.

The Review Body, therefore, proceeded to consider the justification for Condition 2 and the potential effects of removing the condition on the overall development. Members noted that the site had originally been intended as additional accommodation as an extension to Warlawbank. Members also noted that there had been attempts to market the site for holiday occupation since the 2019 consent and considered all comments made from the applicant, consultees and objectors on the issue of occupancy. In particular, Members noted the close proximity of the proposed accommodation to a working farm building and yard, considering the buffer space to be much less than other houses at the location and also noting the level differences with the farmyard and farm building at an elevated position.

Members supported the objections of the Environmental Health and Appointed Officers over the potential use conflicts that would be likely to occur due to the close proximity and elevated position of the farming activities. Whilst they noted that the applicant was contending that anyone purchasing the property would be aware of the potential use conflicts, the Review Body considered that the issue needed to be properly addressed at this stage, to reconcile potential future conflicts. Members recognised that the impacts on residential amenity would be more significant for anyone occupying the property as a permanent dwellinghouse, compared to impacts on holidaymakers only staying for short periods of time. For these reasons, the Review Body agreed with the Appointed Officer's decision that the application was contrary to Policies PMD2, HD2 and HD3 of the Local Development Plan.

The Review Body finally considered all other material issues relating to the proposal including the water supply, road capacity, foul drainage and development contributions, Members noting that contributions would be needed for education purposes if the property was not restricted to holiday occupancy. The Review Body concluded that these issues did not influence their overall decision on the Review and 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 Mountford
Chairman of the Local Review Body

Date 28th March 2022



**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: 22/00002/RREF

Planning Application Reference: 21/01270/FUL

Development Proposal: Change of use from Industrial (Class 4, 5, 6) to a Functional Fitness Gym (Class 11)

Location: Unit B Whinstone Mill, Netherdale Industrial Estate, Galashiels

Applicant: Miss Lianne Wallace

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 and an informative as set out below.

DEVELOPMENT PROPOSAL

The application relates to change of use from Industrial (Class 4, 5, 6) to a Functional Fitness Gym (Class 11) (retrospective) at Unit B Whinstone Mill, Netherdale Industrial Estate, Galashiels. The application drawings and documentation consisted of the following:

Plan Type

Plan Reference No.

Site/Location Plan

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 March 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) Consultation Replies; e) General Comments; f) Further

Representations and g) 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 a set of customer testimonials and also to a list of claimed vacant industrial and other available premises within local industrial areas and Galashiels town centre at paragraphs 5.8 and 5.40 of the applicant's Review Statement. After consideration, Members agreed that this information was new, met the Section 43B test and that it could be considered, given it was material to the applicant's case and, therefore, to the determination of the Review.

However, Members decided that there was a requirement for further procedure in the form of written submissions to enable the Appointed Officer and Economic Development Service to respond to the details of the vacant and available industrial and commercial premises list provided by the applicant. The Review was, therefore, continued to the Local Review Body meeting on 18th April 2022 where the Review Body considered all matters, including the response from the Appointed Officer/Economic Development Service 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: PMD2, PMD3, ED1, ED3, HD3, IS7, IS8, IS9 and IS13

Other Material Considerations

- SBC Supplementary Planning Guidance on Waste Management 2015
- Draft National Planning Framework 4
- SBC Employment Land Audit 2020

The Review Body noted that the proposal was for change of use from Industrial (Class 4, 5, 6) to a Functional Fitness Gym (Class 11) (retrospective) at Unit B Whinstone Mill, Netherdale Industrial Estate, Galashiels.

Members firstly considered the principle of the development under Policy ED1. They noted that the unit had previously been within industrial use but that the gymnasium had now been implemented within the unit. The application at Review was, therefore, noted to be retrospective and Members acknowledged the reasons given by the applicant for this.

Members noted that the unit lay within an area allocated as a District industrial and employment site in Policy ED1 in the Local Development Plan and that, whilst Class 4-6 uses were preferred, other uses could be considered, provided three criteria set down in the Policy were met. Members then considered these criteria and were of the opinion that three were met by the proposal.

Firstly, the Review Body noted the submissions from the Appointed Officer, Economic Development and applicant which revealed disagreements over the potential impacts of the

loss of the unit on industrial land supply. However, Members welcomed the re-use of the unit and noted that a number of gyms had been approved in the locality and in other industrial estate settings. The Review Body also noted that the future use of such units had been safeguarded by conditions seeking reversion to industrial use should the approved gym uses cease. Subject to the same condition being applied to the current proposal, Members were content that approval would not be prejudicial to the long term requirements of industrial land and buildings in the area

The Review Body also recognised that there were employment and community benefits to allowing a gym use within the unit, noting that the operator had invested in the facility which now employed 10 staff and had a customer base of 80 clients. With the additional benefits of improvements to community health and the importance of gyms as a response to the pandemic, Members welcomed the proposal and considered that it met the second criterion of Policy ED1, representing significant community benefits which outweighed the necessity of keeping the unit in industrial use.

The Review Body then considered the remaining criteria within Policy ED1 and noted that there was no evidence to suggest the building was constrained in providing accommodation for industrial uses, Members also accepting that gym uses had a more flexible choice of locations and premises available to them, compared to industrial operators. However, in terms of the final criterion relating to a changing land use pattern of more mixed uses, the Review Body noted the different examples of gym uses allowed in the vicinity and in other industrial and Business Park settings in the Borders. Members considered that precedents had already been set for allowing a more mixed use in such locations, to allow specifically for gym uses. Subject to the use being limited by condition to gym usage only and not any other use within Use Class 11, the Review Body were satisfied that a context of more mixed usage had occurred, partly as a result of previous exceptions granted to Policy ED1.

The Review Body finally considered other material issues relating to the proposal including amenity, access, parking, future use of the premises, land use conflict, waste, flooding and potential contamination. Members did not consider these issues to be material in their determination of the application and were of the opinion that appropriate conditions and an informative, where relevant, could address them satisfactorily. The Review Body concluded the gym to be a complimentary use to its surrounding uses without any identified detrimental impacts nor being a deterrent to attracting further industrial operators.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was consistent with Policies PMD3 and ED1 of the Local Development Plan. The development was considered to be a justified exception within an industrial area with increasingly mixed use, providing gym facilities for which there was a proven demand. Subject to conditions ensuring gym use only and a reversion to industrial uses should the gym use cease, the application was approved.

CONDITIONS

1. The approved use shall be limited to a gymnasium and there shall be no permitted change to any other use within Class 11 of the Use Classes (Scotland) Order 1997 (as amended) unless a planning application for the same has been submitted to and approved by the Planning Authority.
Reason: The development has been considered specifically with respect to the merits of the gym against Policy ED1 of the Local Development Plan 2016 and no other uses within Class 11.

2. In the event that the approved gym use ceases, the lawful use of the unit (Unit B) shall revert to its previous lawful use (Classes 4-6) under the Use Classes (Scotland) Order 1997 (as amended).

Reason: The development has been considered specifically with respect to the merits of the gym against Policy ED1 of the Local Development Plan 2016 and no other uses within Class 11.

INFORMATIVES

1. The Council's Contaminated Land Officer advises the following:

The former use of the site is potentially contaminative and may have resulted in land contamination. The land is not currently identified as contaminated land and the Council is not aware of any information which indicates the level of risk the potential contamination presents. The historic use of the site is recorded within a Council database. This database is used to prioritise land for inspection within the Council's Contaminated Land duties. Should the applicant wish to discuss these duties their enquiry should be directed to Environmental Health.

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

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

Monday-Friday 0700-1900

Saturday 0800-1300

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

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

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

Notice of Initiation of Development

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

Notice of Completion of Development

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

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

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

Transco, Susiephone Department, 95 Kilbirnie Street, Glasgow, G5 8JD
Scottish Power, Riccarton Mains Road, Currie, Edinburgh, EH14 5AA
Scottish Water, Developer Services, 419 Balmore Road, Possilpark, Glasgow G22 6NU
British Telecom, National Notice Handling Centre, PP404B Telecom House, Trinity Street, Stoke on Trent, ST1 5ND
Scottish Borders Council, Street Lighting Section, Council HQ, Newtown St Boswells, Melrose, TD6 0SA
Cable & Wireless, 1 Dove Wynd, Strathclyde Business Park, Bellshill, ML4 3AL
BP Chemicals Ltd, PO Box 21, Bo'ness Road, Grangemouth, FK2 9XH
THUS, Susiephone Department, 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.

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

Date 27 April 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: 22/00003/RREF

Planning Application Reference: 20/00796/FUL

Development Proposal: Erection of dwellinghouse

Location: Land West of Causewayfoot Cottage, Wolflee, Hawick

Applicant: Miss Dawn Kilpatrick

DECISION

The Local Review Body upholds and varies the decision of the appointed officer and refuses planning permission as explained in this decision notice and on the following grounds:

1. The development would be contrary to Policy IS8 of the Local Development Plan 2016 in that the site is located within the 1 in 200 year functional floodplain of the Catlee Burn. This development would be at significant risk of flooding from the Catlee Burn and no information has been provided to demonstrate that the proposal can be safely developed on this land free from flood risk and without increasing the probability of flooding elsewhere.

DEVELOPMENT PROPOSAL

The application relates to the erection of a dwellinghouse on land West of Causewayfoot Cottage, Wolflee, Hawick. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	
Site Plan	MM2008/1
Plan	MM2008/2
Elevations 1	MM2008/3
Elevations 2	MM2008/4

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 March 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) Consultation Replies; e) General comment; 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: PMD2, HD2, HD3, EP1, EP2, EP13, IS2, IS7, IS8, and IS9

Other Material Considerations

- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006
- SBC Supplementary Planning Guidance on Placemaking and Design 2010
- SBC Supplementary Planning Guidance on Waste Management 2015
- SBC Supplementary Planning Guidance on Development Contributions 2021
- SBC Supplementary Planning Guidance on New Housing in the Borders Countryside 2008
- SBC Supplementary Planning Guidance on SUDS 2020
- SBC Supplementary Planning Guidance on Landscape and Development 2008
- SBC Supplementary Planning Guidance on Trees and Development 2008
- "Flood Risk and Land Use Vulnerability Guidance" SEPA 2018

The Review Body noted that the proposal was for planning permission for the erection of a dwellinghouse on land West of Causewayfoot Cottage, Wolflee, Hawick.

Members firstly considered whether there was a building group in the vicinity under Clause A of Policy HD2. They noted that there were five existing houses within the Policy grounds and woodland of the former Wolflee estate, served by existing private tracks within the estate. The Review Body agreed with the applicant and Appointed Officer 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 terms of relationship of the site with the group, the Review Body noted the current character, spacing and layout of the houses within the building group. Members considered the spacious pattern of separation to be part of the historic and current character of the group and they did not agree with the Appointed Officer that the application site was outwith the boundaries of the group. Members afforded weight to the current use of the site as garden ground with domestic buildings on the site, thereby not constituting development breaking into undeveloped fields. The Review Body were also of the opinion that the site did not need to be accessed from the Wolflee private tracks to be considered part of the sense of place and that the presence of the Catlee Burn, together with surrounding boundary vegetation, resulted in a site which lay within the boundaries and sense of place of the building group. For these reasons, Members concluded that the site was an appropriate addition to the building group and in compliance with Policy HD2 and Supplementary Planning Guidance.

The Review Body then considered the siting and design of the dwellinghouse in relation to Policies PMD2, HD2 and HD3. Whilst they recognised the rural position and attraction of the location and understood the concerns of the Appointed Officer over the design elements of the proposed house, Members did not consider there was justification to seek amendment to design in this location. They noted the design of the extension to Causewayfoot Cottage opposite the site and that appropriate roof materials could be addressed by condition. The Review Body concluded that the siting and design of the dwellinghouse were in accordance with Policies PMD2, HD2, HD3 and Supplementary Planning Guidance.

Members then considered the issue of flood risk and compliance with Policy IS8. They noted that despite a Flood Risk Assessment being provided, this had still resulted in sustained objections from both SEPA and the Council's Flood Risk Officer. Members noted the reasons for the objections which related to insufficient information, the floodplain extent and the impacts of the bridge and unnamed burn. Members were also concerned about safe access and egress. The Review Body gave significant weight to the fact that both SEPA and the Flood Risk Officer had objected, but they also noted the applicant's comments on clearance of the site above the Catlee Burn. Members also noted that the applicant would be willing to provide a more detailed Flood Risk Assessment.

After full consideration of various options in relation to the provision of a more detailed Flood Risk Assessment, Members agreed that the proposal was not acceptable in terms of flood risk on the basis of the current proposals and information submitted. The Review Body decided that if a more detailed Assessment was provided in discussion with SEPA and the Council's Flood Risk Officer, then the applicant could reapply for planning permission supported by the more detailed Assessment.

The Review Body finally considered all other material issues relating to the proposal including access, parking, water, drainage, ecology, trees, hedges and developer contributions. Members concluded that these issues did not influence their overall decision on the Review and that they could be addressed by conditions, informatives and a legal agreement had the application been approved.

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

Date 28th 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: 21/00042/RREF

Planning Application Reference: 21/01132/FUL

Development Proposal: Erection of pergola and boundary fencing (retrospective)

Location: 58 George Street, Peebles

Applicant: Lisa Dawkins

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 pergola and fencing is contrary to policies PMD2 and HD3 of the Local Development Plan 2016 in that the siting of the pergola and the varied height and style of the fencing would have an unacceptably adverse impact on the character and visual amenity of this residential area. There are no other material considerations that are sufficient to overcome the adverse visual impact resulting from the proposed development.

DEVELOPMENT PROPOSAL

The application relates to the erection of a pergola and fencing (retrospective) at 58 George Street, Peebles. The application drawings and documentation consisted of the following:

Plan Type

Plan Reference No.

Location Plan
Photographs
Layout photograph

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 March 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; and c) 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: PMD2, HD3 and EP9

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 pergola and fencing within the front garden of a property at 58 George Street, Peebles. Members noted that the works had been carried out and that the application at Review was, therefore, retrospective.

The Review Body firstly considered the pergola and fencing in relation to 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 front position of the garden ground, the visibility on George Street and the open nature of gardens and boundary treatments of other houses in the vicinity. They also took into account the applicant's offer to change colours or make other alterations to the fencing and pergola.

The Review Body fully understood the concerns of the Appointed Officer over prominence and visual impact, recognising that there was adverse visual impact from both the pergola and the height and style of fencing. Members debated whether the pergola would be more acceptable with an alternative roof covering, but ultimately concluded that this was a structure out of character with the front garden in the overall street scene and that it was more appropriate to a rear garden location. Members also considered that the side and front fencing were too high for the front garden position and noted that a neighbouring proprietor had attempted to mitigate the visual impacts of the height of the side fencing. The Review Body also considered that the design of the front fencing and gate was inappropriate and out of character with surrounding fence styles. Members concluded that the pergola and fencing had an unacceptable visual impact contrary to Policies PMD2 and HD3.

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.
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Signed.....

Councillor S Mountford
Chairman of the Local Review Body

Date 28th 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: 22/00004/RCOND

Planning Application Reference: 21/00312/AMC

Development Proposal: Erection of new dwelling with garage (Approval of all matters specified in condition of planning permission 18/01632/PPP)

Location: Land North Of Old Manor Inn Lanton

Applicant: Mr Richard and Alison Stables

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.

DEVELOPMENT PROPOSAL

The application relates to the approval of matters specified in conditions of consent 18/01632/PPP for the erection of a dwelling house with attached garage. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	857P-01
Proposed Site Plan	857P-03B
3D View	857P-06
Existing Site Plan	857P02-02
Proposed Elevations	857P02-05
Proposed Plans & Sections	857P02-04
Specifications	Geocell Tree Root Protection
Report	Arboricultural Report

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 March 2022. After examining the review documentation which included: a) Notice of Review b) Review Statement c) Applicants Photos c) Report of Handling d) Consultations e) 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, HD2, HD3, EP13, IS2, IS5, IS7, EP2, EP3, EP5, EP8, EP13, EP16, IS7, IS9

Other Material Considerations

- SBC Supplementary Planning Guidance on Sustainable Urban Drainage 2020
- SBC Supplementary Planning Guidance on Waste Management 2015
- SBC Supplementary Planning Guidance on Local Landscape Designations 2012
- SBC Supplementary Planning Guidance on Placemaking and Design 2010
- SBC Supplementary Planning Guidance on Use of Timber in Sustainable Construction 2009
- SBC Supplementary Planning Guidance on Trees and Development 2008
- SBC Supplementary Planning Guidance on Landscape and Development 2008
- SBC Supplementary Planning Guidance on New Housing in the Borders Countryside 2008
- SBC Supplementary Planning Guidance on Renewable Energy 2007
- SBC Supplementary Planning Guidance on Privacy and Sunlight Guide 2006
- SBC Supplementary Planning Guidance on Biodiversity 2005
- SBC Supplementary Planning Guidance on Local Biodiversity Action Plan 2001

The Review Body noted that the appeal was in relation to Condition 2 of consent 21/00312/AMC and in particular the requirement for the roof of the development to be externally finished using a slate roof instead of standing seam metal coloured dark grey (RAL7016) with a matt finish as originally proposed.

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 entitled to re-assess the whole consent on a De Novo basis and not only in relation to the Condition which was sought to be varied.

The Review Body, firstly considered matters specified in conditions of consent 18/01632/PPP. Members welcomed the contemporary design approach of the

proposal and had no issues with the siting or scale of the dwellinghouse. Its means of access and landscaping was acceptable. No concerns were raised in response to other matters covered by the PPP consent which included parking provision, means of tree and hedge retention, site services and protection of an existing decorative on site water pump and surface water drain.

Members then turned their attention to the roof material finish. The Review Body were provided with relevant plans, 3D visuals, photos of the site and the surrounding area which identified roof material finishes of different properties within the village and their relationship with the application site.

The Review Body observed that the site did not occupy a prominent location but its roof material finish must respect the character of Lanton. Members did agree that there was a range of roof material finishes in Lanton and there may be particular locations within the village where a slate roof finish would be preferable. It was queried if a change to slate would pose structural issues for the development. This would be a matter which would have been required to be addressed at Building Warrant stage however the applicant had not opposed the Condition on structural grounds. It was the consensus of the Members that a metal sheet roof would complement the architectural appearance of the proposed dwellinghouse. The Review Body agreed that its discrete location would ensure that a dark grey coloured standing seam metal roof in a matt finish would not detract from the visual amenities of the surrounding area and would be suitable at this site.

The Review Body heard how other requirements of Condition 2 of consent sought to control the external colour finish of the flue and PV panel frames. This part of the condition was not contested by the applicants and Members were satisfied that it would be appropriate to retain the requirement that this equipment should be dark coloured in a non-reflective finishes.

CONCLUSION

After considering all the information, the Local Review Body considered that the development was consistent with relevant policies of the Local Development Plan and that there were no other material considerations that would justify departure from the Development Plan. Consequently, the application was approved subject to the conditions below.

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 and ensure to a satisfactory form of development, which contributes appropriately to its setting, and to minimise risk to trees.
- 2 The external parts of the flue of the wood burning stove are to be matt black or matt grey in colour. In addition, the frames of the Solar PV panels hereby approved shall be coloured non-reflective black or dark grey unless with the prior written consent of the Planning Authority.
Reason: To ensure a satisfactory form of development, which contributes appropriately to its setting.

- 3 The dwellinghouse shall not be occupied until the connection to the public mains water supply is made, and the approved foul and surface water drainage measures are implemented. Surface water-run off shall be maintained at pre-development levels.
Reason: To ensure that the development is adequately serviced.
- 4 No development shall commence until further details of landscaping (including location, species and number of new planting), timescale for implementation and future maintenance of planting have been submitted to and approved in writing by the Planning Authority. The landscaping shall be carried out and maintained in accordance with the approved details.
Reason: To visually integrate the development sympathetically with the setting.
- 5 Construction works shall only be carried out in accordance with the submitted Arboricultural Report (Robert Gray Forestry & Arboricultural Consultants) dated September 2021. All trees shall be protected as per this report including provision of the approved driveway and parking and erection of protective fencing in accordance with BS5837:12 during the construction period. No trees shall be subsequently removed or lopped unless with the prior written approval of the Planning Authority.
Reason: To ensure protection of trees that contribute to the landscape setting of the site.

FOR THE INFORMATION OF THE APPLICANT

It should be noted that:

If the stove has an output of more than 45kw, the applicant should contact the Council's Environmental Health Service and provide further information in order that a screening assessment can be carried out. Stove installations can cause smoke and odour complaints and any Building and Planning Consents for the installation do not indemnify the applicant in respect of nuisance action. In the event of nuisance action being taken there is no guarantee that remedial work will be granted a Building Warrant/Planning Permission, including changes to the height and position of the flue.

There is a low potential for encountering buried archaeology during excavations. If buried features (e.g. walls, pits, post-holes) or artefacts (e.g. pottery, ironwork, bronze objects, and beads) of potential antiquity are discovered, please contact the planner or Council's Archaeology Officer for further discussions.

Further investigation secured by the development may be required if significant archaeology is discovered per PAN2 (2011) paragraph 31. In the event that human remains or artefacts are discovered, these should remain in situ pending investigation by the Archaeology Officer. Human Remains must be reported immediately to the police. Artefacts may require reporting to Treasure Trove Scotland.

The applicant is reminded that this permission does not convey approval for works affecting third party rights which may exist on the land or any adjoining. The applicant is therefore advised to seek the approval of any parties having an interest in any land affected by this permission

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

Date 1 April 2022