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SCOTTISH BORDERS COUNCIL LOCAL REVIEW BODY

MINUTES of Meeting of the LOCAL REVIEW
BODY held Via Microsoft Teams on Monday,
18 April 2022 at 10.00 am

Present:- Councillors S Mountford (Chair), A. Anderson, H. Laing, S. Hamilton, C. Ramage, N. Richards and E. Small.

Apologies:- Councillors J. Fullarton, D. Moffat.

In Attendance:- Principal Planning Officer (Paragraphs 1-4) Assistant Planning Officer (S. Shearer – paragraphs 5-6), Solicitor (S. Thompson), Democratic Services Team Leader, Democratic Services Officer (F. Henderson).

MEMBERS

Councillors Mountford and Laing did not take part in the determination of the following Review having not been present when it was first considered and left the Meeting prior to its consideration. In the absence of Councillor Mountford, Councillor Hamilton Chaired the meeting for this item of business

1. **CONTINUATION OF REVIEW 21/00448/FUL**

With reference to paragraph 4 of the Minute of 21 February 2022, the Local Review Body continued their consideration 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 (including the Decision Notice and Officer's Report); Papers referred to in the Officer's report; Objection comments; Consultation replies; support comments; List of policies and submission by the Roads Planning Officer and response from the Applicant on information received regarding existing utilities contained within the verge. After considering all relevant information, the Local Review Body concluded that the development was contrary to the Local 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; and
- (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.

MEMBERS

Councillors Laing and Mountford rejoined the meeting.

Councillor Richards did not take part in the determination of the following Review having not been present when it was first considered and left the Meeting prior to its consideration.

2. CONTINUATION OF REVIEW 21/00710/PPP

With reference to paragraph 4 of the Minute of 7 March 2022, the Local Review Body continued their consideration of the request from Ferguson Planning, 54 Island Street, Galashiels to review the decision to refuse the planning application for the erection of a dwellinghouse with access, landscaping and associated works on Land South and West of Greywalls, Gattonside. 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, list of policies and submission by the Planning Officer and Applicant response on two Historical maps which had been submitted with the review papers. 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.

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; and**
- (d) the officer's decision to refuse the application be upheld and the application refused for the reasons set out in Appendix II to this Minute.**

MEMBERS

Councillor Richards rejoined the meeting.

Councillor Anderson did not take part in the determination of the following Review having not been present when it was first considered and left the Meeting prior to its consideration.

3. CONTINUATION OF REVIEW 21/01270/FUL

With reference to paragraph 4 of the Minute of 21 March 2022, the Local Review Body continued their consideration of the request from Ferguson Planning, 54 Island Street, Galashiels to review the decision to refuse the planning application for the change of use from Industrial (Class4,5,6) to a Functional Fitness Gym (Class 11) 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 representation; list of policies and submission by the Economic Development Officer and Planning Officer and response from Applicant on the applicants review statement regarding vacant industrial and commercial premises within Galashiels. 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.

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 development was consistent with Policies PMD3 and ED1 of the Local Development Plan and considered to be a justified exception within an industrial area with increasingly mixed use, providing gym facilities for which there was a proven demand; and**
- (d) the officer's decision to refuse the application be overturned and the application approved, subject to conditions set out in Appendix III to this Minute.**

MEMBER

Councillor Anderson rejoined the meeting.

4. REVIEW OF 21/00793/FUL

There had been circulated copies of a request from Ha Viet Pham, c/o Andrew Scott, Murray House, High Street, Langholm to review the decision to refuse the planning application for the partial change of use of shop and alterations to form manager's flat at shop, 43 High Street, 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; consultation replies; Design Access and Heritage Statement; correspondence from the Agent and List of Policies. The Planning Adviser drew attention to information, in the form of magazine articles and website excerpts contained within in Appendix 3 of the review submission submitted with the Notice of Review but had not been before the Appointed 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 and ED3 of the Local Development Plan. The majority of Members considered that the development was an appropriate provision of supporting residential accommodation for the retained ground floor commercial unit and that, provided conditions were imposed linking occupancy and allowing the accommodation to revert to previous use, then the vitality of Hawick High Street and Town Centre would be preserved. Consequently, the application was approved subject to conditions.

VOTE

Councillor Laing, seconded by Councillor Smail moved that the Officer's decision be overturned and the application approved.

Councillor Ramage, seconded by Councillor Anderson moved as an amendment that the Officer's decision be upheld and the application refused.

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

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) new evidence submitted with the Notice of Review in the form of magazine articles and web site excerpts 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 development was consistent with Policies PMD2 and ED3 of the Local Development Plan. The development was considered to be an appropriate provision of supporting residential accommodation for the retained ground floor commercial unit and that, provided conditions were imposed linking occupancy and allowing the accommodation to revert to previous use, then the vitality of Hawick High Street and Town Centre would be preserved. Consequently, the application was approved subject to conditions; and**
- (e) the officers decision to refuse the application be overturned and the application approved, subject to conditions, for the reasons detailed in Appendix IV to this Minute.**

5. REVIEW OF 22/01422/FUL

There had been circulated copies of a request from Ferguson Planning, 54 Island Street, Galashiels to review the decision to refuse the planning application for the demolition of steading and farmhouse and erection of two dwellinghouses on land at Haughhead Farm and Steading Building. 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; objection comments; General comments and list of policies. After considering all relevant information, the majority of Members concluded that the development was considered to be a justified exception to housing in the countryside policy provisions within the LDP. Matters concerning fenestration, fascia details, materials, landscaping, site services, bin storage, archaeology, contamination and access of way were able to be addressed by planning conditions. Developer contributions towards local school and affordable house would be addressed via legal agreement. Consequently, the application was approved.

VOTE

Councillor Mountford, seconded by Councillor Laing moved that the Officer's decision be upheld and the application refused.

Councillor Small, seconded by Councillor Richards moved as an amendment that the Officer's decision be overturned and the application approved.

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

*Motion – 2 votes
Amendment – 5 votes*

The amendment 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 any further procedure on the basis of the papers submitted;**
- (c) the development was considered to be a justified exception to housing in the countryside policy provisions within the LDP. Matters concerning fenestration, fascia details, materials, landscaping, site services, bin storage, archaeology, contamination and access of way to be addressed by planning conditions. Developer contributions towards local school and affordable house be addressed via legal agreement; and**
- (c) the officers decision to refuse the application be overturned and the application approved, subject to conditions, for the reasons detailed in Appendix V to this Minute.**

6. REVIEW OF 21/01908/FUL

There had been circulated copies of a request from Camerons Strachan Yuill Architects, 1 Wilderhaugh, Galashiels to review the decision to refuse alterations and extensions to dwellinghouse and formation of access at East Lodge, Netherurd Blyth Bridge, West Linton. The supporting papers included the Notice of Review (including the Decision Notice and Officer's Report); Papers referred to in the Officer's report; consultee comments; consultation replies and List of Policies. The Planning Adviser drew attention to information, in the form of additional information with regard to the possibility of bats, which had been submitted with the Notice of Review but had not been before the Appointed 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, without referring back to the Officer on this occasion. After considering all relevant information, the majority of Members concluded that the application could be approved.

VOTE

Councillor Laing, seconded by Councillor Ramage moved that the Officer's decision be upheld and the application refused.

Councillor Small, seconded by Councillor Richards moved as an amendment that the Officer's decision be overturned and the application approved.

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

*Motion – 3 votes
Amendment – 4 votes*

The amendment was accordingly carried.

- 6.1 In light of the decision taken by the Local Review Body, Ms Thomson advised that the bat survey was a legal requirement and would be required to be carried out before the Local Review Body could determine the application. She had not shared this information with Members prior to their consideration of the application so that their final decision was not influenced by this requirement. However, due to the imminent Local Government Elections, the matter could not be continued to a future meeting of the current Local Review Body and would require to be considered “de novo” by the newly appointed Local Review Body following the Election.

DECISION

(a) DECIDED that:-

- (i) the request for review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997; and**
- (ii) new evidence submitted with the Notice of Review in the form additional information regarding the possibility of bats met the test set in Section 43B of the Town and Country Planning (Scotland) Act 1997 and was material to the determination.**

(b) NOTED that:-

- (i) although the review could be considered without the need for further procedure in the form of written submissions the bat survey was required prior to the final determination of the application; and**
- (ii) due to the imminent Local Government Elections, the matter could not be continued and would require to be presented “de novo” to the newly appointed Local Review Body at the first available opportunity following the Election.**

The meeting concluded at 1.45 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: 21/00034/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 scarcement 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

Councillor S Hamilton
Vice Chairman of the Local Review Body

Date 16 May 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: 21/00038/RREF

Planning Application Reference: 21/00710/PPP

Development Proposal: Erection of dwellinghouse with access, landscaping and associated works

Location: Land South and West of Greywalls, Gattonside

Applicant: Mr N & Mrs C Cameron

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 contrary to Policies HD2 and EP6 of the Local Development Plan 2016 and Supplementary Planning Guidance: New Housing in the Borders Countryside 2008 in that it would constitute piecemeal, sporadic new housing development in the countryside that would be poorly related to an established building group, within a previously undeveloped field, outwith the sense of place, out of keeping with the character of the building group, resulting in an unacceptable adverse impact on the landscape and visual amenities of the surrounding area. This conflict with the development plan is not overridden by other material considerations.

Development Proposal

The application relates to the erection of a dwellinghouse with access, landscaping and associated works on land South and West of Greywalls, Gattonside. The application drawings and documentation consisted of the following:

Plan Type		Plan Reference No.
Site Location Plan	(Comparison)	P01 B2
Site Location Plan	(Indicative)	P01 B2
Indicative Floor Plan and Elevation		S01 B

First Floor Plan	S02 B
Access Road Plan	21/011/01
Access Road Long Section	21/011/02
Access Road Cross Sections 1	21/011/03
Access Road Cross Sections 2	21/011/04

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 7th 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; and e) 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 two historical Ordnance Survey maps of the area.

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 to comment on the new information.

The Review was, therefore, continued to the Local Review Body meeting on 18th April 2022 where the Review Body considered all matters, including a response to the further information from the Appointed Officer and the applicant's comments on 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, PMD4, HD2, EP1, EP2, EP3, EP4, EP6, EP7, EP8, EP13, IS2, IS3, IS7, IS8, and IS9

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
- SBC Supplementary Planning Guidance on Sustainable Urban Drainage Systems 2020
- SBC Supplementary Planning Guidance on Biodiversity 2005
- SBC Supplementary Planning Guidance on Countryside Around Towns 2011

- Scottish Planning Policy 2014

The Review Body noted that the proposal was for the erection of a dwellinghouse with access, landscaping and associated works on land South and West of Greywalls, Gattonside.

Members firstly considered whether there was a building group in the vicinity under Clause A of Policy HD2. They noted that there were a number of existing houses in the immediate vicinity to the north and east of the site, based around Friars Hall and including a new dwellinghouse at Friarshaugh View. Members were satisfied that this constituted a building group under Clause A of Policy HD2. In terms of whether there was capacity for the group to be expanded, the Review Body also noted that there were no existing permissions for any further houses at the group and they concluded that, subject to the site being considered to be an acceptable addition to the group, there was capacity for the development in compliance with Policy HD2 and the relevant SPG.

Members then considered the relationship of the site with the group and whether it was within the group's sense of place and in keeping with its character. In this respect, they noted the location of the site within the northern part of an open field, immediately adjoining the curved boundary of Greywalls which was formed by a wall and by beech hedging. Members also noted the other boundaries in the vicinity including woodland to the north of the site and conifer hedging enclosing the garden of Friars Hall to the east of the site.

Whilst the Review Body acknowledged the points advanced by the applicant in contending that the site was part of the sense of place at the group, on balance, Members disagreed. They considered that the proposal represented incursion into an undeveloped field and, whilst it was adjoining the building group, it did not integrate with the group nor did it relate well to the character or sense of place. Members considered that the boundary to the group in the vicinity of the site was formed by the curved wall and hedge of Greywalls, the site being both outwith that and distant from other houses within the building group. This isolation led to a poor relationship with the building group which was exacerbated by the lengthy access road taken from the westerly field access. Members concluded that the site was not an appropriate addition to the building group and was contrary to Policy HD2 and the relevant Supplementary Planning Guidance. The Review Body also noted that there had been no economic justification advanced for the need for the site under Part F of Policy HD2.

Members then considered the issues of landscape and residential amenity impacts, noting that the site was covered by the Countryside Around Towns Policy EP6. The Review Body agreed with the Appointed Officer that the isolation and detachment of the site from the building group led to contravention of this Policy and that the length and location of the proposed access road both detracted from the amenity of the area and could lead to development pressure in the future.

The Review Body finally considered other material issues relating to the proposal including water, drainage, impacts on trees and hedges, ecology, archaeology, flood risk and the need for compliance with developer contributions. Members were of the opinion that appropriate conditions and a legal agreement could have addressed these issues satisfactorily, had the application been supported.

CONCLUSION

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

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

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

Date 27th 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: 22/00002/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: 22/00005/RREF

Planning Application Reference: 21/00793/FUL

Development Proposal: Partial change of use of shop and alterations to form manager's flat

Location: 43 High Street, Hawick TD9 9BU

Applicant: Ms Ha Pham

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 partial change of use of shop and alterations to form manager's flat at 43 High Street, Hawick TD9 9BU. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Existing Plans and Section A-A	2106-01A
Existing Elevations	2106-02A
Proposed Plans and Section A-A	2106-03
Proposed Elevations	2106-04
Location Plan and Block Plan	2106-05
Site/Roof Plan	2106-06

PRELIMINARY MATTERS

The Local Review Body considered the review, which had been competently made, under section 43A (8) of the Town & Country Planning (Scotland) Act 1997 at its meeting on 18th April 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; d) Design Access and Heritage Statement; e) Correspondence from the Agent; 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 various magazine and website excerpts relating to mixed uses within town centres, included as Appendix 3 in the applicant's Review submissions. After consideration, Members agreed that this information was new, met the Section 43B test and that it could be considered in the determination of the Review.

The Review Body also noted that the applicant had requested further procedure in the form of written submissions and a hearing session but did not consider it necessary in this instance and proceeded to determine the case.

REASONING

The determining issues in this Review were:

- (1) whether the proposal would be in keeping with the Development Plan, and
- (2) whether there were any material considerations which would justify departure from the Development Plan.

The Development Plan comprises: SESplan Strategic Development Plan 2013 and the Scottish Borders Local Development Plan 2016. The LRB considered that the relevant listed policies were:

- Local Development Plan policies: PMD2, PMD5, ED3, ED4, HD3, EP9, IS2, IS4, 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 2020
- Town Centre Core Activity Area Pilot Study
- Circular 1/1998 Use Classes Order

The Review Body noted that the proposal was for the partial change of use of shop and alterations to form manager's flat at 43 High Street, Hawick TD9 9BU.

Members firstly considered the principle of the development under Policy ED3. The Review Body understood that the proposal was for a change of use related to the rear part of the ground floor of the premises and basement and not for the use of the ground floor commercial frontage, nor any changes that may have occurred to the exterior of the frontage. Although the application site was in a central part of Hawick High Street, Members also noted that as a result of the continued application of the Core Activity Area Pilot Study, Policy ED4 would not apply and proposals on the ground floor would need to be assessed against Policy ED3. The

requirements of this Policy were to support a wide range of uses within town centres whilst retaining character and vitality.

The Review Body noted the concerns of the Appointed Officer on the potential impacts on character and vitality of loss of shop storage space and welfare facilities to residential use, the access to the flat through the shop floor, the precedent approval could set for further loss of shop units and the discouragement of residential uses in the Core Activity Area Pilot Study. However, Members also noted the submissions from the applicant and their lack of need for storage or support rooms to service their proposed Class 2 business.

Members generally welcomed the proposal as an effective and inventive use of space. Whilst the Review Body understood the negative impacts on vitality that could arise in the future if creation of the flat deterred potential occupants of the remaining ground floor commercial frontage, they were persuaded by the specific requirements of the applicant and noted that the flat would remain within the same ownership as the commercial frontage, intended for employee accommodation. Members also considered it significant that the proposal still allowed for retention of the ground floor commercial frontage with staff toilet facility.

Members then discussed what controls would be available by condition or legal agreement to ensure that the proposal could proceed without affecting the longer term operation and viability of the commercial unit, together with the character and vitality of the town centre. The Review Body wanted to ensure that the proposal did not unduly affect either the operation of the commercial unit nor the future attraction as a viable unit should an interested business no longer need the residential accommodation and require more floorspace. After discussion, Members concluded that the occupation of the flat should be linked to the business operating within the ground floor commercial frontage and that, should the flat no longer be required in the future, it could revert to a use matching that operating from the ground floor frontage, without needing planning permission. Subject to appropriate conditions, Members were satisfied that the proposal could meet the requirements of the applicant whilst still preserving the character and vitality of the unit and Hawick Town Centre, in compliance with Policies PMD2 and ED3 of the Local Development Plan.

Members then considered issues relating to the external changes required to convert the accommodation. They noted that all works were to the rear and were of the opinion that it would result in improvements to that part of the building, subject to precise details of the external alterations being required by condition to be submitted for further approval.

The Review Body finally considered other material issues relating to the proposal including residential amenity, waste storage and fire escape, but were of the opinion that such issues either did not outweigh their decision to support the proposal or were able to be addressed through appropriate conditions where appropriate.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was consistent with Policies PMD2 and ED3 of the Local Development Plan. The development was considered to be an appropriate provision of supporting residential accommodation for the retained ground floor commercial unit and that, provided conditions were imposed linking occupancy and allowing the accommodation to revert to previous use, then the vitality of Hawick High Street and Town Centre would be preserved. Consequently, the application was approved subject to conditions.

DIRECTION

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

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

CONDITIONS

1. The occupation of the flat shall be restricted at all times to an employee of the business operating within the ground floor commercial frontage of the premises, together with any partner and dependants, and shall not be sold or leased as a separate residential unit from the ground floor commercial frontage.

Reason: The relationship between the flat and commercial frontage would introduce use and access conflicts if the flat was occupied by residents unconnected with the commercial frontage business.

2. Should any Use Class 1 business intending to occupy the ground floor commercial frontage no longer require the flat accommodation approved under this consent, then the accommodation may revert to Class 1 use without the need for planning permission for Use Class change, or to whatever use is subsequently approved within the ground floor commercial frontage.

Reason: To ensure flexibility of commercial floorspace and support the vitality of Hawick Town Centre, in the event that residential accommodation is no longer required to service the commercial frontage business.

3. No development to be commenced until details of waste storage are submitted to, and approved in writing by, the Planning Authority. Once approved, the approved details to be implemented before occupation of the residential accommodation.

Reason: To secure appropriate details of waste disposal.

4. No development to be commenced until details of all external materials, including windows, doors, rooflights and platform stairway, are submitted to, and approved in writing by, the Planning Authority. Once approved, the development then to be implemented in accordance with the approved details.

Reason: To safeguard the visual amenity of the area.

Informative

1. The Council's Flood Risk Officer advises the following:

The applicant should be made aware that flooding can occur from other sources including run-off from surrounding land, blocked road drains, surcharging sewers and blocked bridges and culverts.

Please note that this information must be taken in the context of material that this Council holds in fulfilling its duties under the Flood Risk Management (Scotland) Act 2009.

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**

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

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

Date 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: 22/00007/RREF

Planning Application Reference: 21/01422/FUL

Development Proposal: Demolition of steading and farmhouse and erection of two dwellinghouses

Location: Land At Haughhead Farm And Steading Building Innerleithen

Applicant: Mr William, Brenda and Sarah Glennie

DECISION

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

DEVELOPMENT PROPOSAL

The application relates to the demolition of a farmhouse and steading building and erection of a two new houses in their place along with access, landscaping and associated works. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	20035-LOC
Existing Plans and Elevations	20035-E-101
Proposed Site Plan	20035-001-A
Proposed Plans	20035-ST-101-A
Proposed Plans	20035-FH-101-A
Proposed Elevations	20035-FH-201-A
Proposed Elevations	20035-ST-101-A

PRELIMINARY MATTERS

The Local Review Body considered the review, which had been competently made, under section 43A (8) of the Town & Country Planning (Scotland) Act 1997 at its meeting on 18th April 2022. After examining the review documentation which included: a) Notice of Review (including Appeal Statement); b) Report of Handling c) Consultations; d) Policies, e) Planning Statement, f) Structural Inspection Report, f) Costings Reports, g) Ecological Surveys, 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, HD4, EP1, EP2, EP3, EP5, EP8, EP13, EP15, EP16, IS2, IS5, IS7, IS8, IS9, IS13

Other Material Considerations

- SBC Supplementary Planning Guidance on Biodiversity 2005
- SBC Supplementary Planning Guidance on Development Contributions 2011 (Updated 2020)
- SBC Supplementary Planning Guidance on Landscape and Development 2008
- SBC Supplementary Planning Guidance on Local Biodiversity Action Plan 2001
- SBC Supplementary Planning Guidance on New Housing in the Borders Countryside 2008
- SBC Supplementary Planning Guidance on Privacy and Sunlight Guide 2006
- SBC Supplementary Planning Guidance on Placemaking and Design 2010
- SBC Supplementary Planning Guidance on Sustainable Urban Drainage Systems 2020
- SBC Supplementary Planning Guidance on Trees and Development 2008
- SBC Supplementary Planning Guidance on Affordable Housing 2015
- SBC Supplementary Planning Guidance on Waste Management 2015
- SBC Supplementary Planning Guidance on Sustainable Urban Drainage 2020
- Scottish Planning Policy 2014
- Draft NPF4 2021

The Review Body noted that the proposal seeks consent for a replacement house on the site of a derelict farmhouse, and a house on the site of a former steading building. It was noted that consent was granted in April 2016 to convert the steading building to a house under 15/00742/FUL but that consent has lapsed.

Members firstly considered whether Policy HD2 (E) supported the replacement of a new house on the site of the now dilapidated farmhouse. Members agreed with the appointed officer and applicant that the replacement of this existing former residential building with a new residential building is acceptable against the criteria set out in HD2 (E).

The Review Body then turned their attention to the replacement steading building with a new build house. Members recognised that demolishing the steading and replacing the building with a new build house posed tensions against Policy HD2.

Members firstly heard that both the appointed officer and applicants were in agreement that a new build house on this site would not relate to an existing building group of at least 3 houses against HD2.

The development was not found to align with other criteria for new housing in the countryside where it did not relate to the conversion of a steading to a house, the restoration of a house, the replacement of an existing house and no economic justification had been substantiated which confirmed that a house is required in this location for business reasons. Members did recognise that the site did benefit from a previous consent to convert the building but that consent has subsequently lapsed. The Local Review Body appreciated that the design of the proposal replicated the previous unimplemented permission and that the scale and appearance of the proposal is in keeping with the character of the existing building. The Review Body noted how the applicants Condition Survey found physical failings with the building. To address current flooding issues at the site Members heard how the finished floor levels at the steading would be required to be raised by 1m. The Review Body identified that this would pose a significant barrier for any potential conversion of the steading building. Members acknowledged that failing to secure the redevelopment of this brownfield site would result in both existing dilapidated buildings (steading and farmhouse) falling into further state of disrepair and appearing as an eyesore within the surrounding environment.

Taking all matters into consideration, the Local Review Body found that flooding issues effectively signified that the building was beyond conversion and the benefits of securing the redevelopment of this wider brownfield site outweighed the implications of not securing its sensitive reuse. Under these specific circumstances, the demolition of the steading building and replacement with a new build house was in this case considered as an exceptional approval.

The Local Review Body recognised that the proposed layout failed to protect the permissive path which passed through the site. Members determined that the impacts of the development on this path should be addressed by a planning condition.

Members moved on to other materials matters covering fenestration, fascia details landscaping, site services, bin storage, archaeology, ecology and contamination were considered but the Review Body were of the opinion that appropriate conditions could address them satisfactorily. They also noted that developer contributions for education and affordable house could be secured by legal agreement.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was considered to be a justified exception to housing in the countryside policy provisions within the LDP. Matters concerning fenestration, fascia details, materials, landscaping, site services, bin storage, archaeology, contamination and access of way are able to be addressed by planning conditions. Developer contributions towards local school and affordable house can be addressed via legal agreement. Consequently, the application was approved.

DIRECTIONS

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

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

CONDITIONS

1. Notwithstanding details illustrated on the approved drawing, no development shall commence until revised plans addressing the following matters have been provided;
 - i. elevation drawings addressing the proportions of windows on the new farmhouse and steading and the fascia details on the steading
 - ii. a site plan identifying areas for bin stances for each dwellinghouse and also deleting bin storage within the service layby.

The revised plans shall be approved in writing with the Planning Authority and thereafter the development shall be undertaken in accordance with the revised details.

Reason: The fenestration design and fascia detail requires revision to ensure an appropriate form of development which respects the character of the rural area.

2. No development shall commence until precise details of all external material finishes (including colour finish) to be used on the development have been submitted to and approved in writing by the Planning Authority. Thereafter the development shall be completed in accordance with the approved details unless otherwise agreed in writing with the planning authority.

Reason: To ensure the material finishes respect the character and appearance of the surrounding area.

3. No development shall commence until the precise means of access, parking and turning have been submitted to and approved in writing with the Planning Authority. The details shall include definition of the communal turning area, construction specifications and visibility splays of 2 by 90 metres in either direction onto the public road. The development shall be completed in accordance with the agreed details prior to occupation of the first dwelling unless otherwise agreed in writing.

Reason: To ensure appropriate means of access, parking and turning are provided for this residential development.

4. No development shall commence until precise details of the means of foul drainage has been submitted to and approved in writing by the Planning Authority. Once approved the works shall be completed in accordance with the approved details prior to occupation of the dwellinghouse.

Reason: To ensure that the development is adequately serviced and does not have a detrimental effect on amenity and public health.

5. No development shall commence until the means of surface water drainage methods to serve the site which incorporate Sustainable Urban Drainage Systems (SUDS) and maintain existing run-off levels have been submitted to and approved by the Planning Authority thereafter the development shall be completed in accordance with the approved details.

Reason: To ensure that the development is serviced in a manner which complies surface water drainage requirements in a manner which does not increase flood risk at the development.

6. No development shall take place except in strict accordance with a scheme of hard and soft landscaping works, which has first been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
 - i. existing and finished ground levels in relation to a fixed datum preferably ordnance
 - ii. existing landscaping features, hedgerows and trees to be retained, protected and, in the case of damage, restored
 - iii. location and design, including materials, of walls, fences and gates
 - iv. soft and hard landscaping works including new planting within the site
 - v. A programme for completion and subsequent maintenance.

Reason: To ensure the satisfactory form, layout and assimilation of the development.
7. No development shall take place until the applicant has secured the implementation of a programme of archaeological work (which may include excavation) in accordance with a Written Scheme of Investigation outlining a Historic Building Survey which has been formulated by, or on behalf of, the applicant and submitted to and approved in writing by the Planning Authority. Access should be afforded to allow archaeological investigation, at all reasonable times, by a person or persons nominated by the developer and agreed to by the Planning Authority. Results will be submitted to the Planning Authority for review in the form of a Historic Building Survey Report.
Reason: To preserve by record a building of historical interest.
8. No development shall be undertaken during the breeding bird season (March to September), unless in strict compliance with a Species Protection Plan for breeding birds, including provision or pre-development supplementary survey, that shall be submitted to and approved in writing by the Planning Authority.
Reason: To protect the ecological interest in accordance with Local Development Plan policies EP2 and EP3.
9. No development shall commence until the developer has provided the Planning Authority with either of the following undertakings;
 - a) a copy of the relevant European Protected Species licence, or, written confirmation that works will be carried out under a Bat Low Impact Licence (BLIMP) or
 - b) a copy of a statement in writing from NatureScot (licensing authority) stating that such a licence is not necessary for the specified development
 - c) Where a statement in writing from NatureScot has been submitted to the Planning Authority in pursuance of part b) of this condition, no development shall commence until the developer submits for approval in writing by the Planning Authority a Bat Mitigation Plan, including measures as outlined Bat and breeding bird survey, Haughead farm , Innerleithen. The Wildlife Partnership, 16 June 2021. Thereafter, no development shall take place except in strict accordance with the approved plan.

Reason: To protect the ecological interest in accordance with Local Development Plan policies EP1 and EP3.
10. No development shall commence until a scheme submitted by the Developer to identify and assess potential contamination on site. No construction work shall commence until the scheme has been submitted to, and approved, by the planning authority, and is thereafter implemented in accordance with the scheme so approved.
The scheme shall be undertaken by a competent person or persons in accordance with the advice of relevant authoritative guidance including PAN 33 (2000) and BS10175:2011 or, in the event of these being superseded or supplemented, the most up-to-date version(s) of any subsequent revision(s) of, and/or supplement(s) to, these documents. This scheme should contain details of proposals to investigate and remediate potential contamination and must include:-

- a) A desk study and development of a conceptual site model including (where necessary) a detailed site investigation strategy. The desk study and the scope and method of recommended further investigations shall be agreed with the Council prior to addressing parts b, c, d, and, e of this condition, and thereafter;
 - b) Where required by the desk study, undertaking a detailed investigation of the nature and extent of contamination on site, and assessment of risk such contamination presents.
 - c) Remedial Strategy (if required) to treat/remove contamination to ensure that the site is fit for its proposed use (this shall include a method statement, programme of works, and proposed validation plan).
 - d) Submission of a Validation Report (should remedial action be required) by the developer which will validate and verify the completion of works to a satisfaction of the Council.
 - e) Submission, if necessary, of monitoring statements at periods to be agreed with the Council for such time period as is considered appropriate by the Council.
- Written confirmation from the Council, that the scheme has been implemented completed and (if appropriate), monitoring measures are satisfactorily in place, shall be required by the Developer before any development hereby approved commences. Where remedial measures are required as part of the development construction detail, commencement must be agreed in writing with the Council.
- Reason: To ensure that the potential risks to human health, the water environment, property, and, ecological systems arising from any identified land contamination have been adequately addressed.

11. No development shall commence until a scheme of details has been submitted to and agreed in writing with the Planning Authority which mitigates the impact of the development on path INGT/River/2 which dissects the site and thereafter the development shall be undertaken in accordance with the agreed details.
- Reason: To ensure that public access remains attractive and convenient.

LEGAL AGREEMENT

The Local Review Body required that a Section 75, or other suitable legal agreement, be entered into to secure developer contributions for Pebbles High School and affordable housing.

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 29 April 2022