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SCOTTISH BORDERS COUNCIL LOCAL REVIEW BODY

MINUTES of Meeting of the LOCAL REVIEW BODY held in Council Chamber, Council Headquarters, Newtown St Boswells on Monday, 15 August 2022 at 10.00 am

Present:- Councillors S Mountford (Chair), J. Cox (from para 3), M. Douglas, D. Moffat, A. Orr, V. Thomson, N. Richards, S. Scott, E. Small (from para 3)

In Attendance:- Principal Planning Officer, Solicitor (S. Thompson), Democratic Services Team Leader, Democratic Services Officer (F. Henderson).

MEMBERS

Having not been present when the following review was first considered, Councillors Cox and Small left the meeting.

1. CONTINUATION OF REVIEW 21/00739/PPP

With reference to paragraph 2 of the Minute of 20 June 2022, the Local Review Body continued their consideration of the request from F J Usher's Children Trust, c/o Hannah Belford, Agent, Wemyss House, 8 Wemyss Place, Edinburgh to review the decision to refuse the planning application for the erection of two dwellinghouses on Land East of Delgany, Old Cambus, Cockburnspath. 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, correspondence, consultation replies; objection comments, general comments, further representations; list of policies and submission by the Planning Officer and Environmental Health and the Applicant response. Members firstly considered whether there was a building group in the vicinity under Clause A of Policy HD2 and following discussion, were satisfied that the existing houses constituted a building group, albeit they did not include "Dalgeny" due to its separation by distance and woodland belts. They also accepted that there was capacity for the group to be expanded. Members then considered the relationship of the site and whether it was within the group's sense of place. Whilst the indicative site plan and photomontages were noted, the Review Body were not persuaded that detailed siting and design at a future planning stage could resolve their fundamental concerns over the inappropriate location, shape and height of the site. 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

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 would be contrary to Policy HD2 of the Scottish Borders Local Development Plan 2016 and the New Housing in the Borders Countryside Supplementary Planning Guidance 2008 in that it would not relate sympathetically to the character of the existing building group. The

proposal would not respect the scale, siting and hierarchy of buildings within the existing group and would degrade its strong sense of place. This conflict with the Local Development Plan was not overridden by any other material considerations.

- (d) the officer's decision to refuse the application be upheld and the application refused, for the reasons detailed in Appendix I to this Minute.**

MEMBER

Having been unable to attend the site visit, Councillor Moffat left the meeting.

2. CONTINUATION OF REVIEW 21/01846/PPP

With reference to paragraph 6 of the Minute of 20 June 2022, the Local Review Body continued their consideration of the request from Aitken Turnbull Architects, 5 Castle Terrace, Edinburgh EH1 2DP to review the non determination of a planning application for the erection of two dwellinghouses on Land North of Ivanhoe, Dingleton Road, Melrose. The Review Body noted that the review was submitted against non-determination of the planning application, as the Council had not determined the application within the application processing period. This constituted a deemed refusal and they were required to make a 'De Novo' decision on the application. The supporting papers included the Notice of Review; additional information; consultation replies; objection comments; correspondence; List of Policies and submissions by the Planning and Ecology Officers and Applicants response. Members accepted that the site was an infill site within the defined settlement boundary of Melrose and noted that the site was part of the overall housing allocation EM32B in the Local Development Plan, albeit shown on the Settlement Proposals Map as part of the structure planting within that land allocation, reflecting the fact that the site contained orchard trees protected by SBC TPO 21. The Review Body noted that the application was for planning permission in principle and there were no detailed siting and design proposals, although a site plan with house positions and tree positions had been submitted. Having considered all the submissions and informed by their site inspection, the Review Body were of the opinion that this was a suitable infill development opportunity but that the proposal for two houses represented overdevelopment given the constraint of protected trees on the site and insufficient space to achieve and maintain replacement planting. As there were no other material considerations that would justify departure from the Development Plan. Consequently, the application was refused.

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 would be contrary to Policy EP13 of the Local Development Plan 2016 and the Trees and Development SPG 2008 in that there would be an unacceptable and detrimental impact on the orchard trees forming part of the SBC TPO 21 ("Dingleton Hospital Site") as a consequence of loss of protected trees, prejudice to the remaining trees and insufficient space for adequate and acceptable compensatory planting, resulting in adverse impacts on the character and amenity of the area. Furthermore, the development has not demonstrated that public benefit would outweigh the loss of, and impacts on, the trees.**

- (d) **the deemed refusal of the application be upheld and the application refused, for the reasons detailed in Appendix II to this Minute.**

MEMBERS

Councillors Cox, Moffat and Small joined the meeting prior to consideration of the following review.

3. REVIEW 22/00127/FUL

There had been circulated copies of a request from Daina McFarlane, Leitvale, Eden Road, Gordon to review the decision to refuse the planning application for the change of Use from Industrial (Class 4, 5 ,6) to Fitness Studio (Class 11)(retrospective) at Unit C, 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; support letters and list of policies. The Planning Adviser drew attention to information on the availability of Industrial Units within Netherdale Industrial Estate, Galashiels, which had been submitted with the Notice of Review 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 information on the availability of Industrial Units within Netherdale Industrial Estate. Members, therefore, agreed that the application be continued for further procedure in the form of written submission to seek comments from the Planning Officer and Economic Development.

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 information about the availability of Industrial Units within Netherdale Industrial Estate, Galashiels 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 information on the availability of industrial units within the Netherdale Industrial Estate, Galashiels provided by the applicant.**
- (e) **consideration of the review be continued to a future meeting on a date to be confirmed.**

4. REVIEW 21/00706/FUL

There had been circulated copies of a request from Mr Drew Glendinning, c/o Ferguson Planning, Shiel House, 54 Island Street, Galashiels to review the decision to refuse the planning application for the erection of a dwellinghouse on Plot 4, Westcote Farm, Westcote, 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; objection comments and list of policies. The Planning Adviser drew attention to the revised location plan submitted with the Notice of Review but not 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 without the need for further procedure. Members firstly considered whether there was a building group under Clause

A of Policy HD2 and noted that there were a number of existing houses in the immediate vicinity consisting of the original farmhouse, several conversions and new-builds to the north of the site. Members were satisfied that this constituted a building group and there was notional capacity for addition. In considering whether the site was within the group's sense of place and in keeping with its character, the Review Body noted the location of the site within a field on the southern edge of the group, and Members were concerned that the proposal was not within the cluster of buildings and houses around the original farmhouse and that it appeared to constitute ribbon development, lying outwith the group and breaking into a field. Members were also concerned that this could set a precedent for further sporadic development in the field. After full discussion, the Review Body concluded that the building group was complete and that the site was not an appropriate addition to the group. 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 development was contrary to Policy HD2 of the Local Development Plan 2016 and New Housing in the Borders Countryside Guidance 2008 because it would constitute housing in the countryside that would not relate well to the existing building group and would lead to an unjustified sporadic expansion of development into a previously undeveloped field. Furthermore, there is no overriding economic justification to support the development. Material considerations do not outweigh the resulting harm; and**
- (d) the officer's decision to refuse the application be upheld and the application refused, for the reasons detailed in Appendix III to this Minute.**

MEMBER

The Chairman left the meeting and Councillor Richards took the chair for the remainder of the meeting.

5. REVIEW OF 22/00093/PPP

There had been circulated copies of a request from Mr James Hewitt c/o Ferguson Planning, 54 Island Street, Galashiels to review the decision to refuse the planning application for the erection of a dwellinghouse with associated infrastructure works on Land adjoining 16 Hendersyde Drive, Kelso. 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; objection comments; further representations and list of policies. The Review Body considered the comments from Scottish Water in terms of the equipment contained within the site, the Flood Risk Officers comments and those comments from the roads officer. Members expressed concern with regard to the possible loss of green space and the potential for the site to flood.

VOTE

Councillor Moffat, seconded by Councillor Douglas moved that an unaccompanied site visit be held.

Councillor Small, seconded by Councillor Scott moved as an amendment that the application be determined without a site visit.

On a show of hands Members voted as follows:-

Motion - 4 votes
Amendment - 4 votes

As there was an equality of votes, the Chairman exercised his casting vote in favour of an unaccompanied site visit.

DECISION

AGREED that:-

- (a) the request for review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;**
- (b) the review could not be considered without the need for further procedure in the form of an unaccompanied visit to the site;**
- (c) consideration of the review be continued to a future meeting on a date to be confirmed.**

6. REVIEW OF 21/01625/PPP

There had been circulated copies of a request from Mr and Mrs Jerry and Shona Ponder, c/o Ferguson Planning, 54 Island Street, Galashiels to review the decision to refuse the planning application for the erection of a residential dwelling with associated amenity, parking, infrastructure and access on land to the East of South Laws, Duns. The supporting papers included the Notice of Review (including the Decision Notice and Officer's Report); Papers referred to in the Officer's report; additional information, consultation replies and list of policies. The Review Body agreed that there was an existing building group and noted that although there had been one consent granted within the current Local Development Plan period, that had since lapsed and there was capacity to expand the group. Members considered the relationship of the site with the group and whether it was within the group's sense of place and were concerned that the proposed site lay outwith and was not related to the building group, constituting ribbon development and breaking into the corner of an arable field. Members were also concerned that a precedent would be set for further development within the field. The Review Body noted the objection of SEPA over the potential for flood risk at the site. Whilst Members had concerns over this issue, they accepted that the Appointed Officer had refused the application for other reasons and it was, therefore, not necessary to investigate the issue further. Consideration was then given to the issue of loss of prime agricultural land and compliance with Policy ED10 of the Local Development Plan. Members agreed with the Appointed Officer that the site was within a field being used and available for agricultural purposes. 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.

VOTE

Councillor Moffat, seconded by Councillor Cox moved that the application be approved.

Councillor Thomson, seconded by Councillor Orr moved as an amendment that the application be refused.

On a show of hands Members voted as follows:-

Motion - 3 votes
Amendment - 5 votes

The amendment was accordingly carried and 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 proposed development failed to comply with Policy HD2 of the Local Development Plan 2016 and Supplementary Planning Guidance, New Housing in the Countryside 2008, as it would not relate well to the existing building group, would break into an undeveloped field, outwith the building group's sense of place and would result in ribbon development long the public road which would adversely impact upon the composition and quality of the landscape character. The development also failed to comply with Policy ED10 as it would result in the permanent loss of prime quality agricultural land.**
- (d) the officer's decision to refuse the application be upheld and the application refused, for the reasons detailed in Appendix IV to this Minute.**

The meeting concluded at 1.05 p.m



**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: 22/00008/RREF

Planning Application Reference: 21/00739/PPP

Development Proposal: Erection of 2 no dwellinghouses

Location: Land East of Dalgeny, Old Cambus, Cockburnspath

Applicant: F J Usher's Childrens Trust

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 would be contrary to Policy HD2 of the Scottish Borders Local Development Plan 2016 and the New Housing in the Borders Countryside Supplementary Planning Guidance 2008 in that it would not relate sympathetically to the character of the existing building group. The proposal would not respect the scale, siting and hierarchy of buildings within the existing group and would degrade its strong sense of place. This conflict with the Local Development Plan is not overridden by any other material considerations.

Development Proposal

The application relates to the erection of 2 no dwellinghouses on land East of Dalgeny, Old Cambus, Cockburnspath. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	5311/01/F
Existing Site Plan	5311/02/F
Proposed Site Plan	5311/03/G
Proposed Site Plan	5311/04/F
Photomontage	Image 1

Photomontage
Photomontage

Image 2
Image 3

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 20th June 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) Correspondence; e) Consultation Replies; f) Objection Comments; g) General Comment; h) Further Representations and i) 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 submitted by an objector in the form of noise levels of machinery in operation at TD Trees and Land Services, Old Cambus.

Members agreed that the information was new and considered that it met the Section 43B test, that it was material to the determination of the Review and could be considered. However, there was a requirement for further procedure in the form of written submissions to enable the Appointed Officer and Environmental Health to comment on the new information.

The Review was, therefore, continued to the Local Review Body meeting on 15th August 2022 where the Review Body considered all matters, including responses to the further information from the Appointed Officer and Environmental Health, together with the applicant's comments on the responses. The Review Body also noted that the applicant had requested further procedure by means of a site inspection but did not consider it necessary in this instance and proceeded to determine the case.

Reasoning

The determining issues in this Review were:

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

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

- Local Development Plan policies: PMD1, PMD2, HD2, HD3, ED10, EP1, EP2, EP3, EP5, EP8, EP13, EP14, 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
- SBC Supplementary Planning Guidance on Placemaking and Design 2010
- SBC Supplementary Planning Guidance on Biodiversity 2005
- SBC Supplementary Planning Guidance on Landscape and Development 2008

- SBC Supplementary Planning Guidance on Local Landscape Designations 2012
- SBC Contaminated Land Inspection Strategy 2001
- SPP 2014
- Draft NPF4
- NPPG14 Natural Heritage
- PAN60 Planning for Natural Heritage
- PAN33 Contaminated Land
- 2/2011 Planning and Archaeology
- 1/2011 Planning and Noise

The Review Body noted that the proposal was for the erection of 2 no dwellinghouses on land East of Dalgeny, Old Cambus, Cockburnspath.

Members firstly considered whether there was a building group in the vicinity under Clause A of Policy HD2. They noted that there were five houses in the vicinity, including the farmhouse and the property known as “Dalgeny” further to the west. After discussion, the Review Body were satisfied that this constituted a building group under Clause A of Policy HD2, albeit they did not include “Dalgeny” due to its separation by distance and woodland belts. In terms of whether there was capacity for the group to be expanded, the Review Body noted that there was one other plot to the north-east of the farm steading which had been accepted by the Appointed Officer subject to a legal agreement. However, Members also understood that, as there had been no planning consent yet issued for that site, it would not impact on the scale of addition allowance as that only took into account issued planning consents. As there were no existing permissions for any further houses at the group, the Review Body 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, the proposal for two plots, the height of the site and the relationship with the farmhouse, cottages and other steading buildings. Having concluded that “Dalgeny” was not part of the building group, Members were of the view that the development site constituted an inappropriate addition to the existing group, lying outwith the group and constituting ribbon development with an unsympathetic layout and relationship with the farmhouse, steading and general form of the group.

The indicative site plan and photomontages were noted but did not persuade the Review Body that detailed siting and design at a future planning stage could resolve their fundamental concerns over the inappropriate location, shape and height of the site. There was concern that development on the site would conflict with the height, location and hierarchy of the other buildings in the group and could also set a precedent for further ribbon development towards “Dalgeny”. Whilst the Review Body considered there may be capacity and potential for further development within the building group, they did not consider the application site to be an appropriate location and Members concluded that the proposal 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 also considered other material issues relating to the proposal including the adequacy of the road network, noise impacts on residential amenity, loss of prime agricultural land, coastline impacts, infrastructure constraints, ecology, archaeology, possible land contamination and the need for compliance with developer contributions. Members were of the opinion that appropriate conditions and a legal agreement could have addressed such 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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Signed.....
Councillor S Mountford
Chairman of the Local Review Body

Date 23 August 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: 22/00015/RNONDT

Planning Application Reference: 21/01846/PPP

Development Proposal: Erection of two dwellinghouses

Location: Land North of Ivanhoe, Dingleton Road, Melrose

Applicant: Rivertree Residential Limited

DECISION

The Local Review Body refuses planning permission as explained in this decision notice and on the following grounds:

1. The development would be contrary to Policy EP13 of the Local Development Plan 2016 and the Trees and Development SPG 2008 in that there would be an unacceptable and detrimental impact on the orchard trees forming part of the SBC TPO 21 ("Dingleton Hospital Site") as a consequence of loss of protected trees, prejudice to the remaining trees and insufficient space for adequate and acceptable compensatory planting, resulting in adverse impacts on the character and amenity of the area. Furthermore, the development has not demonstrated that public benefit would outweigh the loss of, and impacts on, the trees.

Development Proposal

The application relates to the erection of two dwellinghouses on land North of Ivanhoe, Dingleton Road, Melrose. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	AT3533 LOC
Existing Site Plan	AT3533 (-L)001
Site Plan with Tree Removals	AT3533 (-L)101
Site Plan as Proposed	AT3533 (-L)102

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 20th June 2022.

After examining the review documentation at that meeting, which included a) Notice of Review; b) Additional Information; c) Consultation Replies; d) Objection Comments; e) Correspondence; and f) List of Policies, the Review Body considered whether certain matters included in the review documents constituted new evidence under Section 43B of the Act and whether or not this evidence could be referred to in their deliberations. This related to further information submitted by the applicant in the form of a Bat Potential and Breeding Bird Survey.

Members agreed that the information was new and considered that it met the Section 43B test, that it was material to the determination of the Review and could be considered. However, there was a requirement for further procedure in the form of written submissions to enable the Appointed Officer and Ecology Officer to comment on the new information. Members also concluded that a site inspection, as part of the further procedure, would assist them in their determination of the Review.

The Review was, therefore, continued to the Local Review Body meeting on 15th August 2022, the Review Body having previously carried out their site inspection. Members considered all matters, including responses to the further information from the Appointed Officer and Ecology Officer, together with the applicant's comments on the responses. 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, PMD3, EM32B, PMD5, HD1, HD3, EP1, EP2, EP3, EP4, EP8, EP10, EP13, EP14, IS2, IS3, IS7 and IS9.

Other Material Considerations

- SBC Supplementary Planning Guidance on Developer Contributions 2021
- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006
- SBC Supplementary Planning Guidance on Placemaking and Design 2010
- SBC Supplementary Planning Guidance on Biodiversity 2005
- SBC Supplementary Planning Guidance on Landscape and Development 2008
- SBC Supplementary Planning Guidance on Local Biodiversity Action Plan 2008
- SBC Supplementary Planning Guidance on Trees and Development 2008
- SBC Supplementary Planning Guidance on Sustainable Urban Drainage Systems 2020

The Review Body noted that the proposal was for the erection of two dwellinghouses on land North of Ivanhoe, Dingleton Road, Melrose.

Members firstly considered the application against Policies PMD2 and PMD5 of the Local Development Plan and accepted that the site was an infill site within the defined settlement boundary of Melrose. They also noted that the site was part of the overall housing allocation EM32B in the Local Development Plan, albeit shown on the Settlement Proposals Map as part of the structure planting and landscaping within that land allocation, reflecting the fact that the site contained orchard trees protected by SBC TPO 21. The Review Body noted that the application was for planning permission in principle and that there were no detailed siting and design proposals, although a site plan with house positions and tree positions had been submitted. Having considered all the submissions and informed by their site inspection, the Review Body were of the opinion that this was a suitable infill development opportunity but that the proposal for two houses represented overdevelopment given the constraint of protected trees on the site.

Members considered that the orchard trees within the site represented an historic and important element of the natural landscape and environment of the area, providing a public amenity for residents around the site. Whilst they noted the conclusions of the Arboricultural Assessment and the new tree planting proposals, the Review Body agreed with the Council Landscape Officer that there was insufficient space within the site to achieve two dwellinghouses without resulting in the loss of existing orchard trees. Members also considered that there was insufficient space to carry out the new planting and for that planting to become established and retained, given that the proposal was for two houses. Ultimately, the Review Body concluded that the impact on the protected trees would result in an adverse impact on the character and amenity of the area and that there were insufficient benefits or mitigation that would outweigh the adverse impact. The proposal was, therefore, considered to be contrary to Policy EP13 of the Local Development Plan and the Trees and Development Supplementary Planning Guidance.

The Review Body did consider whether a more appropriate proposal would be a submission for one house on the site, which could potentially provide more space for the retention of the existing orchard trees and for adequate compensatory planting. However, Members were required to determine the proposal for two houses as submitted and that this could be a future option available to the applicant, to re-apply for one house on the site in a revised planning application.

The Review Body finally considered other material issues relating to the proposal including impacts on designated landscapes, residential amenity, ecology, access, parking, water, drainage and development contributions but were of the opinion that detailed siting, design, appropriate conditions and a legal agreement could have addressed these issues, 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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Signed.....
Councillor S Mountford
Chairman of the Local Review Body

Date 23 August 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: 22/00020/RREF

Planning Application Reference: 21/00706/FUL

Development Proposal: Erection of dwellinghouse

Location: Land South of Stable Cottage (Plot 4) Westcote, Hawick

Applicant: Mr Drew Glendinning

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 Policy HD2 of the Local Development Plan 2016 and New Housing in the Borders Countryside Guidance 2008 because it would constitute housing in the countryside that would not relate well to the existing building group and would lead to an unjustified sporadic expansion of development into a previously undeveloped field. Furthermore, there is no overriding economic justification to support the development. Material considerations do not outweigh the resulting harm.

Development Proposal

The application relates to the erection of a dwellinghouse on Land South of Stable Cottage (Plot 4) Westcote, Hawick. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	AT3514 L(-1)101
Location Plan	AT3514 L(-1)101 Rev B
Proposed Site Plan	AT3514 L(-1)102
Existing Site Plan	AT3514 L(-1)103
Proposed Ground Floor Plan & Elevations	AT3514 L(-1)104
Proposed First Floor Plan & Site Section	AT3514 L(-1)105

Preliminary Matters

The Local Review Body considered the review, which had been competently made, under section 43A (8) of the Town & Country Planning (Scotland) Act 1997 at its meeting on 15th August 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) Objection Comments; 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 a revised location plan from the applicant showing field ownership, reference AT3514 L(-1) 101 Revision B.

Members agreed that the information was new and considered that it met the Section 43B test, that it was material to the determination of the Review and could be considered. The Review Body 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, HD2, HD3, EP1, EP2, EP3, EP5, EP13, IS2, IS5, IS7 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 Placemaking and Design 2010
- SBC Supplementary Planning Guidance on Landscape and Development 2008
- SBC Supplementary Planning Guidance on Local Landscape Designations 2012
- SBC Supplementary Planning Guidance on Waste Management 2015
- SBC Supplementary Planning Guidance on Trees and Development 2008
- SPP 2014
- Draft NPF4
- SESPlan 2013

The Review Body noted that the proposal was for the erection of a dwellinghouse on Land South of Stable Cottage (Plot 4) Westcote, Hawick

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 consisting of the original farmhouse, several conversions and new-builds to the north of the site. 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 noted that there had been one consent granted within the current Local Development Plan period but that, combined with the proposed development, the maximum scale of addition within the group would not be exceeded. The Review Body concluded that, subject to the site being considered to be an acceptable addition to the group, there was notional 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 a field on the southern edge of the group. The Review Body were concerned that the proposal was not within the cluster of buildings and houses around the original farmhouse and that it appeared to constitute ribbon development, lying outwith the group and breaking into a field. Members were also concerned that this could set a precedent for further sporadic development in the field. After full discussion, the Review Body concluded that the building group was complete and that the site was not an appropriate addition to the group. As there had also been no economic case advanced for the proposed house, Members considered the application to be contrary to Policy HD2 of the Local Development Plan and the New Housing in the Borders Countryside Supplementary Planning Guidance.

The Review Body finally considered other material factors relating to the proposal including landscape, residential amenity, other building group addition cases, access arrangements, water and drainage, right of way, compliance with Government Policy and the need to meet developer contributions. Members were of the opinion that the factors did not outweigh their conclusion that the development was contrary to Local Development Plan Policy and that appropriate conditions and a legal agreement could have addressed them 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.

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

Date 23 August 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: 22/00022/RREF

Planning Application Reference: 21/01625/PPP

Development Proposal: Erection of dwellinghouse and formation of access

Location: Land East of The Garden Cottage, South Laws, Duns

Applicant: Mr and Mrs Jerry and Shona Ponder

DECISION

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

1. The proposed development fails to comply with Policy HD2 of the Scottish Borders Local Development Plan 2016 and Supplementary Planning Guidance, New Housing in the Borders Countryside 2008, as it would not relate well to the existing building group, it would break into an undeveloped field, outwith the building group's sense of place, and it would result in ribbon development along the public road, which would adversely impact upon the composition and quality of the landscape character. Furthermore, the proposed development fails to comply with Policy ED10 as it would result in the permanent loss of prime quality agricultural land.

Development Proposal

The application relates to the erection of a dwellinghouse and formation of access on Land East of The Garden Cottage, South Laws, Duns. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	11833-04
Site Plan	11833-03 Rev D
FF Plan and North & West Elevations	11833-02 Rev B

Preliminary Matters

The Local Review Body considered the review, which had been competently made, under section 43A (8) of the Town & Country Planning (Scotland) Act 1997 at its meeting on 15th August 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 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, HD2, HD3, HD4, EP13, IS2, 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 Placemaking and Design 2010
- SBC Supplementary Planning Guidance on Waste Management 2015
- Proposed Local Development Plan
- SPP 2014
- Draft NPF4

The Review Body noted that the proposal was for the erection of a dwellinghouse and formation of access on Land East of The Garden Cottage, South Laws, Duns.

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 to the west of the site and south of the public road. 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 noted that there had been one consent granted within the current Local Development Plan period which had now lapsed. The Review Body concluded that, subject to the site being considered an acceptable addition to the group, there was notional 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 a field on the eastern edge of the group. The Review Body were concerned that the proposed site lay outwith and was not related to the building group, constituting ribbon development and breaking into the corner of an arable field. Members were

also concerned that this could set a precedent for further development within the field. After full discussion, the Review Body concluded that the building group was complete and that the site was not an appropriate addition to the group. As there had also been no economic case advanced for the proposed house, Members considered the application to be contrary to Policy HD2 of the Local Development Plan and the New Housing in the Borders Countryside Supplementary Planning Guidance.

The Review Body then considered the issue of loss of prime agricultural land and compliance with Policy ED10 of the Local Development Plan. Whilst Members noted the submissions by the applicant claiming the site occupied an unproductive field margin, they agreed with the Appointed Officer that the site was still within a field being used and available for agricultural purposes and that the proposal resulted in the unjustified loss of prime agricultural land contrary to Policy ED10.

The Review Body also noted the objection of SEPA over the potential for flood risk at the site. Whilst Members had concerns over this issue, they accepted that the Appointed Officer had refused the application for other reasons and it was, therefore, not necessary to investigate the issue further at this stage.

The Review Body finally considered other material factors relating to the proposal including claimed housing land shortfall, national planning policy, other building group addition cases, access, passing places, water, drainage, impacts on trees and hedges, waste and the need for compliance with developer contributions. Members were of the opinion that the factors did not outweigh their conclusion that the development was contrary to Local Development Plan Policies and that appropriate conditions and a legal agreement could have addressed them 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.

Signed.....
Councillor N Richards
Acting Chairman of the Local Review Body

Date 23 August 2022