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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 Thursday, 22 September 2022 at 10.00 am

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

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

ORDER OF BUSINESS

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

MEMBERS

Having not been present when the following review was first considered, Councillors Mountford and Scott left the meeting. Councillor Richards chaired the meeting for the following item.

1. CONTINUATION OF REVIEW 22/00093/PPP

With reference to paragraph 5 of the Minute of 15 August, the Local Review Body continued their consideration of the 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. Consideration of the review had been continued to allow members to undertake a site visit which was held on 29 August 2022. The Members confirmed that the site visit had been worthwhile and had given them a better sense of the size of the site and the overhang of the nearby trees. The Members 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. In particular members were concerned about the risk from surface flooding as no evidence had been provided to evaluate the potential impacts.

DECISION

AGREED that:-

- (a) the request for review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;
- (b) the review could not be considered without the need for further procedure in the form of written submissions;
- (c) the Applicant be requested to submit either a Flood Risk Assessment or a Drainage Impact Assessment in line with the advice from the Flood Risk Officer, following which the Flood Risk Officer would be given the opportunity to comment; and

- (d) **consideration of the review be continued to a future meeting on a date to be confirmed.**

MEMBERS

Councillors Mountford and Scott joined the meeting prior to consideration of the following review.

2. CONTINUATION OF REVIEW 21/01421/PPP

With reference to paragraph 4 of the Minute of 18 July 2022, the Local Review Body continued their consideration of the request from Mr and Mrs J Seed c/o Ferguson Planning, 54 Island Street, Galashiels Duns to review the decision to refuse the planning application for the erection of a dwellinghouse, on Land North East of Woodend Farmhouse, Gavinton, Duns. The supporting papers included the Notice of Review; Decision Notice; Officers Report; papers referred to in the Officers report; consultation replies; list of policies and written submission from the Planning Officer and Applicants response. Also circulated were the Planning Officers comments and Applicant response on new information submitted in terms of the Soil Fertility Report; 3D image of proposed new House in relation to Existing House and Revised Site Plan indicating a reduced development boundary. Members considered whether there was a building group in the vicinity and noted there were at least three existing houses in the immediate vicinity, including the existing farmhouse and cottages and were satisfied that this constituted a building group. Members also agreed there was capacity for the group to be expanded; The Review Body concluded that the site balanced the group, allowing the farmhouse to occupy a central position and that the site mirrored the location of the cottages whilst being necessarily separated from the access and buildings relating to the working farm. The Review Body also noted the applicants' current occupation at Woodend Farm, the intention for a retirement house and the continued operation of the farm by family. However, in terms of Clause F of Policy HD2, Members did not consider it necessary to test the proposal due to their support under Clause A relating to building group addition. Members then considered whether the proposal would be contrary to Policy ED10 in relation to the loss of prime quality agricultural land and were satisfied with the findings of the Soil Fertility Report, accepting that the site occupied a poorer grade of land at the field margin and that the reduced extent of the site also resulted in a smaller land take. After considering all relevant information, the application was approved subject to conditions and a legal agreement.

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; and**
- (c) **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 the intentions notice subject to conditions and the applicants entering into a Section 75, or other suitable Legal Agreement, as set out in Appendix I to this Minute.**

3. REVIEW 22/00207/FUL

There had been circulated copies of a request from Mr & Mrs C & J Stephens, c/o Ferguson Planning, Shiel House, 54 Island Street, Galashiels to review the decision to refuse the planning application for the change of use of barn and alterations and extension to form dwellinghouse on Land North of Carterhouse, Jedburgh. The supporting papers included the Notice of Review (including the Decision Notice and Officer's Report); Papers referred to in the Officer's report; consultation replies and list of policies. Members firstly noted that as the building lay outwith any defined settlement boundary or building group, the development must be considered against Part C of Policy HD2 which referred to conversion of existing buildings to houses in the countryside. The Review Body assessed the proposals against that part of the Policy but also the relevant criteria within Policy PMD2, as well as the detailed guidance in the Housing in the Countryside Supplementary Planning Guidance and the Farm Steading Conversions Advice Note at Appendix 2 of the SPG. While being supportive of the conversion of buildings in principle, the Review Body were firmly of the opinion that the building had insufficient architectural character or merit. Following conversion, the building would still retain the appearance of an agricultural shed and Members could, therefore, not accept that such conversion work would either improve the appearance and merit of the building, or make it appear suitable for residential purposes.

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 criteria a) of Part C of Policy HD2 of the Local Development Plan 2016 and New Housing in the Borders Countryside Guidance 2008 in that the existing building was not worthy of conversion in terms of its architectural or historic merit and nor did it appear physically suited for residential use. The site lay outwith any recognised settlement or building group and no overriding essential business need had been substantiated for a house in this isolated location. The proposal would lead to sporadic residential development in the countryside and other material considerations did not outweigh the conflict with the Local Development Plan and harm that would result.**
- (d) the officer's decision to refuse the application be upheld and the application refused, for the reasons detailed in Appendix II to this Minute.**

4. REVIEW 21/01639/FUL

There had been circulated copies of a request from Mark McGlone, 20 Birch Avenue, Elgin c/o ACJ Group, 5 Moycroft Industrial Estate, Elgin to review the decision to refuse the planning application for the erection of a dwellinghouse at Cavers Hillhead, 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; support comments; further representations and list of policies. Members noted that the application was for the erection of a dwellinghouse at land West of Cavers Hillhead, Cavers, Hawick. They went onto consider whether there was a building group present and noted that whilst the site lay adjoining an existing dwellinghouse known as Cavers Hillhead, there were no other houses in the immediate vicinity and concluded that there was no building group present. Members also considered that, if approved, the development would have contravened policy and guidance by breaking into an underdeveloped field outwith the character and sense of place. Members then considered if there was a justified business case for a dwellinghouse on the site and while generally sympathetic to the principle and

divided on the issue, they ultimately concluded that there was insufficient evidence to support on economic case to justify the erection of a house on the site.

VOTE

Councillor Moffat, seconded by Councillor Scott moved that application be refused.

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

On a show of hands Members voted as follows:-

Motion - 6 votes
Amendment - 3 votes

The motion was accordingly carried.

DECISION

DECIDED that:-

- (a) the request for review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;**
- (b) the review could be considered without the need for 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 was no overriding economic justification to support the development. Material considerations did not outweigh the resulting harm.**
- (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.**

5. REVIEW OF 21/00992/PPP

There had been circulated copies of a request from Mr Christopher Wilson c/o Ferguson Planning, 54 Island Street, Galashiels to review the decision to refuse the planning application for the erection of a dwellinghouse on Plot 1 at Land North of Belses Cottage, Jedburgh. 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 Advisor drew attention to information, in the form of a Transport Technical Note, which had been submitted with the Notice of Review documentation but which had not been before the Appointed Planning 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 Transport Technical Note could not be considered without affording the Roads Officer and Planning Officer an opportunity of making representations on this new information.

DECISION

AGREED that:-

- (a) the request for review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;**

- (b) new evidence submitted with the Notice of Review in the form of a Transport Technical Note 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 Roads and Planning Officer be given the opportunity to comment on the new evidence submitted with the Notice of Review; and**
- (e) consideration of the review be continued to a future meeting on a date to be confirmed.**

6. REVIEW OF 21/00993/PPP

There had been circulated copies of a request from Mr Christopher Wilson c/o Ferguson Planning, 54 Island Street, Galashiels to review the decision to refuse the planning application for the erection of a dwellinghouse on Plot 2 at Land North of Belses Cottage, Jedburgh. 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 Advisor drew attention to information, in the form of a Transport Technical Note, which had been submitted with the Notice of Review documentation but which had not been before the Appointed Planning 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 Transport Technical Note could not be considered without affording the Roads Officer and Planning Officer an opportunity of making representations on this new information.

DECISION

AGREED that:-

- (a) the request for review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;**
- (b) new evidence submitted with the Notice of Review in the form of a Transport Technical Note 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 Roads and Planning Officer be given the opportunity to comment on the new evidence submitted with the Notice of Review; and**
- (e) consideration of the review be continued to a future meeting on a date to be confirmed.**

The meeting concluded at 12.20 pm

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**SCOTTISH BORDERS COUNCIL
LOCAL REVIEW BODY INTENTIONS 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: 22/00016/RREF

Planning Application Reference: 21/01421/PPP

Development Proposal: Erection of dwellinghouse

Location: Land North East of Woodend Farmhouse, Duns

Applicant: Mr John & Mrs Louise Seed

DECISION

The Local Review Body reverses the decision of the appointed officer and indicates that it intends 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 erection of a dwellinghouse at Land North East of Woodend Farmhouse, Duns. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	865-PPP-1
Site Plan	A103

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 July 2022.

After examining the review documentation at that meeting, which included a) Notice of Review (including the Decision Notice and Officer's Report; b) Papers referred to in Officer's Report; c) Consultation Replies; and d) List of Policies, the Review Body noted that the applicants had

stated new information had been submitted with the Review. This related to a Soil Fertility Report, amended Site Plan with reduced development boundary and a 3D visualisation.

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 22nd September 2022. Members considered all matters, including responses to the further information from the Appointed Officer and the applicants' 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, HD2, HD3, ED10, EP3, EP7, EP13, IS2, 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 Biodiversity 2005
- SBC Supplementary Planning Guidance on Landscape and Development 2008
- SBC Supplementary Planning Guidance on Trees and Development 2008

The Review Body noted that the proposal was for the erection of a dwellinghouse at Land North East of Woodend Farmhouse, Duns.

Members firstly considered whether there was a building group in the vicinity under Clause A of Policy HD2. They noted that there were at least three existing houses in the immediate vicinity to the west, including the existing farmhouse and cottages. 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 were no existing permissions for any further houses at the group. 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 had regard to the location and spacings of other houses in the group, especially the farmhouse which Members noted was immediately adjoining the site. Given the relationship with the driveways

and the position of other cottages to the east, Members agreed with the applicants that the site balanced the group, allowing the farmhouse to occupy a central position and focal point. The Review Body considered that the site mirrored the location of the cottages whilst being necessarily separated from the access and buildings relating to the working farm. The relationship with the building group was enhanced by the reduced curtilage boundary, existing and proposed planting, all of which could be controlled by condition. In conclusion, Members considered the site to be an appropriate addition to the building group in compliance with Clause A of Policy HD2 and the Housing in the Countryside SPG.

The Review Body also noted the applicants' current occupation at Woodend Farm, the intention for a retirement house and the continued operation of the farm by family. However, in terms of Clause F of Policy HD2, Members did not consider it necessary to test the proposal due to their support under Clause A relating to building group addition.

Members then considered the proposal in relation to Policy ED10 relating to prime quality agricultural land. Whilst they noted the views of the Appointed Officer, the Review Body accepted the findings of the Soil Fertility Report and noted that there had been previous efforts at mitigation and improving the quality of the land. On the basis of the evidence provided, Members considered the site to be occupying a poorer grade of land at the field margin, the reduced extent of the site also resulting in a smaller land take. For these reasons, Members were content that the proposal did not represent a significant loss of prime agricultural land and, thus, complied with Policy ED10.

The Review Body finally considered other material issues including impact on the setting of a listed building, provision of water and drainage, road access details, landscape, tree impacts and the need for compliance with developer contributions. Members were of the opinion that appropriate conditions and a legal agreement could address the issues satisfactorily.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was consistent with Policies HD2 and ED10 of the Local Development Plan and relevant Supplementary Planning Guidance. The development was considered to be an appropriate addition to the Woodend Farm building group and was sited on land demonstrated to have limited fertility. Consequently, the application was approved subject to conditions and a legal agreement.

DIRECTIONS

1. Application for approval of matters specified in the conditions set out in this decision shall be made to the Planning Authority before whichever is the latest of the following:
 - a. the expiration of three years from the date of this permission, or
 - b. the expiration of six months from the date on which an earlier application for approval of matters specified in the conditions set out in this decision notice was refused or dismissed following an appeal.

Only one application may be submitted under paragraph (b) of this condition, where such an application is made later than three years after the date of this consent.

Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

2. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the matters specified in the conditions set out in this decision.

Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

CONDITIONS

1. No development shall commence until the details of the layout, siting, design and external appearance of the building(s), the means of access thereto and the landscaping of the site have been submitted to and approved in writing by the Planning Authority. Thereafter the development shall be carried out in accordance with the agreed details.

Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

2. No development shall commence until all matters specified in conditions have, where required, been submitted to and approved in writing by the Planning Authority. Thereafter the development shall only take place in strict accordance with the details so approved.

Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

3. No development shall commence until a tree survey and tree protection plan are submitted to, and approved in writing by, the Planning Authority. The identified trees to be protected at all times during construction and building operations, by the erection of substantial timber fence around the trees or tree areas, together with such other measures as are necessary to protect the trees and their roots from damage. Details of the methods it is proposed to use shall be submitted by the applicant to the Local Planning Authority and be approved by them in writing. The approved protective measures shall be undertaken before any works commence on the site and must, thereafter be observed at all times until the development is completed.

Reason: To ensure that adequate precautions are taken to protect trees during building operations.

4. 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 (as appropriate):

- I. existing and finished ground levels in relation to a fixed datum preferably ordnance
- II. trees to be retained within the site
- III. existing landscaping features, hedgerows and trees to be retained, protected and, in the case of damage, restored
- IV. location and design, including materials, of walls, fences and gates
- V. soft and hard landscaping works including new tree planting adjoining the site to the west and incorporated within hedgerow planting along the new boundary to the north and eastern sides.
- VI. existing and proposed services such as cables, pipelines, sub-stations
- VII. A programme for completion and subsequent maintenance.

Reason: To ensure the satisfactory form, layout and assimilation of the development.

5. The development site and garden curtilage to be restricted to the area bounded by the red line to the north and west and by the green line (indicating hedge and tree planting) to the east and south, as shown on revised Site Plan A103.

Reason: To integrate the site with the adjoining building group and prevent additional incursion into prime agricultural land.

6. The dwellinghouse not to be occupied until two parking spaces, not including any garage, and turning area are provided within the curtilage of the site and retained thereafter in perpetuity
Reason: To ensure adequate parking and turning provision, in the interests of road safety.
7. No development to be commenced until the details of water and drainage provision are submitted to, and approved in writing by, the Planning Authority. Once approved, the development then to be completed in accordance with those details.
Reason: To ensure that the development is adequately serviced and in the interests of public health.
8. No development to be commenced until a scheme of waste storage has been submitted to, and approved in writing by, the Planning Authority. Once approved, provision to be made in accordance with the approved details prior to occupation of the dwellinghouse.
Reason: To ensure adequate provision for waste storage within the site.

LEGAL AGREEMENT

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

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 3rd October 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: 22/00023/RREF

Planning Application Reference: 22/00207/FUL

Development Proposal: Change of use of barn and alterations to form dwellinghouse

Location: Barn, Land North of Carterhouse, Jedburgh

Applicant: Mr & Mrs C & J Stephens

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 criteria a) of Part C of Policy HD2 of the Local Development Plan 2016 and New Housing in the Borders Countryside Guidance 2008 in that the existing building is not worthy of conversion in terms of its architectural or historic merit and nor does it appear physically suited for residential use. The site lies outwith any recognised settlement or building group and no overriding essential business need has been substantiated for a house in this isolated location. The proposal would lead to sporadic residential development in the countryside and other material considerations do not outweigh the conflict with the Local Development Plan and harm that would result.

DEVELOPMENT PROPOSAL

The application relates to the change of use of a barn and alterations to form a dwellinghouse at Land North of Carterhouse, Jedburgh. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	STE21S-02-010109
Existing Site Plan	STE21S-02-95-001
Existing Elevations	STE21S-02-95-002A

Site Plan STE21S-02-01-105A
Proposed Floor Plan and Elevations STE21S-02-01-107B

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 22nd September 2022.

After examining the review documentation at that meeting, which included a) Notice of Review (including the Decision Notice and Officer's Report); b) Papers referred to in Officer's Report; c) Consultation Replies; and d) Policy List, 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, EP5, EP16, IS2, IS7, IS9 and IS13

Proposed Local Development Plan Policy: IS13

Other Material Considerations

- SBC Supplementary Planning Guidance on Housing in the Countryside 2008
- SBC Supplementary Planning Guidance on Developer Contributions 2019
- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006
- SBC Supplementary Planning Guidance on Placemaking and Design 2010
- SBC Supplementary Planning Guidance on Local Landscape Designations 2012
- SBC Supplementary Planning Guidance on Waste Management 2015
- SBC Supplementary Planning Guidance on Use of Timber in Sustainable Construction 2009
- SBC Supplementary Planning Guidance on Contaminated Land Inspection Strategy 2001
- SBC Supplementary Planning Guidance on Sustainable Urban Drainage Systems 2020
- Draft National Planning Framework 4
- SPP 2014

The Review Body noted that the proposal was for planning permission to change the use of a barn and carry out alterations to form a dwellinghouse at Land North of Carterhouse, Jedburgh.

Members firstly noted that as the building lay outwith any defined settlement boundary or building group, the development must be considered against Part C of Policy HD2 which refers to conversion of existing buildings to houses in the countryside. The Review Body assessed

the proposals against that part of the Policy but also the relevant criteria within Policy PMD2, as well as the detailed guidance in the Housing in the Countryside Supplementary Planning Guidance and the Farm Steading Conversions Advice Note at Appendix 2 of the SPG. Whilst the Review Body recalled other cases of conversions within farm buildings, they proceeded to determine the Review entirely on its own merits and in accordance with the Local Development Plan and all other material factors

Referring to the three criteria under Part C of Policy HD2, the Review Body noted that the Appointed Officer had accepted that the proposal met two of the criteria in relation to the building being intact, not requiring significant demolition and the details of the conversion and extension being in scale with the existing building. They agreed with the Appointed Officer on these matters.

However, Members noted that the application had been refused as a result of non-compliance with Criterion a) which requires any building to possess sufficient architectural and historic merit and to be capable of conversion, being suitable for the purpose intended. They were supportive of conversion of buildings in principle but considered that the building needed to be appropriate in the first instance. The Review Body were firmly of the opinion that the building had insufficient architectural character or merit, being a contemporary agricultural barn with shallow metal roofing. They concluded that, even with new doors and windows, the building would retain the appearance of an agricultural shed and Members could, therefore, not accept that such conversion work would either improve the appearance and merit of the building, or make it appear suitable for residential purposes. There was also concern at the proximity of the building to another agricultural building. The Review Body concluded that the application was contrary to Policy HD2 and the Farm Steadings Conversion Advice Note for these reasons.

The Review Body finally considered other material issues relating to the proposal including access, parking, water, drainage, contamination, developer contributions, permitted development, residential amenity, landscape, air quality, sustainability and applicant family circumstances. They were of the opinion that the issues either did not influence the overall decision on the Review or could have been controlled by appropriate conditions and a legal agreement had the proposal been supported

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

Dated **3rd October 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: 22/00024/RREF

Planning Application Reference: 21/01639/FUL

Development Proposal: Erection of dwellinghouse

Location: Land West of Cavers Hillhead, Cavers, Hawick

Applicant: Mr Mark McGlone

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. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	514.1.01
Site Plan, Section, Planting	514.1.02
Floor and Roof Plan	514.1.03
Sections, Elevations	514.1.04

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 22nd September 2022.

After examining the review documentation at that meeting, which included a) Notice of Review (including Officer's Report and Decision Notice); b) Papers referred to in Officer's Report; c) Consultation Replies; d) Support Comments; e) Further Representation and f) Policy List, the Review Body noted that the applicant had requested further procedure in the form of written submissions, a hearing and site inspection but did not consider further procedure 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, HD2, HD3, EP1, EP2, EP3, EP13, IS2, 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

The Review Body noted that the application was for the erection of a dwellinghouse at land West of Cavers Hillhead, Cavers, Hawick.

Members firstly considered whether there was a building group present under Part A of Policy HD2. They noted that whilst the site lay adjoining an existing dwellinghouse known as Cavers Hillhead, there were no other houses in the immediate vicinity. Whilst the Review Body noted the applicant's claims in relation to an historic connection with Cavers Castle parkland, the need to stem rural depopulation and to consider building groups of less than three houses, they agreed with the Appointed Officer that there was no building group present of a minimum of three existing houses that the site was related to and that the application was, therefore contrary to Part A of Policy HD2 – the current adopted Local Development Plan Policy for new housing in the countryside.

Members considered that, even if they had identified a building group of three houses in the vicinity, the site would still contravene Policy and guidance by breaking into an undeveloped field outwith the character and sense of place. Whilst the applicant contended this was garden

ground associated with Cavers Hillhead, the Review Body still considered this to be part of an undeveloped field which contained, and extended beyond the current confines of, the garden. Members also considered that allowing development could set a precedent for further sporadic expansion

The Review Body then considered whether there was any justified business case for a dwellinghouse on the site under Part F of Policy HD2. They noted that the new house was principally intended to provide accommodation for a manager of the woodland resource on the land holding but would also reduce the isolation and improve the welfare of the current resident of Cavers Hillhead, as well as supporting diversification of the holiday park. Whilst Members were generally sympathetic to the principle of the request and noted the claimed benefits, they did not consider there was sufficient economic case advanced to justify the erection of a house on the site. The submitted Business Case relating to woodland management did not persuade the Review Body that it was essential for a manager's dwellinghouse to be located at the site. It was, therefore, concluded that the proposal was contrary to Part F of Policy HD2.

The Review Body finally considered other material issues relating to the proposal including water and drainage, road access, parking, tree impacts, ecology and the need for compliance with developer contributions. As Members did not consider there had been a case substantiated for the principle of a house on the site, they agreed that these issues did not influence their final decision.

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 reason stated above.

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

3. 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.
 4. 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 3rd October 2022

**SCOTTISH BORDERS COUNCIL
LOCAL REVIEW BODY INTENTIONS 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: 22/00016/RREF

Planning Application Reference: 21/01421/PPP

Development Proposal: Erection of dwellinghouse

Location: Land North East of Woodend Farmhouse, Duns

Applicant: Mr John & Mrs Louise Seed

DECISION

The Local Review Body reverses the decision of the appointed officer and indicates that it intends 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 erection of a dwellinghouse at Land North East of Woodend Farmhouse, Duns. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	865-PPP-1
Site Plan	A103

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 July 2022.

After examining the review documentation at that meeting, which included a) Notice of Review (including the Decision Notice and Officer's Report; b) Papers referred to in Officer's Report; c) Consultation Replies; and d) List of Policies, the Review Body noted that the applicants had

stated new information had been submitted with the Review. This related to a Soil Fertility Report, amended Site Plan with reduced development boundary and a 3D visualisation.

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 22nd September 2022. Members considered all matters, including responses to the further information from the Appointed Officer and the applicants' 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, HD2, HD3, ED10, EP3, EP7, EP13, IS2, 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 Biodiversity 2005
- SBC Supplementary Planning Guidance on Landscape and Development 2008
- SBC Supplementary Planning Guidance on Trees and Development 2008

The Review Body noted that the proposal was for the erection of a dwellinghouse at Land North East of Woodend Farmhouse, Duns.

Members firstly considered whether there was a building group in the vicinity under Clause A of Policy HD2. They noted that there were at least three existing houses in the immediate vicinity to the west, including the existing farmhouse and cottages. 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 were no existing permissions for any further houses at the group. 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 had regard to the location and spacings of other houses in the group, especially the farmhouse which Members noted was immediately adjoining the site. Given the relationship with the driveways

and the position of other cottages to the east, Members agreed with the applicants that the site balanced the group, allowing the farmhouse to occupy a central position and focal point. The Review Body considered that the site mirrored the location of the cottages whilst being necessarily separated from the access and buildings relating to the working farm. The relationship with the building group was enhanced by the reduced curtilage boundary, existing and proposed planting, all of which could be controlled by condition. In conclusion, Members considered the site to be an appropriate addition to the building group in compliance with Clause A of Policy HD2 and the Housing in the Countryside SPG.

The Review Body also noted the applicants' current occupation at Woodend Farm, the intention for a retirement house and the continued operation of the farm by family. However, in terms of Clause F of Policy HD2, Members did not consider it necessary to test the proposal due to their support under Clause A relating to building group addition.

Members then considered the proposal in relation to Policy ED10 relating to prime quality agricultural land. Whilst they noted the views of the Appointed Officer, the Review Body accepted the findings of the Soil Fertility Report and noted that there had been previous efforts at mitigation and improving the quality of the land. On the basis of the evidence provided, Members considered the site to be occupying a poorer grade of land at the field margin, the reduced extent of the site also resulting in a smaller land take. For these reasons, Members were content that the proposal did not represent a significant loss of prime agricultural land and, thus, complied with Policy ED10.

The Review Body finally considered other material issues including impact on the setting of a listed building, provision of water and drainage, road access details, landscape, tree impacts and the need for compliance with developer contributions. Members were of the opinion that appropriate conditions and a legal agreement could address the issues satisfactorily.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was consistent with Policies HD2 and ED10 of the Local Development Plan and relevant Supplementary Planning Guidance. The development was considered to be an appropriate addition to the Woodend Farm building group and was sited on land demonstrated to have limited fertility. Consequently, the application was approved subject to conditions and a legal agreement.

DIRECTIONS

1. Application for approval of matters specified in the conditions set out in this decision shall be made to the Planning Authority before whichever is the latest of the following:
 - a. the expiration of three years from the date of this permission, or
 - b. the expiration of six months from the date on which an earlier application for approval of matters specified in the conditions set out in this decision notice was refused or dismissed following an appeal.

Only one application may be submitted under paragraph (b) of this condition, where such an application is made later than three years after the date of this consent.

Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

2. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the matters specified in the conditions set out in this decision.

Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

CONDITIONS

1. No development shall commence until the details of the layout, siting, design and external appearance of the building(s), the means of access thereto and the landscaping of the site have been submitted to and approved in writing by the Planning Authority. Thereafter the development shall be carried out in accordance with the agreed details.

Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

2. No development shall commence until all matters specified in conditions have, where required, been submitted to and approved in writing by the Planning Authority. Thereafter the development shall only take place in strict accordance with the details so approved.

Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

3. No development shall commence until a tree survey and tree protection plan are submitted to, and approved in writing by, the Planning Authority. The identified trees to be protected at all times during construction and building operations, by the erection of substantial timber fence around the trees or tree areas, together with such other measures as are necessary to protect the trees and their roots from damage. Details of the methods it is proposed to use shall be submitted by the applicant to the Local Planning Authority and be approved by them in writing. The approved protective measures shall be undertaken before any works commence on the site and must, thereafter be observed at all times until the development is completed.

Reason: To ensure that adequate precautions are taken to protect trees during building operations.

4. 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 (as appropriate):

- I. existing and finished ground levels in relation to a fixed datum preferably ordnance
- II. trees to be retained within the site
- III. existing landscaping features, hedgerows and trees to be retained, protected and, in the case of damage, restored
- IV. location and design, including materials, of walls, fences and gates
- V. soft and hard landscaping works including new tree planting adjoining the site to the west and incorporated within hedgerow planting along the new boundary to the north and eastern sides.
- VI. existing and proposed services such as cables, pipelines, sub-stations
- VII. A programme for completion and subsequent maintenance.

Reason: To ensure the satisfactory form, layout and assimilation of the development.

5. The development site and garden curtilage to be restricted to the area bounded by the red line to the north and west and by the green line (indicating hedge and tree planting) to the east and south, as shown on revised Site Plan A103.

Reason: To integrate the site with the adjoining building group and prevent additional incursion into prime agricultural land.

6. The dwellinghouse not to be occupied until two parking spaces, not including any garage, and turning area are provided within the curtilage of the site and retained thereafter in perpetuity
Reason: To ensure adequate parking and turning provision, in the interests of road safety.
7. No development to be commenced until the details of water and drainage provision are submitted to, and approved in writing by, the Planning Authority. Once approved, the development then to be completed in accordance with those details.
Reason: To ensure that the development is adequately serviced and in the interests of public health.
8. No development to be commenced until a scheme of waste storage has been submitted to, and approved in writing by, the Planning Authority. Once approved, provision to be made in accordance with the approved details prior to occupation of the dwellinghouse.
Reason: To ensure adequate provision for waste storage within the site.

LEGAL AGREEMENT

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

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.

5. 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.
6. 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 3rd October 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: 22/00024/RREF

Planning Application Reference: 21/01639/FUL

Development Proposal: Erection of dwellinghouse

Location: Land West of Cavers Hillhead, Cavers, Hawick

Applicant: Mr Mark McGlone

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. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	514.1.01
Site Plan, Section, Planting	514.1.02
Floor and Roof Plan	514.1.03
Sections, Elevations	514.1.04

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 22nd September 2022.

After examining the review documentation at that meeting, which included a) Notice of Review (including Officer's Report and Decision Notice); b) Papers referred to in Officer's Report; c) Consultation Replies; d) Support Comments; e) Further Representation and f) Policy List, the Review Body noted that the applicant had requested further procedure in the form of written submissions, a hearing and site inspection but did not consider further procedure 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, HD2, HD3, EP1, EP2, EP3, EP13, IS2, 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

The Review Body noted that the application was for the erection of a dwellinghouse at land West of Cavers Hillhead, Cavers, Hawick.

Members firstly considered whether there was a building group present under Part A of Policy HD2. They noted that whilst the site lay adjoining an existing dwellinghouse known as Cavers Hillhead, there were no other houses in the immediate vicinity. Whilst the Review Body noted the applicant's claims in relation to an historic connection with Cavers Castle parkland, the need to stem rural depopulation and to consider building groups of less than three houses, they agreed with the Appointed Officer that there was no building group present of a minimum of three existing houses that the site was related to and that the application was, therefore contrary to Part A of Policy HD2 – the current adopted Local Development Plan Policy for new housing in the countryside.

Members considered that, even if they had identified a building group of three houses in the vicinity, the site would still contravene Policy and guidance by breaking into an undeveloped field outwith the character and sense of place. Whilst the applicant contended this was garden

ground associated with Cavers Hillhead, the Review Body still considered this to be part of an undeveloped field which contained, and extended beyond the current confines of, the garden. Members also considered that allowing development could set a precedent for further sporadic expansion

The Review Body then considered whether there was any justified business case for a dwellinghouse on the site under Part F of Policy HD2. They noted that the new house was principally intended to provide accommodation for a manager of the woodland resource on the land holding but would also reduce the isolation and improve the welfare of the current resident of Cavers Hillhead, as well as supporting diversification of the holiday park. Whilst Members were generally sympathetic to the principle of the request and noted the claimed benefits, they did not consider there was sufficient economic case advanced to justify the erection of a house on the site. The submitted Business Case relating to woodland management did not persuade the Review Body that it was essential for a manager's dwellinghouse to be located at the site. It was, therefore, concluded that the proposal was contrary to Part F of Policy HD2.

The Review Body finally considered other material issues relating to the proposal including water and drainage, road access, parking, tree impacts, ecology and the need for compliance with developer contributions. As Members did not consider there had been a case substantiated for the principle of a house on the site, they agreed that these issues did not influence their final decision.

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 reason 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 3rd October 2022