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SCOTTISH BORDERS COUNCIL LOCAL REVIEW BODY

MINUTES of Meeting of the LOCAL REVIEW
BODY held in Council Chamber - Blended on
Monday, 20 March 2023 at 10.00 am

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

Apologies: Councillors E. Small, J. Cox.

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

1. CONTINUATION OF REVIEW 22/00041/RREF

With reference to paragraph 2 of the Minute of 20 February 2023, the Local Review Body continued their consideration of a request from Mr P J Lewis, c/o RM Architecture Ltd, Bloomfield, Heatherlie Park, Selkirk to review the decision to refuse the planning application for the erection of a dwellinghouse on Land South West of Castleside Cottage, Selkirk. The supporting papers included the written submission from the Applicant detailing the fibre cement cladding and colour proposed, together with photographs of the use of the material; Notice of Review (including the Decision Notice and Officer's Report); Papers referred to in the Officer's report; consultation replies; further representations and list of policies. The Applicant had also supplied a sample of the fibre cement to be used.

- 1.1 At their initial consideration of the Review, Members noted that the application had not been refused in relation to the principle of a house under Policy HD2 of the Local Development Plan and the New Housing in the Borders Countryside Supplementary Planning Guidance. However, they did consider the principle as part of their overall consideration of the Review, the relationship with the Development Plan and all other material issues. Members accepted that there was a building group present at Castleside, that there was capacity for addition of another house and that the application site was an appropriate site within the group. The Review Body concluded that the principle of a house was acceptable under Clause A of Policy HD2 and the New Housing in the Borders Countryside SPG.
- 1.2 Members then considered the issues of siting and design and noted that the Appointed Officer had accepted the scale, position and alignment of the proposed dwellinghouse but had considered that the external cladding material, its colour and the fenestration, especially to the south-west elevation, were inappropriate and out of context with the character and architectural styles of the building group and surrounding area.
- 1.3 After careful consideration of the fibre cement sample and additional photographs, the Review Body were of the opinion that the design would result in a house very different from what existed within the building group, appearing prominent and incongruous adjoining the existing cottage. Whilst there were no objections to the overall scale and form of the house, the type, colour and extent of external cladding and fenestration would result in a design that would be out of character with the group and area.

VOTE

Councillor Thomson, seconded by Councillor Orr, moved that the officer's decision be upheld and the application refused.

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

On a show of hands Members voted as follows:-

*Motion - 5 votes
Amendment - 2 votes*

**DECISION
DECIDED that:-**

- (a) the request for review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;**
- (b) the review could be considered without the need for further procedure;**
- (c) the design was contrary to Policies PMD2 and HD2 of the Local Development Plan and the advice within the SPGs;**
- (d) NPF4 Policies did not alter their conclusion.**
- (e) that the Officer's decision to refuse the application be upheld.**

PROCEDURAL HEARINGS

2.0 Mrs Thompson, Solicitor explained that that the following applications had been placed on the Agenda as procedural hearings as a result of the Scottish Government introducing the National Planning Framework 4 (NPF4) on 13 February 2023, which superseded previous guidance and now formed part of the Development Plan. In accordance with the terms of Section 25 of the Town and Country Planning (Scotland) Act 1997, the Planning Authority must ensure that Planning Decisions and Reviews took account of the new Framework. It was therefore agreed that comments on the impact of NPF4 on the planning application and subsequent review be sought from the Planning Officer and Applicant, prior to the following applications being presented to the Local Review Body for consideration.

3.0 **REVIEW OF 23/00004/RREF**

There had been circulated copies of a request from W A Mole & Son, c/o Cockburn's Consultants, 1A Belford Park, Edinburgh to review the decision to refuse the planning application for the erection of 4 No. dwellinghouses on Land West of Greenburn Cottage, Auchencrow. 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 and consultation replies.

**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 Planning Officer and Applicant be given the opportunity to submit an NPF4 statement; and**

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

4.0 **REVIEW OF 23/00005/RREF**

There had been circulated copies of request from Mr Alan Hislop, 100 Abbotseat, Kelso , to review the decision to refuse the planning application for the erection of a boundary fence (retrospective) at 100 Abbotseat, 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; additional information, consultation replies and Objection comments.

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 Planning Officer and Applicant be given the opportunity to submit an NPF4 statement; and**
- (f) **consideration of the review be continued to a future meeting on a date to be confirmed.**

5.0 **REVIEW OF 23/00007/RREF**

There had been circulated copies of a request from Mr and Mrs P Nowell, The Millers House, Scotsmill, Kailzie, Peebles to review the decision to refuse the planning application for the formation of access and boundary fence (retrospective) at The Millers House, Scotsmill, Kailzie, Peebles . The supporting papers included the Notice of Review (including the Decision Notice and Officer's Report); Papers referred to in the Officer's report; Consultation Replies; Objection comments and further representations;

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 Planning Officer and Applicant be given the opportunity to submit an NPF4 statement; and**
- (d) **consideration of the review be continued to a future meeting on a date to be confirmed.**

6.0 **REVIEW OF 23/00008/RREF**

There had been circulated copies of a request from Mr Rob Cameron c/o Ferguson Planning, 54 Island Street, Galashiels to review the decision to refuse the planning application for the erection of residential dwelling together with associated landscaping/amenity, parking, infrastructure and access at Land South of Ebbastrand, Coldingham Sands, Coldingham. 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 and objection comments.

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 Planning Officer and Applicant be given the opportunity to submit an NPF4 statement; and
- (d) consideration of the review be continued to a future meeting on a date to be confirmed.

The meeting concluded at 10.23 am



**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: 22/00041/RREF

Planning Application Reference: 21/01618/FUL

Development Proposal: Erection of dwellinghouse

Location: Land South West of Castleside Cottage, Ashkirk, Selkirk

Applicant: Mr P J Lewis

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 would, due to its design and materials, be unsympathetic to, and adversely impact on, the character of the existing building group, contrary to Policies PMD2 and HD2 of the Local Development Plan 2016, and contrary to Placemaking and Design Supplementary Planning Guidance 2010 and New Housing in the Borders Countryside Supplementary Planning Guidance 2008. Other material considerations do not override these policy conflicts and the harm that would arise as a result of the development.

DEVELOPMENT PROPOSAL

The application relates to the erection of a dwellinghouse on Land South West of Castleside Cottage, Ashkirk, Selkirk. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Site Plan	21-001-SD-002 REV H
Proposed House Floor Plan & Elevations	21-001-SD-001 REV K
Contextual Elevation	21-001-SD-003 REV B
Shadow Path Analysis	21-001-SD-004 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 23rd January 2023

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 the Officer Report; c) Consultation Replies; d) Further Representation and e) List of Policies, the Review Body noted that a revised Contextual Elevation (showing a new window in a neighbouring property) was a new drawing that had not been in front of the Appointed Officer at the time of determination. However, as the Officer was aware of the option of the new window as considered in the Handling Report and given that residential amenity was not cited as a reason for refusal, the Members accepted the new information without the need to test against S43B of the Act.

After discussion. Members then concluded, however, that there was a requirement for further procedure in the form of submission of a sample of the fibre cement exterior cladding together with photographic images of buildings where fibre cement had been used for external walls and roofs to the same extent and in the colour as that proposed.

The Review was then considered by the Review Body at its meeting on 20th February 2023. At that meeting, Members noted that National Planning Framework 4 (NPF4) was in force as part of the Development Plan and considered it necessary for the Review Body to have regard to any relevant Policies in NPF4 before determining the Review. Members concluded that it was appropriate to undertake further procedure by seeking written submissions from the Appointed Officer and Applicant in relation to NPF4.

The Review was, therefore, continued to the Local Review Body meeting on 20th March 2023. Members considered all matters at this meeting, including the fibre cement sample provided, photographs of similar cladding installations elsewhere and responses from the Appointed Officer and Applicant in relation to NPF4. Members 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: Scottish Borders Local Development Plan 2016 and National Planning Framework 4. The LRB considered that the relevant listed policies were:

- Local Development Plan policies: PMD1, PMD2, HD2, HD3, HD4, EP1, EP2, EP3, EP5, EP7, EP8, EP10, EP13, IS2, IS7 and IS9
- NPF 4 policies : 2, 3, 4, 9, 12, 13, 14, 15, 16, 17, 18, 19, 22, 23, 24 and 29

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 Trees and Development 2008
- “Control of Woodland Removal” Scottish Government 2019

The Review Body noted that the application was for the erection of a dwellinghouse on Land South West of Castleside Cottage, Ashkirk, Selkirk

At their initial consideration of the Review, Members noted that the application had not been refused in relation to the principle of a house under Policy HD2 of the Local Development Plan and the New Housing in the Borders Countryside Supplementary Planning Guidance. However, they did consider the principle as part of their overall consideration of the Review, the relationship with the Development Plan and all other material issues. Members accepted that there was a building group present at Castleside, that there was capacity for addition of another house and that the application site was an appropriate site within the group. The Review Body concluded that the principle of a house was acceptable under Clause A of Policy HD2 and the New Housing in the Borders Countryside SPG.

Members then considered the issues of siting and design, as required by Policies PMD2 and HD2 of the Local Development Plan and Policies 14 and 17 of NPF4, supported by the SPGs. Their deliberations were assisted by the submissions made under further procedure from the Applicant and Appointed Officer, relating to a sample of the proposed external cladding, photographs of its usage at other locations and the relationship of the proposal to relevant NPF4 Policies. The Review Body noted that the Appointed Officer had accepted the scale, position and alignment of the proposed dwellinghouse but had considered that the external cladding material, its colour and the fenestration, especially to the south-west elevation, were inappropriate and out of context with the character and architectural styles of the building group and surrounding area.

Members, therefore, carefully considered the visual impacts of the proposed design, the context set by the building group and surrounding area and the issue of compatibility with local character. With regard to these matters, Members were also aware of the amended Community Council response now supporting the proposed design and, indeed, all submissions from the applicant. Whilst the Review Body were aware that there were a variety of architectural styles, including conversions, within the building group as shown in the submitted Design Statement, they were uncertain regarding the impacts of the dark fibre cement cladding used across the whole building. Those concerns had led to the request for submission of a sample of the cladding and photographs of it being used in situ.

After consideration of the sample and photographs, the Review Body were of the opinion that the design would result in a house very different from what exists within the building group, appearing prominent and incongruous adjoining the existing cottage. Whilst there were no objections to the overall scale and form of the house, the type, colour and extent of external cladding and fenestration would result in a design that would be out of character with the group and area. The Review Body concluded that the design was contrary to Policies PMD2 and HD2 of the Local Development Plan, the advice within the SPGs and that NPF4 Policies did not alter their conclusion.

Members finally considered other material issues relating to the proposal including residential amenity, flood risk, water, drainage, road access, parking, waste storage, air quality, ecology and the need for compliance with developer contributions. As Members did not consider that the proposal was acceptable for design reasons, 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 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 30 March 2023