

# Public Document Pack

## SCOTTISH BORDERS COUNCIL LOCAL REVIEW BODY

MINUTE of Meeting of the LOCAL REVIEW BODY held in the Council Chamber, Council Headquarters, Newtown St Boswells on Monday, 15 May 2023 at 10 a.m.

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

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

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### 1. PROCEDURAL HEARINGS

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as a result of the Scottish Government introducing the National Planning Framework 4 (NPF4) on 13 February 2023, which superseded previous guidance and now formed part of the Development Plan.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.

### 2. REVIEW OF 23/00013/RREF

There had been circulated copies of a request from Ms Norma Conroy, Hardens Hall (Ard Na Greine), Hardens Road, Duns to review the decision to refuse the planning application in respect of the erection of a dwellinghouse at Paddock West of Hardens Hall, 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 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.

### 3. REVIEW OF 23/00017/RREF

There had been circulated copies of request from Mr Andrew Douglas-Home, per Camerons Strachan Yuill Architects, 1 Wilderhaugh, Galashiels to review the decision to refuse the planning application in respect of the erection of 2 No. dwellinghouses on Land South of 1 Kelso Road, Coldstream. The supporting papers included the Notice of

Review (including the Decision Notice and Officer's Report); 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**
- (d) **consideration of the review be continued to a future meeting on a date to be confirmed.**

#### **4. REVIEW OF 23/00019/RREF**

There had been circulated copies of a request from Mr J M and Mrs G Barton c/o Ferguson Planning, 54 Island Street, Galashiels to review the decision to refuse the planning application in respect of the installation of timber gates (retrospective) at Church House, Raemartin Square, West Linton. The supporting papers included the Notice of Review (including the Decision Notice and Officer's Report); Papers referred to in the Officer's report 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.**

### **BUSINESS**

#### **5.0 CONTINUATION OF REVIEW OF 23/00004/RREF**

5.1 With reference to paragraph 3 of the Minute of 20 March 2023, 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 written submissions from the Planning Officer and Applicant in respect of NPF4; Notice of Review (including the Decision Notice and Officer's Report); Additional Information and Consultation Replies and list of policies.

5.2 Members noted that Auchencrow was not a recognised settlement within the Local Plan, therefore the key issues were compliance with LDP Policy HD2 on housing in the countryside, PMD2 on visual impacts and road safety and SPGs on housing in the countryside and placemaking and design. The Appointed Officer and the applicants were in agreement that there was an established building group at Auchencrow and that there was numerical capacity within the building group for an additional four houses under the terms of Policy HD2. There was concern with regard to loss of prime agricultural land and

the Members requested that the application be continued to allow for a site visit and for the site to be marked out for their inspection to assist with their understanding of its relationship with the building group.

#### **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 a site visit;**
- (c) **the proposed site be marked out in order that they could visualise the amount of agricultural land to be used; and**
- (d) **consideration of the review be continued to a future meeting on a date to be confirmed.**

#### **6.0 REVIEW 22/00005/RREF**

6.1 There had been circulated copies of a request from Mr Alan Hislop, 100 Abbotseat, Kelso to refuse the planning application in respect of the erection of Boundary fence (retrospective) at 100 Abbotseat, Kelso. The supporting papers included the written submissions from the Planning Officer and Applicant in respect of NPF4; Notice of Review (including the Decision Notice and Officer's Report); papers referred to in the Officer Report; Support Comment; Consultation Replies and list of policies.

6.2 Members noted that it was unfortunate that the works had taken place and the application was retrospective. Members noted that the garden ground was previously enclosed by hedging and that some hedging had been retained elsewhere on the boundary on the opposite side of the gate. The Review Body noted that the rear garden ground was small and overlooked by neighbours and this impacted on its amenity. Members considered that it was important for the property to benefit from improved amenity space and this had to be balanced against any potential harm to the visual amenity of the area. The Local Review Body further noted that the plots mutual boundary with No 2 Abbotseat was separated by a taller timber fence which was visible from the street. The fence was judged to be visually bold but had been designed to a high quality and it was noted that it did not pose any harmful impacts on the residential amenity of any neighbouring properties and that it did not result in any road safety issues.

#### **VOTE**

*Councillor Moffat, seconded by Councillor Thomson, moved that the officer's decision be overturned and the application approved.*

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

*On a show of hands Members voted as follows:-*

*Motion - 7 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) **NPF4 Policies did not alter their conclusion.**
- (d) **the officer's decision to refuse the application be overturned and the application approved, for the reasons detailed in Appendix I to this Minute.**

**7.0 REVIEW 22/00007/RREF**

7.1 With reference to paragraph 9 of the Minute of 20 February 2023, the Local Review Body continued their consideration of a request from Mr and Mrs Peter Newell, The Miller's House, Scotsmill, Kailzie, Peebles to review the decision to refuse the planning application in respect of the formation of access and boundary fence at the Miller's House, Scotsmill, Kailzie, Peebles. The supporting papers included the written submissions from the Planning Officer and Applicant in respect of NPF4; Notice of Review (including the Decision Notice and Officer's Report); Papers referred to in the Officer's report; Consultation Replies; Objections and list of policies.

7.2 The Planning Advisor drew attention to new evidence submitted with the Notice of Review documentation regarding the access to the site, in the form of a revised plans GD L (9) P101C – Site Location Plan (Block Plan) and GD L (9) P102C – Site Layout 1-200 (Block Plan) which had been submitted with the review but which had not been before the Appointed Planning Officer at the time of determination. The Review Body considered that the new evidence met the test set out in Section 43B of the Town and Country Planning (Scotland) Act 1997, and that this new information was material to the determination of the review. It was therefore agreed that there was a need for further procedure in the form of written submissions to afford the Planning Officer and Roads Officer the opportunity of assessing this new evidence and submitting their views.

**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 revised plans 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 be not considered without the need for further procedure in the form of written submissions;**
- (d) **the Planning Officer and Roads Officer be given the opportunity to comment on the new evidence submitted with the Notice of Review;**
- (e) **consideration of the review be continued to a future meeting on a date to be confirmed.**

**8.0 REVIEW 23/00008/RREF**

8.1 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 in respect of the erection of dwellinghouse and associated work on Land South of Ebbastrand, Coldingham Sands, Coldingham. The supporting papers included the written submissions from the Planning Officer and Applicant in respect of NPF4; Notice of Review (including the Decision Notice and Officer's Report); Papers referred to in the Officer's report; support comments; consultation replies; Objections and list of policies.

- 8.2 Members noted that there had been three previous applications for erection of a house on this site, in 2010, 2011 and 2013 all withdrawn. There are also other notable and related applications, especially the implemented consent for the redevelopment of the former Shieling nursing home opposite the site which was now 8 apartments known as The Bay. Members firstly considered if there was a building group under Clause A of Policy HD2 and whether there was scale of addition capacity to add a further house to the group, the allowance under Policy HD2 being no more than 2 new houses within the LDP period or 30%, whichever was the greater. Members were in agreement that there appeared to be a building group, however they also noted a difference of opinion in terms of whether the development known as The Bay was under construction prior to Local Development Plan adoption in May 2016. This would make a significant difference to the scale of capacity allowance and Members continued the review for further written submissions by requesting evidence from both parties to support their position on this matter. Members also agreed to carry out 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 be not considered without the need for further procedure in the form of written submissions and a site visit;**
- (d) the Planning Officer and Applicant be given the opportunity to comment on the difference of opinion between the Applicant and Planning Officer in terms of whether 'The Bay' (Reference 13/00299/FUL) was under construction at the time of the adoption of the Local Development Plan on 12 May 2016;**
- (e) consideration of the review be continued to a future meeting on a date to be confirmed.**

#### **9.0 CONTINUATION OF REVIEW 23/00014/RNONDT**

- 9.1 With reference to para 6 of the Minute of 17 April 2023, there had been circulated copies of a request from Mr Gary Neale, c/o Robert Slaney, 48 3F2, Bruntsfield Gardens, Edinburgh to review the decision to refuse the planning application in respect of alterations and dormer extension to dwellinghouse at 11 Tweed Avenue, Peebles. 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 agreed application processing period. This constituted a deemed refusal and Members were required to make a 'De Novo' decision on the application. The supporting papers included written submissions from the Applicant and Officer in NPF4; the Notice of Review; Additional Information and list of policies.

- 9.2 Members noted the requirements of the LDP Policy PMD2 and Policy EP9 in terms of scale, massing and height of any house extensions and alterations and the preservation and enhancement of the special character architectural or historic character and appearance of a conservation Area. Members further noted that the proposal was located within a densely developed part of the Conservation Area and although the development would result in the loss of a parking space, were satisfied that the amended scale of the proposed extension did not represent overdevelopment of the existing building or surrounding area. The design of the extension and alterations were modern but would complement the character and appearance of the existing building and Conservation Area. Members considered it important to ensure that the development was completed with suitable material finishes which included the finishes of all windows and doors, and were satisfied that this matter could be addressed by an appropriately worded planning condition. Although Members did not raise concerns about the impact of the development on; the existing building, conservation area or residential amenity, Members

agreed that the development could not proceed until an Ecological survey, including the relevant survey (Preliminary Roost Assessment) had been carried out and submitted.

**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 form of an Ecological survey, including the relevant survey (Preliminary Roost Assessment) had been carried out and submitted;
- (c) consideration of the review be continued to a future meeting on a date to be confirmed.

*The meeting concluded at 12.20 pm*



**SCOTTISH BORDERS COUNCIL  
LOCAL REVIEW BODY DECISION NOTICE**

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**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**

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**Local Review Reference:** 23/00005/RREF

**Planning Application Reference:** 22/00679/FUL

**Development Proposal:** Erection of boundary fence (retrospective)

**Location:** 100 Abbotseat Kelso

**Applicant:** Mr Alan Hislop

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**DECISION**

The Local Review Body reverses the decision of the appointed officer and grants planning permission for the reasons set out in this decision notice.

**DEVELOPMENT PROPOSAL**

The application relates to erection of boundary fence (retrospective) at 100 Abbotseat, Kelso. The application drawings and documentation consisted of the following:

<b>Plan Type</b>	<b>Plan Reference No.</b>
Location Plan	A Location Plan
Photo	Photo of New Fence

**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 15<sup>th</sup> May 2023.

After examining the review documentation at that meeting, which included a) Notice of Review (including the Decision Notice and Officer's Report); b) Papers referred to in Officer's Report; c) Consultation Replies; d) List of Policies; and e) Applicants photographs, 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: Scottish Borders Local Development Plan 2016 and National Planning Framework 4. The LRB considered that the relevant listed policies were:

- Local Development Plan policies: PMD2 and HD3
- National Planning Framework 4 Policies: 14 and 26

Other Material Considerations

- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006
- SBC Supplementary Planning Guidance on Placemaking and Design 2010

The Review Body noted that it was unfortunate that the works had taken place and the application was retrospectively. Members were aware that the garden ground was previously enclosed by hedging. Some hedging has been retained elsewhere on the boundary on the opposite side of the gate. The Review Body noted that the rear garden ground was small and overlooked by neighbours and this impacts on its amenity. Members considered that it was important for the property to benefit from improved amenity space and the challenge was to balance this against any potential harm to the visual amenity of the area posed by the close boarded timber fence.

The Local Review Body observed that the plots mutual boundary with No 2 Abbotseat is currently separated by a taller timber fence which is visible from the street. The proposed fence was judged to be visually bold but that it was designed to a high quality. Members considered examples of tall, close boarded timber fences which had been erected to enclose curtilage ground of other residential properties within Kelso and found that the visual impact of this fence is comparable to the identified examples which are publicly visible.

The Local Review Body noted that the fence did not pose any harmful impacts on the residential amenity of any neighbouring properties and that it did not result in any road safety issues.

Overall, the Local Review Body concluded that the fence improves the amenity of the property and does not adversely affect the character and visual amenity of the surrounding area.

## **CONCLUSION**

After considering all relevant information, the Local Review Body concluded that the development was consistent with Policies PMD2 and HD3 of the Local Development Plan and Policies 14 and 16 of National Planning Framework 4. On balance, the siting, scale and design of the fence was considered to respect the character and appearance of the surrounding area. No adverse impacts on residential amenity were judged to be caused by the development. Consequently, the application was approved.



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, 4<sup>th</sup> 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.

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

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

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Councillor S Mountford  
Chairman of the Local Review Body

**Date** 18 May 2023