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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, 14 August 2023 at 10 a.m.

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

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

MEMBERS

Having not been present when the following review was first considered, Councillors Mountford, Thomson, Orr, Small, and Scott left the meeting. Councillor Richards chaired the meeting for the next item of business only.

1.0 CONTINUATION OF REVIEW 23/00002/RREF

1.1 With reference to paragraph 14 of the Minute of 17 April 2023, the Local Review Body continued their consideration of a request from Mr Robert Gaston, Ravelaw Farm, Whitsome, Duns to review the decision to refuse the planning application for the Erection of agricultural building (retrospective). The supporting papers included the written submissions from the Planning Officer and Applicant in respect of new information, 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; additional information; consultation replies, support comments; general comments; objections and list of Policies.

1.2 The Local Review Body noted that the application was retrospective. The building which was the subject of the appeal was used as part of Ravelaw's pig farming enterprise and as the building had been erected within 400 metres of third-party residential properties planning permission was required for the development. The Review Body accepted that the principle of the development was supported by Policy ED7, and no concerns were raised regarding the siting and design of the building in relation to visual amenity. The Review Body therefore considered whether the development was compatible with surrounding uses and in particular whether it would harm the amenity of neighbouring residential properties, particularly in relation to noise, odour, dust and attracting vermin.

1.3 Following discussions, the Review Body concluded that the development did not result in an increase in the number of pigs at Ravelaw Farm but instead allowed the number of pigs to be spread across more farm buildings, therefore reducing the number of pigs housed in sheds nearest the residential properties and improving the impact of the pig farm on neighbouring residential properties, provided it was operated in accordance with the terms of the Memorandum of Understanding. In addition, Members considered that the development would improve the welfare of the pigs and the efficiency of the rural enterprise. In light of the information which had been presented to them and compared against the current relationship of the farm and residential properties, Members concluded that the development would not negatively impact on the amenity of nearby residential properties.

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 further procedure;**
- (c) after considering all relevant information, the development complied with Policies ED7, HD3 and PMD2 of the LDP and Policies 5, 14 and 23 of NPF4; and**
- (d) the officer's decision to refuse the application be overturned.**

2. CONTINUATION OF REVIEW 23/00012/RREF

- 2.1 With reference to paragraph 2.1 of the minute of 19 June 2023, there had been circulated copies of a request from Mr Ian Swann, per MAKAR Ltd, Clachandreggy, Dores Road, Torbreck, Inverness to review the planning application in respect of the erection of dwellinghouse on Land West of the Old Barn, Westwater, West Linton. The supporting papers included the written submissions from the Planning Officer and Applicant in respect of new information, 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; Additional Information and Consultation Replies.
- 2.2 The Review Body were advised that the second reason for refusal on the original Decision Notice and the Handling Report was a duplicate of the first reason and instead a residential amenity reason was intended to be the second reason for refusal. Members noted that the applicant had sought to address residential amenity concerns in their appeal submissions. It was confirmed that the site already benefited from PPP approval for a dwellinghouse, and the principle of the development was supported by the Appointed Officer. The key issue was in relation to whether the design and siting of the development was acceptable against relevant housing in the countryside and placemaking development plan provisions.
- 2.3 In terms of the siting of the proposed dwellinghouse, the Review Body judged that the house was positioned deep within the plot, too far from the road, too close to the site's eastern boundary and did not relate well to the positioning of other dwellings within the building group. This resulted in the height of the proposal having an overbearing impact on the amenity of the Old Barn and gave rise to overlooking which would detract from the privacy of the Old Barn. The Review Body accepted that the site was large and had capacity for the development provided it was suitably sited. The modern design approach was also acceptable, in principle, provided that the design was sympathetic to the character of the rural area. However, reservations were raised with regard to the use of timber as the sole wall material finish as this did not fully respect the material finishes of other properties within the building group.

DECISION

AGREED:-

- (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 siting, access design, orientation and height of the development failed to respect the character of the building group and resulted in a development which would adversely impact in the residential amenity of the Old Barn. The Review Body concluded that the proposal was contrary to Policies HD2, HD3**

and PMD2 of the Local Development Plan, Policies 14 and 17 of NPF4 and supplementary guidance on New Housing in the Borders Countryside; and

(d) the officer's decision to refuse the application be upheld.

3.0 REVIEW OF 23/00019/RREF

3.1 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 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); Consultation Replies and List of Policies. The Review Body considered whether certain matters included in the review documents constituted new evidence under Section 43B of the Act and whether or not this evidence could be referred to in their deliberations. This related to letters of support from local residents, updated response from the West Linton Community Council, letter from ward Councillor and letter from the West Linton Village Trust. The Review Body concluded that the information did not raise any new material evidence that was not before the appointed officer and could be admitted without the need for any further procedure.

3.2 The Review Body noted that the application was retrospective, that the site was located within the West Linton Conservation Area and that the property was a converted church with two separate gates providing access to the property from Raemartin Square. Members observed that the gated openings were formally iron railed with decorative tops and the appeal sought permission for the painted timber boards which had been added to both access gates, whilst the iron gates remained in-situ behind the timber boards and gave weight to the fact that the works had not resulted in the complete loss of the original entrance features. The Review Body observed that the property was not extensively visible from other parts of the Conservation Area and noticed that other properties within the Conservation Area, including a neighbour opposite the site, had similar timber gates. The Review Body judged that the works did not affect any of the retained gate piers or the stone boundary wall and its railings. Reservations were raised over the colour of coating which had been applied to the timber boards, but it was accepted that this would weather in time.

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 further procedure;**
- (c) that the development was consistent with Policies PMD2 and EP9 of the Local Development Plan and Policies 7, 14 and 16 of National Planning Framework 4 whereby the development was not found to adversely impact on the character and appearance of the conservation area or the visual amenity of the residential area; and**
- (d) the Officers decision to refuse the application be overturned.**

4.0 REVIEW OF 23/00020/RREF

4.1 There had been circulated copies of a request from Mr Stephen Murray, per W M Brown, Mill Cottage, Annay Road, Melrose to review the decision to refuse the planning application in respect of the erection of a dwellinghouse on Land South of Greenbraehead Farmhouse, Greenbraehead, Hawick. The supporting papers included Notice of Review (including the Decision Notice and Officer's Report); Consultation Replies and List of Policies.

- 4.2 Members noted the planning history of the site where two previous applications for the erection of a dwellinghouse were refused in 2017 and 2019 on the basis that the site did not relate to a building group. The Review Body noted that the site was located to the south of Greenbraehead Farmhouse within a small paddock to the east of an existing farm track serving Greenbraehead Farm and the application was seeking consent for a house on economic grounds to provide accommodation for the applicant to manage agricultural operations at Greenbraehead Farm. Firstly, Members considered whether an existing building group of three or more dwellings existed at the location and concluded that there was no building group at Greenbraehead. Members then considered whether the proposed house could be justified under Part F of Policy HD2 and criteria a) part 5 of NPF4 Policy 17, and acknowledged the business was a viable operation but questioned whether the 20ha currently rented by the applicant was sufficient to operate the business long term. Members accepted that the economic case required to justify the need for a house to support the business was difficult to prove and also noted that the applicant had invested heavily in machinery and had agreed a 25-year long term lease on the land, with the intention to purchase or lease a further 12ha from the forestry commission, although financing the additional land and growth of the flock had not been included in the projected accounts. Some weight was also given to the security benefits associated with an employee residing on site.
- 4.3 Overall, Members accepted the justification of a house was only on the basis of its operational need, therefore occupation of the house was required to be controlled to a person (and their dependants) employed in the farm enterprise at Greenbraehead Farm and that this occupational restriction be controlled by a planning condition with the house tied to the business via 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 further procedure;**
- (c) the development was necessary to support a viable rural enterprise and that there was an essential operational requirement for a worker to reside on site. The development was determined to be consistent with development plan provisions covering housing in the countryside, principally Policy HD2 of the LDP, Policy 17 of NPF4 and relevant Supplementary Planning Guidance on housing in the countryside; and**
- (d) The Local Review Body overturned the decision of the appointed officer and indicated that it intended to grant planning permission subject to conditions and the applicants entering into a Section 75 legal agreement to tie the house to applicants' business.**

5. REVIEW OF 23/00021/RREF

- 5.1 There had been circulated copies of a request from Mr M Curtin per RM Architecture Ltd, Bloomfield, Heatherlie Park, Selkirk to review the decision to refuse the planning application in respect of the demolition of shed and erection of dwellinghouse (approval of all matters specified in planning permission 20/00874/PPP) on Land Northwest of Rosebank Cemetery Lodge, Shedden Park Road, 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 and List of Policies.
- 5.2 The Review Body noted that the Application sought AMC approval of the condition attached to consent 20/00874/PPP. It was noted that the PPP consent expired in

December 2023 and that the principle of a house on this site was not a matter for the review. The Review Body were mindful that the site was located close to the Conservation Area and that the site was compact in scale. Members accepted that the central positioning of the house within the site ensured that the proposal was not too close to either neighbour and the height of the house correlated with the ridge heights of the properties on either side. Overall, it was accepted that the proposal would not lead to overdevelopment of the site and the proposal was judged to be in keeping with the scale and density of surrounding residential plots.

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 further procedure;**
- (c) that the development was consistent with Policies PMD2 and PMD5 of the LDP, Policy 16 of NPF4 and Supplementary Planning Guidance on Placemaking and Design; and**
- (d) the Officers decision to refuse the application be overturned.**

6. REVIEW OF 23/00022/RREF

- 6.1 There had been circulated copies of a request from Mr Jim Warnock, per Ericht Planning & Property Consultants, Gifford House, Bonnington Road, Peebles to review the decision to refuse the planning application in respect of the Erection of dwellinghouse with outbuilding and formation of new access (approval of all matters specified in conditions of planning permission 21/00030/PPP) on Land at Rachan Woodlands, Broughton. 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.
- 6.2 The Review Body noted that the Applicant was seeking AMC approval of the condition attached to consent 22/01973/PPP and that the PPP consent expired in 2024. The principle of a house on the site was not a matter for the review.
- 6.3 In comparison to the previous AMC application, Members welcomed the updated proposal which transposed the position of the garage and the dwelling and allowed the house to be located closer to other dwellings within the group. The LRB accepted that this positioning would not be possible owing to the presence of a Victorian stone cundy within the application site which would restrict any further westward siting. Members observed that the central positioning of the proposal within the site reflected the positioning of some other dwellings in the group which are centrally located within spacious plots. Overall, Members accepted that the position of the dwelling was well related to the building group, and provided, existing mature trees were protected, and the final site landscape details agreed, the development would integrate with the sense of place of 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 be considered without the need for further procedure;**
- (c) that the development was respectful of the sense of place of the Rachan building group and the submitted details satisfied all conditional**

requirements of consent 21/00030/PPP, subject to compliance with the schedule of conditions; and

(d) the Officers decision to refuse the application be overturned.

7. REVIEW OF 23/00023/RREF

7.1 There had been circulated copies of a request from Mrs Nancy Hunter, per Sam Edwards, Ferguson Planning, 37 ONE George Street, Edinburgh to review the decision to refuse the planning application in respect of the Erection of dwellinghouse with detached garage on Land South of Headshaw Farmhouse, Ashkirk, Selkirk. The supporting papers included the Notice of Review; papers referred to in the Officer's Report; Consultation Replies and List of Policies. The Planning Adviser drew attention to information, in the form of aerial photographs which had been submitted with the Notice of Review, but which had not been before the Appointed Officer at the time of determination. Members agreed that the information was new but considered that it met the Section 43B test, was material to the determination of the Review and could be considered. However, they also agreed that the new information could not be considered without affording the Planning Officer an opportunity of making 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) new evidence submitted with the Notice of Review in the form of aerial photographs met the test set in Section 43B of the Town and Country Planning (Scotland) Act 1997 and was material to the determination;**
- (c) the review could not be considered without the need for further procedure in the form of written submissions;**
- (d) the Planning Officers be given the opportunity to comment on the new evidence submitted with the Notice of Review in the form of aerial photographs; and**
- (e) consideration of the review be continued to a future meeting on a date to be confirmed.**

8. REVIEW OF 23/00030/RNONDT

8.1 There had been circulated copies of a request from Mr Hugh Garratt, The Guildhall, Ladykirk, Berwick-Upon-Tweed to review the decision to refuse the planning application in respect of the Change of Use of shop and alterations to form 2 No. dwellinghouses at the Shop 22 – 24 South Street, Duns. 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 the Notice of Review; Consultation Replies and List of Policies.

8.2 The Review Body were advised that a previous application (21/01457/FUL) sought planning permission to convert the property into two dwellinghouses, each with two bedrooms. The Planning Authority were minded to support that development, subject to conditions and the need for the applicant to enter into a legal agreement for developer contributions totalling £19,926 towards Duns Primary School, Berwickshire High School and Affordable Housing. Subsequently, the legal agreement had not been concluded therefore planning consent 21/01457/FUL had not been issued.

- 8.3 The Review Body noted that the application before them sought to convert the property into two, one-bedroom properties and that the applicant's justification for the revised application was directly in response to the current economic landscape which resulted in the previous proposal (21/01457/FUL) no longer being viable due to the developer contributions it attracted. The new application proposed to reduce the number of bedrooms at each property and would only attract affordable housing contributions of £2000 which would not affect the viability of the proposed conversion.
- 8.4 Members determined that the proposed change of use represented a suitable form of infill development which would not adversely affect the vitality or viability of the Duns town centre and the external alterations were sympathetic to the character of the conservation area subject to conditions covering external materials, replacement window and door details. The proposed access and parking arrangements were acceptable and no residential amenity concerns were raised.

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 further procedure;**
- (c) that the development was consistent with Policies PMD2, ED3, EP9 and IS2 of the Local Development Plan and Policies 7, 16 and 27 of National Planning Framework 4 in that that proposal represented a suitable form of infill development, which does not detract from the vibrancy of Duns town centre or the character of the Conservation Area, subject to conditions and a legal agreement covering associated developer contributions towards affordable housing; and**
- (d) the application be approved.**

The meeting concluded at 2.00 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: 23/00002/RREF

Planning Application Reference: 22/00576/FUL

Development Proposal: Erection of agricultural building (retrospective)

Location: Ravelaw Farm, Duns

Applicant: Mr Robert Gaston

DECISION

The Local Review Body reversed the decision of the appointed officer and grants planning permission for the reasons set out in this decision notice, subject to a legal agreement.

DEVELOPMENT PROPOSAL

The application relates to the erection of a farm building for use as part of the farms pig enterprise at Ravelaw Farm, Duns. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	BG4755-001(PL)002
Existing Site Plan	BG4755-001(PL)002
Existing Plans & Elevations	BG4755-001(PL)003

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 20th February 2023.

Members also noted that since the determination of the application National Planning Framework 4 (NPF4) had been adopted and it now forms part of the Development Plan. The Review Body considered that it was necessary 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 17th April 2023, after examining the review documentation at that meeting, which included a) Notice of Review (including Officer's Report and Decision Notice); b) Consultation Replies; c) Representations d) List of Policies; and e) Appeal Statement, the Review Body noted that four new pieces of evidence had been submitted which related to:

1. A solicitor letter proposing a condition limiting the number of pigs on the unit.
2. A supporting letter from the Pig Veterinary Society.
3. Signed letter from local residents supporting the application subject to a legal agreement on pig numbers and location.
4. Three site plans noting where total numbers of pigs can be limited.

This information was not in front of the Appointed Officer at the time of determination. After consideration, Members agreed that this information was new, met the Section 43B test and that it could be considered, given it was material to the applicant's case and, therefore, to the determination of the Review. Comment on the new information was sought from the Planning Officer.

The Review Body also concluded that there was a requirement for further procedure in the form of an accompanied site inspection, which took place on 15 May 2023.

The Review was, therefore, continued to the Local Review Body meeting on 14th August 2023 where the Review Body considered all matters, including the responses from the Planning Officer. 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: PMD2, HD3, ED7, ED10
- NPF 4 policies: 5, 14, 23

The Local Review Body noted that the application was retrospective. The building subject of the appeal is used as part of Ravelaw's pig farming enterprise and because this building has been erected within 400m of third-party residential properties planning permission is required for the development. Members noted that the key issue was compliance with LDP Policies PMD2 on Quality Standards, ED7 on Business development in the countryside and HD3 relating to residential amenity.

The Local Review Body accepted that the principle of the development was supported by Policy ED7 by virtue of the proposal being an agricultural use which by its nature is appropriate to a rural area. No concerns were raised regarding the siting and design of the building in relation to visual amenity considerations of Policies ED7 and PMD2. The key area of consideration was whether the development was compatible with surrounding uses and in particular whether it would harm the amenity of neighbouring residential properties, particularly in relation to noise, odour, dust and attracting vermin.

Since the determination of the application, further submissions had been made to clarify the number of pigs which are kept in buildings at the farm steading, which includes confirmation of the number of pigs housed in the existing farm steading building which are located closer to residential properties than the new building. The Review submissions stipulate that the applicant has agreed a that the number of pigs kept across the farm will be limited to 2,000. The additional plans provided evidence that currently 1400 pigs are kept in a farm building which is located closer to the residential properties to the south. The new shed enables the number of pigs housed in the existing building, nearer residential properties to be reduced to 1,000. The further 1,000 pigs are then accommodated in the other shed, which includes the shed subject of this application further from the residential properties. Members heard that the applicant had entered into a Memorandum of Understanding with neighbouring residential homeowners that the farm would be operated in this manner which has led to the withdrawal of the majority of resident objections.

The Local Review Body considered that the development did not result in an increase in the number of pigs at Ravelaw Farm but instead allowed the numbers of pigs to be spread across more farm buildings and importantly reduces the number of pigs housed in sheds nearest the residential properties. Members accepted that the development would in-fact improve the impact that the pig farm would have upon the amenity of neighbouring residential properties, provided it is operated in accordance with the terms of the Memorandum of Understanding. Additionally, Members also considered that the reduction in the density of pig numbers on the farm would improve their welfare and the efficiency of the rural enterprise. In light of the information which had been presented to them and compared against the current relationship of the farm and residential properties, Members concluded that the development would not negatively impact on the amenity of nearby residential properties.

The Local Review Body accepted that although the Memorandum of Understanding provided a formal agreement between the farmer and neighbours it would not provide any planning control over the operation, including providing the Council with the ability to enforce its terms. Instead, Members determined that a Section 75 Agreement should be entered into by the Council and the Applicant to ensure that the development is operated in accordance with the terms of the Memorandum of Understanding which would restrict total pig numbers at Ravelaw to 2,000 and no more than 1,000 pigs should be housed in the building nearest residential properties at any one time.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development complied with Policies ED7, HD3 and PMD2 of the LDP and Policies 5, 14 and 23 of NPF4, whereby the development relates to a suitable employment generating development within the countryside which helps to reduce the impact of the operations of the farm upon the amenity of neighbouring residential properties, subject to the conclusion of an appropriate legal agreement to control the suitable operation of the pig farm.

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 10th October 2023



**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: 23/00012/RREF

Planning Application Reference: 22/01739/FUL

Development Proposal: Erection of dwellinghouse with detached garage

Location: Land West of The Old Barn, Westwater, West Linton

Applicant: Mr Ian Swann

DECISION

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

1. The development would be contrary to policies HD2 and PMD2 of the Local Development Plan 2016, Policies 14 and 17 of NPF4, and New Housing in the Borders Countryside guidance in that the proposed development is unsympathetic to the adjoining buildings and the surrounding context in terms of siting, access, orientation and height. No overriding case for the development as proposed has been substantiated. This conflict with the development plan is not overridden by other material considerations.
2. The development would be contrary to Policy HD3 of the Local Development Plan 2016, Policy 14 of NPF4 and Householder supplementary guidance in that the siting and design would have unacceptable and adverse impact on the residential amenity of the property located to the east of the site.

DEVELOPMENT PROPOSAL

The application relates to the erection of a dwellinghouse and detached garage on Land West of The Old Barn, Westwater, West Linton. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	PL-90-101
Proposed Site Plan	PL-90-100
Proposed Plans	PL-00-100
Proposed Plans	PL-00-101
Proposed Sections	PL-00-200
Proposed Sections	PL-00-201
Proposed Plans, Sections & Elevations	PL-00-102
Proposed Elevations	PL-00-300

PRELIMINARY MATTERS

The Local Review Body initially considered the review, which had been competently made, under section 43A (8) of the Town & Country Planning (Scotland) Act 1997 at its meeting on 19th June 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) List of Policies; e) Sustainable Design Statement; and f) Appeal Statement, the Review Body noted that a comparative section, a plan of the building group, detailed landscape proposal, privacy diagram and responses from the SBC Tree Officer and a tree consultant had been submitted which were not before the Appointed Officer at the time of determination. After consideration, Members agreed that this information was new, met the Section 43B test and that it could be considered, given it was material to the applicant's case and, therefore, to the determination of the Review.

The Review Body also concluded that there was a requirement for further procedure in the form of an unaccompanied site inspection to enable the suitability and impacts of the proposed dwellinghouse to be assessed.

The Review was, therefore, continued to the Local Review Body meeting on 14th August 2023 where the Review Body considered all matters, including the responses from the Planning Officer. 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: PMD2, HD2, HD3, EP13, IS2, IS7
- NPF 4 policies: 6, 14, 17 and 18

Other Material Considerations

- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006
- SBC Supplementary Planning Guidance on Placemaking and Design 2010
- SBC Supplementary Planning Guidance on Trees and Development 2020

- SBC Supplementary Planning Guidance on Sustainable Urban Drainage Systems 2020
- SBC Supplementary Planning Guidance on Housing in the Countryside 2008
- SBC Supplementary Planning Guidance on Development Contributions 2022
- SBC Supplementary Planning Guidance on Waste Management 2015

The Review Body heard that the second reason for refusal on the original Decision Notice and the Handling Report was a duplicate of the first reason. This was found to have been an error. Instead, a residential amenity reason was intended to be the second reason for refusal. Members noted that the applicant had sought to address residential amenity concerns in their appeal submissions.

Members confirmed that the site already benefits from PPP approval for a dwellinghouse, and that the principle of the development was supported by the Appointed Officer. The key issue with this application was in relation to whether the design and siting of the development was acceptable against relevant housing in the countryside and placemaking development plan provisions. 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.

The Review Body examined the siting of the proposed dwellinghouse. They judged that the house was positioned deep within the plot and ultimately too far from the road. This siting of the dwelling was not considered to be well related to the positioning of other dwellings within the building group which have a stronger relationship with their access road. Members also considered that the siting of the dwelling was too close to the site's eastern boundary. This resulted in the height of the proposal having an overbearing impact on the amenity of the Old Barn and also gave rise to detrimental levels of overlooking which would detract from the privacy of the Old Barn.

The Local Review Body accepted that the site was large and that it would have the capacity to accept a development of the scale and massing proposed, provided it was suitably sited. A modern design approach was also considered to be acceptable, in principle, provided that the design was sympathetic to the character of the rural area. Reservations were raised about the use of ~~use of~~ timber as the sole wall material finish as this did not fully respect the material finishes of other properties within the building group.

The Review Body then considered the impact of the development on mature trees within and adjacent to the site. The Review Body noted observations of the applicant's tree consultant and SBC's Tree Officer that the development would likely result in the loss of a Lime tree and Sitka Spruce. Provided that the development would not result in the loss of any further mature trees (and suitable compensatory landscaping were to be provided), Members were of the opinion that the development would not adversely impact on trees to an extent which would warrant objection against LDP Policy EP19 and Policy 6 of NPF4.

After consideration of the merits of the proposal, the opinion of the Local Review Body was that the siting, access design, orientation and height of the development failed to respect the character of the building group and also resulted in a development which would adversely impact in the residential amenity of the Old Barn. The Review Body concluded that the proposal was contrary to Policies HD2, HD3 and PMD2 of the Local Development Plan, Policies 14 and 17 of NPF4 and supplementary guidance on New Housing in the Borders Countryside.

Members finally considered other material issues relating to the proposal including access, parking, water and drainage. 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.
-

Signed Councillor S Mountford
Chairman of the Local Review Body

Date 2nd October 2023



**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: 23/00019/RREF

Planning Application Reference: 22/01935/FUL

Development Proposal: Installation of timber gates (retrospective)

Location: Church House, Raemartin Square, West Linton

Applicant: Mr JM and MRs G Barton

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 Church House, Raemartin Square, West Linton. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan Refused	1 of 7
Proposed Plans Refused	2 of 7
Proposed Elevations Refused	3 of 7
Proposed Elevations Refused	4 of 7
Photos Refused	5 of 7
Photos Refused	6 of 7
Photos Refused	7 of 7

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 14th August 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; and d) List of Policies, the Review Body considered whether certain matters included in the review documents constituted new evidence under Section 43B of the Act and whether or not this evidence could be referred to in their deliberations. This related to letters of support from local residents, updated response from the West Linton Community Council, letter from ward Councillor and letter from the West Linton Village trust, Members considered that the information did not raise any new material evidence that was not before the appointed officer. The information was admitted without the need for any further procedure. 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: PMD2, EP9
- National Planning Framework 4 Policies: 17, 14, 16

Other Material Considerations

- SBC Supplementary Planning Guidance on Placemaking and Design 2010
- HES Guidance – Managing Change (Boundaries)

The Review Body acknowledged that it was unfortunate that the development had already been undertaken. Members noted that the site was located within the West Linton Conservation Area and that the property is a converted church with two separate gates providing access to the property from Raemartin Square. Members observed that the gated openings were formally iron railed with decorative tops and this appeal seeks permission for the painted timber boards had been added to both access gates.

The Review Body observed that the property was located down a narrow lane which was not extensively visible from other parts of the Conservation Area. Members noticed that other properties within the Conservation Area, including a neighbour opposite this site, had similar timber gates. Members noted that the iron gates remained in-situ behind the timber boards and gave weight to the fact that the works had not resulted in the complete loss of the original entrance features. The LRB judged that the works did not affect any of the retained gate piers or the stone boundary wall and its railings. Reservations were raised about the colour coating which had been applied to the timber boards, but it was accepted that this would weather in time.

The Local Review Body accepted that the timber gates 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 timber gates did not adversely impact on the special character and amenity of the Conservation Area.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was consistent with Policies PMD2 and EP9 of the Local Development Plan and Policies 7, 14 and 16 of National Planning Framework 4 whereby the development was not found to adversely impact on the character and appearance of the conservation area or the visual amenity of the residential area.

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 2nd October 2023



**SCOTTISH BORDERS COUNCIL
LOCAL REVIEW BODY INTENSIONS 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: 23/00020/RREF

Planning Application Reference: 22/00869/PPP

Development Proposal: Erection of dwellinghouse

Location: Land South of Greenbraehead Farmhouse Greenbraehead Hawick

Applicant: Mr Stephen Murray

DECISION

The Local Review Body reversed the decision of the appointed officer and indicated that it intended to grant planning permission for the reasons set out in this intentions notice subject to conditions and the applicants entering into a Section 75 legal agreement to tie the house to applicants business.

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 (dated May 2022)	PHGF 10

PRELIMINARY MATTERS

The Local Review Body were satisfied that the review had been competently made, under section 43A (8) of the Town & Country Planning (Scotland) Act 1997 at its meeting on 14th August 2023.

After examining the review documentation at that meeting, which included a) Notice of Review; b) Correspondence; c) Supporting Statements; d) Consultation Replies; e) List of Policies; f) Decision Notice; g) Report of Handling; h) Planning Application Form; i) Registration Details; and j) Balance Sheets, the Review Body noted that the applicant requested a Site Visit and acknowledged that it was possible to access the site without any barriers to entry. The Review

Body also acknowledged that the applicant did not request further procedures. In this instance 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 (LDP) 2016 and National Planning Framework 4 (NPF4).

The LRB considered that the relevant listed policies were:

LDP policies: PMD1, PMD2, HD2, HD3, EP1, EP2, EP3, EP13, IS2, IS5, IS7, IS9
Proposed LDP2 policy IS5
NPF4 policies: 3, 4, 14, 17, 22

Other Material Considerations

SBC Supplementary Planning Guidance on Housing in the Countryside 2008
SBC Supplementary Planning Guidance on Developer Contributions 2022
SBC Supplementary Planning Guidance on Placemaking and Design 2010
SBC Supplementary Guidance on Waste Management 2015

Members noted the planning history of the site where two previous applications for the erection of a dwellinghouse were refused in 2017 and 2019 on the basis that the site did not relate to a building group and in the case of the 2017 application an adequate business case was not provided. Members also noted that a further application was submitted in 2020 for the erection of a house to support an existing business enterprise. This application was withdrawn by the applicant as the business case was not supported by SoSE.

The Local Review Body observed that the site was located to the south of Greenbraehead Farmhouse within a small paddock to the east of an existing farm track serving Greenbraehead Farm. Members heard that this application was seeking consent for a house on economic grounds to provide accommodation for the applicant to manage agricultural operations at Greenbraehead Farm. It was acknowledged that Policy HD2 and Policy 17 of NPF4 offer support for rural housing where it is demonstrated that its location is essential for business needs.

Firstly, Members considered that whether an existing building group of three or more dwellings existed at this location, concluding that there is no building group at Greenbraehead. Members noted that only two houses exist at this location and agreed that a new dwelling would not comply with Part A of Policy HD2.

Members then considered whether the proposed house could be justified under Part F of Policy HD2 and criteria a) part 5 of NPF4 Policy 17, which supports housing that is a direct operational requirement of an established agricultural or other rural business that is appropriate for this rural location. Members considered whether the development is necessary to support a viable rural business and whether the presence of a worker on-site is essential to the efficient operation of the enterprise.

The Local Review Body acknowledged the business was a viable operation but questioned whether the 20ha currently rented by the applicant was sufficient to operate the business long

term. Members acknowledged that the economic case required to justify the need for a house to support the business was difficult to prove but concluded that the applicant had invested heavily in machinery and had agreed a 25-year long term lease on the land. Weight was also given to the security benefits associated with an employee residing on site. The intention to purchase or lease a further 12Ha from the forestry commission was noted but financing the additional land and growth of the flock has not featured in any projected accounts.

Overall, Members accepted the justification put forward by the applicant demonstrated that a creditable business case had been provided which demonstrated that a dwelling is necessary to support a viable rural enterprise and that there is an essential welfare requirement for a worker to reside on site. On balance, the Local Review Body accepted that the development satisfied relevant Economic Requirement criteria of Policy HD2 of the LDP and Policy 17 of NPF4. Members considered that the justification of a house is only on the basis of its operational need, therefore occupation of the house is required to be controlled to a person (and their dependants) employed in the farm enterprise at Greenbraehead Farm. The Review Body determined that this occupational restriction should be controlled by a planning condition with the house tied to the business via a legal agreement.

Members were of the opinion that appropriate conditions could address other matters satisfactorily. They also noted that this application would not attract developer contributions.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development is necessary to support a viable rural enterprise and that there is an essential operational requirement for a worker to reside on site. The development was determined to be consistent with development plan provisions covering housing in the countryside, principally Policy HD2 of the LDP, Policy 17 of NPF4 and relevant Supplementary Planning Guidance on housing in the countryside. Consequently, the application was approved.

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) 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.
- 3) 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.

- 4) 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 except 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.

- 5) The occupation of the dwelling hereby approved shall be limited to a person or persons solely or mainly employed in the existing agricultural business at Greenbraehead Farm or a dependant of such a person residing with him or her or a widow or widower of such a person, and to any residential dependents.

Reason: The site is in a rural area where it is not the Council's policy to permit unrestricted residential development, and permission has therefore only been granted on account of the demonstrated agricultural needs.

- 6) No development shall commence until a scheme of details for the upgrading of the existing private access track has first been submitted to and approved in writing by the Planning Authority. Thereafter no development shall take place except in strict accordance with the approved scheme of details and shall be fully implemented prior to occupation of the dwellinghouse hereby approved.

Reason: To ensure the development is served by an adequate form of access.

- 7) Parking and turning for a minimum of two vehicles must be provided within the curtilage of the dwellinghouse and shall be fully formed and available for use prior to occupation of the development hereby approved. Thereafter the parking and turning shall be retained in perpetuity.

Reason: To ensure appropriate parking and turning is provided within the curtilage of the dwelling.

- 8) No development shall commence until details of a scheme of post-construction ecological enhancements, including timescale for implementation, have been submitted to and approved in writing by the Planning Authority. The approved details shall be implemented within the approved timescale

Reason: To provide a reasonable level of ecological enhancement relative to the environmental impact of the development in accordance with the statutory development plan

- 9) No development shall commence until precise details of the water supply and of both foul water and surface water drainage have been submitted to and approved in writing by the Planning Authority. Thereafter no development shall take place except in strict accordance with the approved details. The surface water drainage shall be handled by way of sustainable urban drainage techniques.

Reason: To ensure the site is adequately serviced.

- 10) No development shall be commenced until a scheme of waste storage and collection has been submitted to, and approved in writing by, the Planning Authority. Once approved, provision shall be made in accordance with the approved details prior to occupation of the dwellinghouse hereby approved.

Reason: To ensure adequate provision is made for waste storage and collection.

- 11) The adjacent Right of Way BR117 located to the west of the application site shall be kept open and free of obstruction before, during and after construction. The full width of the access track shall be kept open and free from obstruction and the track shall be excluded from the development site. Any new gates into the property must open within the property and not outwards into the line of users of the route.
Reason: To allow an adequate width of right of way to be kept open and free of obstruction for the use of the public exercising rights of responsible access by walking, cycling and horse-riding
- 12) No development shall commence until a scheme to identify and assess potential contamination on site, in addition to measures for its treatment/removal, validation and monitoring, and a timescale for implementation of the same, has first been submitted to and approved by the Planning Authority. Once approved, the development shall only proceed in accordance with the approved scheme.
Reason: To ensure that potential contamination within the site has been assessed and treated and that the treatment has been validated and monitored in a manner which ensures the site is appropriate for the approved development.

Informatives

- 1) With regards to Condition 11 above the following applicant informatives apply:
- (a) The boundary of garden ground and curtilage of the proposed dwellinghouse should be defined clearly within the edge of the planning development area. The full width of the track Right of Way path BR117 defined clearly outwith this garden ground /other curtilage of the development
 - (b) The Right of Way BR117 on the existing track is a shared use track used by walkers, cyclists and horse-riders.
 - (c) The Right of Way path BR117 is out-with the curtilage of property at this location.
 - (d) Surface water drainage will require future maintenance to avoid surface water issues on Right of Way BR117.
 - (e) Further advice on the width of paths for shared use is available from the British Horse Society. Also from NatureScot.
 - (f) Further information on Rights of Way is available from the Scottish Rights of Way and Access Society.
 - (g) Further information on Core paths and Outdoor access specific to this location is also available from Scottish Borders Council web site and Countryside Access team.

LEGAL AGREEMENT

The Local Review Body required that a Section 75, or other suitable legal agreement, be entered into to tie the house to the existing business at Greenbraehead Farm.

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

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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.

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.

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 7 September 2023

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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: 23/00021/RREF

Planning Application Reference: 22/01903/AMC

Development Proposal: Demolition of shed and erection of dwellinghouse (approval of all matters specified in planning permission 20/00874/PPP)

Location: Land North West of Rosebank Cemetery Lodge, Shedden Park Road, Kelso

Applicant: Mr M Curtin

DECISION

The Local Review Body reversed the decision of the appointed officer and grants planning permission for the reasons set out in this decision notice, subject to conditions.

DEVELOPMENT PROPOSAL

The application relates to approval of matters specified in planning permission 20/00874/PPP for the demolition of shed and erection of dwellinghouse. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	
Proposed Site Plan	22-010/SCO/02
Proposed Elevations	22-009-SD-03 A
Proposed Plans & Elevations	22-010/SD/01 E

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 14th August 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) Consultations; d) Planning and Design Statement; e) Appeal Statement; and i) List of Policies. Members 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 (LDP) and National Planning Framework 4 2023 (NPF4). The LRB considered that the relevant listed policies were:

- LDP policies: PMD2, PMD5, HD3, EP9, IS7 and IS9
- NPF4 policies: 1, 2, 7, 9, 14 and 16

Other Material Considerations

- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006
- SBC Supplementary Planning Guidance on Placemaking and Design 2010
- SBC Supplementary Planning Guidance on Development Contributions 2022

The Review Body noted that the application seeks AMC approval of the condition attached to consent 20/00874/PPP. It was acknowledged that the PPP consent does not expire until December 2023 and that the principle of a house on this site is not a matter for this review.

The precise layout, siting, design, external appearance, site landscaping and means of access are required to be agreed by Condition 1 of the PPP consent. The Local Review Body noted that the principal area of contention related to the scale and design of the proposal and these matters are required to be primarily considered against LDP Policies PMD2 and PMD5, NPF4 Policy 14 and the Councils Placemaking and Design SPG.

The Local Review Body were mindful that the site is located close to the Conservation Area and that the site was compact in scale. Members accepted that the central positioning of the house within the site ensured that the proposal was not too close to either neighbour and the height of the house correlated with the ridge heights of the properties on either side. Overall, it was accepted that the proposal would not lead to overdevelopment of the site. The proposal was judged to be in keeping with the scale and density of surrounding residential plots.

Members observed that the surrounding area exhibited varied architectural styles. The contemporary design approach was considered by the LRB to be distinctive. Aided by the removal of the existing large shed, the proposal was considered to represent a positive form of development which would enhance the appearance of the brownfield site. Members accepted that the development integrated with the sense of place of the surrounding area, improving the townscape as well as the setting of the Conservation Area.

The Local Review Body did not raise any concerns in relation to any other matters covered by Condition 1 in relation to materials, landscaping and means of access and the development was not considered to adversely affect the residential amenity of any neighbouring residential properties.

Members noted that the Appointed Officer was satisfied all matters specified in Condition's 3 (vehicle access), 4 (slate roof), 5 (site levels), were addressed by the information which had been submitted. The Review Body agreed with this assessment. The LRB acknowledged that submissions were required to address Condition 6 (contamination) and this matter could be addressed by Condition, similarly the need for species protection plans depending on the time of commencement could also be addressed by condition. The Review Body also considered that it would be sensible to agree the final specification of materials before development commences.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was consistent with Policies PMD2 and PMD5 of the LDP, Policy 16 of NPF4 and Supplementary Planning Guidance on Placemaking and Design in that the siting and design of the proposal represented a suitable form of infill development which respects the character and appearance of the surrounding area, subject to compliance with the schedule of conditions.

CONDITIONS

1. 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.
2. Prior to development commencing, further precise details including colour finish of the external building materials finishes shall be submitted for the written approval of the Planning Authority and the development shall be implemented in accordance with the approved details.
Reason: To ensure that the development respects the character and visual amenity of the surrounding area.
3. Prior occupation of the dwellinghouse all approved surface water, foul drainage and water supply measures shall be completed prior to occupancy of the dwellinghouse unless otherwise agreed in writing with the Planning Authority.
Reason: To ensure the development is adequately serviced.
4. Unless otherwise agreed in writing and in advance by the Planning Authority, prior to any development commencing on site, a scheme will be submitted by the Developer (at their expense) to identify and assess potential contamination on site. No construction work shall commence until the scheme has been submitted to, and approved, by the Council, and is thereafter implemented in accordance with the scheme so approved. The scheme shall be undertaken by a competent person or persons in accordance with the advice of relevant authoritative guidance including PAN 33 (2000) and BS10175:2011 or, in the event of these being superseded or supplemented, the most up-to-date version(s) of any subsequent revision(s) of, and/or supplement(s) to, these documents. This scheme should contain details of proposals to investigate and remediate potential contamination and must include: - a) A desk study and development of a conceptual site model including (where necessary) a detailed site investigation strategy. The desk study and the scope and method of recommended further investigations shall be agreed with the Council prior to addressing parts b, c, d, and, e of this condition. and thereafter b) Where required by the desk study, undertaking a detailed investigation of the nature and extent of

contamination on site, and assessment of risk such contamination presents. c) Remedial Strategy (if required) to treat/remove contamination to ensure that the site is fit for its proposed use (this shall include a method statement, programme of works, and proposed validation plan). d) Submission of a Validation Report (should remedial action be required) by the developer which will validate and verify the completion of works to a satisfaction of the Council. e) Submission, if necessary, of monitoring statements at periods to be agreed with the Council for such time period as is considered appropriate by the Council. Written confirmation from the Council, that the scheme has been implemented completed and (if appropriate), monitoring measures are satisfactorily in place, shall be required by the Developer before any development hereby approved commences. Where remedial measures are required as part of the development construction detail, commencement must be agreed in writing with the Council.

Reason: To ensure that the potential risks to human health, the water environment, property, and, ecological systems arising from any identified land contamination have been adequately addressed.

5. No development shall be undertaken during the breeding bird season (March to August), unless in strict compliance with a Species Protection Plan for breeding birds, including provision for pre-development supplementary survey, that shall be submitted to and approved in writing by the Planning Authority.

Reason: To protect the ecological interest in accordance with Local Development Plan policies EP2 and EP3.

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
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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.....

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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: 23/00022/RREF

Planning Application Reference: 22/01973/PPP

Development Proposal: Erection of dwellinghouse with outbuildings and associated work including new access (approval of all matters specified in condition of planning permission 21/00030/PPP)

Location: Land South West of Rachan Woodlands, Broughton

Applicant: Mr J Warnock

DECISION

The Local Review Body reversed the decision of the appointed officer and grants planning permission for the reasons set out in this decision notice, subject to conditions.

DEVELOPMENT PROPOSAL

The application relates to the erection of a dwellinghouse with outbuildings and associated work including new access. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	20038-LOC-A
Proposed Site Plan	20038-022-B
Proposed Plans	20038-101
Proposed Elevations	20038-201
Proposed Plans & Elevations	20038-102

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 14th August 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) Consultations; d) Planning Statement; e) Explanatory statement; f) Drainage Report; g) Tree survey and protection plan; h) Appeal Statement; and i) List of Policies. Members 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 (LDP) and National Planning Framework 4 2023 (NPF4). The LRB considered that the relevant listed policies were:

- LDP policies: PMD1, PMD2, HD2, HD3, EP3, EP4, EP5, EP10, EP12, EP13, IS2, IS7 and IS9
- NPF4 policies: 1, 4, 6, 9, 14, 16, 17, 18, 22, 23,

Other Material Considerations

- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006
- SBC Supplementary Planning Guidance on Placemaking and Design 2010
- SBC Supplementary Planning Guidance on Development Contributions 2022
- SBC Supplementary Planning Guidance on Local Landscape Designations 2012
- SBC Supplementary Planning Guidance on Housing in the Countryside 2008
- SBC Supplementary Guidance on Renewable Energy 2018
- SBC Supplementary Planning Guidance on SUDS 2020
- SBC Supplementary Planning Guidance on Trees and Development 2020
- SBC Supplementary Planning Guidance on Waste Management 2015

The Review Body noted that the Applicant seeks AMC approval of the condition attached to consent 22/01973/PPP. Members noted that the PPP consent does not expire until 2024 and that the principle of a house on this site is not a matter for this review.

Members noted that the precise layout, siting, design, external appearance, site landscaping and means of access are required to be agreed by Condition 1 of the PPP consent and in particular the proposed siting of the development represented that area of conflict between the Appointed Officer and the applicants. The Local Review Body considered the issue of siting as required by Policies PMD2 and HD2 of the Local Development Plan and Policies 14 and 17 of NPF4, supported by the Councils New Housing in the Countryside and Placemaking SG's.

Members heard that a previous AMC application (22/00899/AMC), sought to position the dwellinghouse towards the eastern side of the application site which led to the application being refused primarily because the positioning of the house was judged to be distinctively detached from other houses within the building group. This latest proposal sought to position

the house more centrally within the application site. In comparison to the previous AMC application, Members welcomed the latest proposal which transposed the position of the garage and the dwelling and allowed the house to be located closer to other dwellings within the group. Moving the house further west within the site would bring it closer to the plots nearest neighbour known as 'The Norlands' however the LRB accepted that this positioning would not be possible owing to the presence of a Victorian stone cundy within the application site which would restrict any further westward siting. Members observed that the central positioning of the proposal within the site reflected the positioning of some other dwelling in the group which are centrally located within spacious plots. Overall, Members accepted that the position of the dwelling was well related to the building group. Provided, existing mature trees are protected and final site landscape details are agreed, the development would integrate with the sense of place of the building group.

The Review Body examined all other design and access considerations specified by Condition 1 and accepted that the revised house design was acceptable, and no access concerns were raised. The Local Review Body accepted that the siting and design of the proposed development would not adversely affect the setting of the Upper Tweeddale NSA.

Members noted that the Appointed Officer was satisfied all matters specified in Condition's 3 (tree protection), 5 (access), 6 (site services), 7 (waste provision) were now satisfied by the information which had been submitted, the Review Body agreed with this assessment. Members were satisfied that the proposed development satisfied the matters specified in condition's of consent 21/00030/PPP, provided that conditions covering tree protection, final landscape details, final material finishes and water supply and drainage connections were included.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was consistent with Policies HD2 and EP4 of the Local Development Plan and Policies 14 and 17 of NPF4 and relevant Supplementary Planning Guidance. The siting and design of the development was considered to respect the sense of place of the Rachan building group and the submitted details satisfied all conditional requirements of consent 21/00030/PPP, subject to compliance with the schedule of conditions.

CONDITIONS

1. 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.
2. Prior to development commencing, further precise details including colour finish of the external building materials finishes shall be submitted for the written approval of the Planning Authority and the development shall be implemented in accordance with the approved details.
Reason: To ensure that the development respects the character and visual amenity of the surrounding area.
3. Prior occupation of the dwellinghouse all approved surface water, foul drainage and water supply measures shall be completed prior to occupancy of the dwellinghouse unless otherwise agreed in writing with the Planning Authority.
Reason: To ensure the development is adequately serviced.

4. No development shall commence until the measures to protect the existing trees as specified within the Tree Survey and Arboricultural Impact Assessment have been erected on site and thereafter the development shall be completed in accordance with the agreed details.
5. No development shall take place except in strict accordance with a scheme of hard and soft landscaping works, which has first been submitted to and approved in writing by the planning authority. Details of the scheme shall include;
 - I. existing and finished ground levels in relation to a fixed datum preferably ordnance
 - II. 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 within the site and structure planting to the southern boundary
 - 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.

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:

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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

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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 2nd October 2023

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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: 23/00030/RNONDT

Planning Application Reference: 23/00026/FUL

Development Proposal: Change of use of shop and alterations to form 2 no
dwellinghouses

Location: 22-24 South Street, Duns

Applicant: Mr Hugh Garratt

DECISION

The Local Review Body indicated that it intended to grant planning permission for the reasons set out in this intention notice subject to conditions and the applicants entering into Legal Agreement for relevant developer contributions.

DEVELOPMENT PROPOSAL

The application relates to change of use of a shop and alterations to form two dwellings at 22-24 South Street Duns. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	GAR01-PL01
Plans and Elevations as Existing	GAR01-PL02
Plans and Elevations as Proposed	GAR01-PL03
Sections as Proposed	GAR01-PL04
Plans and Section as Proposed	GAR01-PL05

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 14th August 2023.

After examining the review documentation at that meeting, which included a) Notice of Review; b) Correspondence; c) Consultation Replies; and d) List of Policies, the Review Body noted that the applicant has requested as Hearing Session and a Site Visit but did not consider a either was necessary in this instance.

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 (LDP) and National Planning Framework 4 (NPF4). The LRB considered that the relevant listed policies were:

- LDP policies: PMD2, PMD5, ED3, HD3, EP9, IS2, IS7
- NPF4 policies: 7, 9, 14, 15, 16, 17, 27,

Other Material Considerations

- SBC Supplementary Planning Guidance on Development Contributions 2022

The Review Body heard that a previous application (21/01457/FUL) sought planning permission to convert the property into two dwellinghouses, each with two bedrooms. Members noted that the Planning Authority were minded to support that development, subject to conditions and the need for the applicant to enter into a legal agreement for developer contributions totalling £19,926 towards Duns Primary School, Berwickshire High School and Affordable Housing. Subsequently, the legal agreement has not been concluded therefore planning consent 21/01457/FUL has not been issued.

The Review Body observed that this new application seeks to convert the property into two, one-bedroom properties. Members noted that the applicant's justification for this revised application was directly in response to the current economic landscape which resulted in the previous proposal (21/01457/FUL) to no longer be viable because of the developer contributions it attracts. The new proposal reduces the number of bedrooms at each property and would only attract affordable housing contributions of £2000 which does not affect the viability of the proposed conversion.

The Local Review Body considered the proposal against LDP Policies PMD5 and ED3 as well as Policies 16 and 27 of NPF4. Members determined that the proposed change of use represented a suitable form of infill development which would not adversely affect the vitality or viability of the Duns town centre. Members considered that the external alterations were sympathetic to the character of the conservation area subject to conditions covering external materials, replacement window and door details. Informed by the observation of the Roads Planning Officer, the proposed access and parking arrangements were acceptable. No residential amenity concerns were raised. Members noted that against Policy IS2 of the LDP and the associated SG on developer contributions that a financial contribution would be required towards affordable housing however this matter could be handled via a legal agreement.

Members observed that the previous application (21/01457/FUL) demonstrated that the building could be converted at a later date to add more bedrooms to the dwellings. Members accepted that it would not be appropriate to limit the number of bedrooms or the future conversion of the attic space as these matters would be controlled by the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was consistent with Policies PMD2, ED3, EP9 and IS2 of the Local Development Plan and Policies 7, 16 and 27 of National Planning Framework 4 in that that proposal represented a suitable form of infill development, which does not detract from the vibrancy of Duns town centre or the character of the Conservation Area, subject to conditions and a legal agreement covering associated developer contributions towards affordable housing.

CONDITIONS

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
Reason: To comply with Section 58 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.
2. No works in connection with the development hereby approved shall commence until details of all the materials to be used in the external finish for the approved development have been submitted to and approved in writing by the Planning Authority. Thereafter, the development shall be carried out in complete accordance with the approved details.
Reason: In the interests of the visual appearance of the conservation area.
3. No works in connection with the development hereby approved shall commence until full details for the replacement windows have been submitted to and approved in writing by the Planning Authority. The details shall include elevation and section drawings at a sufficient scale to show the proposed new window detailing, dimensions, glazing patterns, ventilation and opening methods. Thereafter, the windows shall be installed in accordance with the approved details.
Reason: In the interests of the visual appearance of the conservation area.
4. No works in connection with the development hereby approved shall commence until full details for the external doors have been submitted to and approved in writing by the Planning Authority. Thereafter, the external doors shall be installed in accordance with the approved details.
Reason: In the interests of the visual appearance of the conservation area.
5. The access to the site from the public road to be formed to an agreed standard prior to occupation of the dwelling.
Reason: To ensure the property is served by safe access from the public road

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".

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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.

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 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 2nd October 2023

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