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SCOTTISH BORDERS COUNCIL LOCAL REVIEW BODY

MINUTES of Meeting of the LOCAL REVIEW BODY held in Council Chamber , Council Headquarters, Newtown St Boswells - Blended on Monday, 22 January 2024 at 10.00 am

Present: - Councillors S. Mountford (Chair), M. Douglas, D. Moffat, S. Scott, V. Thomson, Councillor E. Small.

Apologies:- Councillors J. Cox, A. Orr, and N. Richards

In Attendance: - Lead Planning Officer, Managing Solicitor (S. Thompson), Democratic Services Officers (F. Henderson and L. Cuerden).

1.0 **REVIEW OF 23/00048/RREF**

There had been circulated copies of a request from Rivertree Residential Ltd c/o Aitken Turnbull Associates, 5 Castle Terrace, Edinburgh to review the decision to refuse the planning application in respect of the erection of a dwellinghouse on Land North of Ivanhoe Road, Melrose. The supporting papers included the Notice of Review (including the Decision Notice and Officer's Report; Additional Information; Further Representations and Applicant's Response; Objections and List of Policies.

1.2 The Review Body noted that the proposal was for the erection of a single dwellinghouse on land North of Ivanhoe, Dingleton Road, Melrose. The LRB also noted that they previously refused permission for appeal 22/00015/RONDT which sought permission for two houses on this site primarily on grounds that the development would result in the loss of existing trees within the site, to the detriment of the character and visual amenity of the surrounding area with insufficient space left for adequate compensatory planting.

1.3 Members considered the application against Policies PMD2 and PMD5 of the Local Development Plan and Policies 14 and 16 of NPF4. They accepted that the site was within the settlement boundary of Melrose and may present an infill opportunity. They recognised that the site was still part of the overall housing allocation EM32B in the Local Development Plan, albeit shown on the Settlement Proposals Map as part of the structure planting and landscaping within that land allocation, reflecting the fact that the site contained orchard trees protected by SBC TPO 21. The key issue was whether the site had the capacity to accommodate the revised proposal for a single house without adversely affecting the protected trees in a manner which would allow the site to be developed without harming the amenity of the surrounding area.

1.4 Following consideration of all relevant information, the Local Review Body concluded that the development was contrary to the Development Plan and that there were no other material considerations that would justify departure from the Development Plan. Consequently, the application was refused.

DECISION

AGREED that:-

- (a) **the request for review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;**
- (b) **the review could be considered without the need for further procedure;**

- (c) **the development would be contrary to policy 6 of the National Planning Framework 4 and policies EP10 and EP13 of the Scottish Borders Local Development Plan 2016 and SBC Supplementary Planning Guidance: Trees and Development 2020.**
- (d) **the Officer's decision to refuse the planning application be upheld, for the reasons detailed in Appendix I to this Minute.**

2.0 CONSIDER REVIEW OF 23/00049/RREF

2.1 There had been circulated copies of a request from Mr Graeme Forsyth c/o Yeoman Architecture Limited, Suite 6, 5 Kings Mount, Ramparts Business Park, Berwick-Upon-Tweed to review the decision to refuse the planning application in respect of the change of use of derelict agricultural building and extension to form dwellinghouse and erection of 17.8m high wind turbine (tip height) at The Blue House, Near Swansfield Farm, Reston, Eyemouth. The supporting papers included Notice of Review (including the Decision Notice and Officer's Report); Papers referred to in the Officer's Report; further information and List of Policies. The Planning Advisor drew attention to information, in the form of a Bat Survey Report, which had been submitted with the Notice of Review documentation, but which had not been before the Appointed Planning Officer at the time of determination. Members agreed that the information was new but considered that it met the Section 43B test, was material to the determination of the Review and could be considered. However, they also agreed that the Bat Survey Report could not be considered without affording the Planning Officer and Ecology Officer an opportunity of making representations on this new information.

DECISION

AGREED that;

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

3. CONSIDER REVIEW OF 23/00050/RREF

3.1 There had been circulated copies of a request from M & J Ballantyne, 24 Shedden Park, Road, Kelso TD5 7AL to review the decision to refuse the planning application in respect of the change of use from amenity land to garden ground at 58 Waldie Griffiths Drive, Kelso. The supporting papers included Notice of Review (including the Decision Notice and Officer's Report); Papers referred to in the Officer's Report; additional information; Consultation replies and List of Policies.

3.2 The Local Review Body noted that 58 Waldie Griffiths Drive was a new build dwellinghouse which had been constructed as part of the East Broomlands residential development. The proposals sought to extend the garden of the dwelling by including land which formed part of a wedge of open space within the residential development into the property's curtilage. Members observed that if approved the development would require

the existing boundary fence to be repositioned and a public footpath which was to be constructed adjacent to the boundary of the application to be re-routed.

- 3.3 Members observed that the wider residential development did not benefit from large areas of open space and any loss potentially impacted on its usability. Although the area of ground would provide the applicants with additional garden ground, the extent of the proposed extension was not necessarily judged to significantly improve the applicant's amenity. There was concern that the repositioning of the fence to the southwest would increase its prominence and affect the balance of the landscape layout at this part of the development. In addition, there would be required an awkward realignment of the path which could affect its usability by elderly residents and would detract from the streetscape and its wider masterplan layout.

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;**
- (a) the proposal would be contrary to Policy 20 of National Planning Framework 4 and Policies PMD2 and EP11 of the Local Development Plan 2016 and the Supplementary Planning Guidance on Placemaking and Design 2010.**
- (d) the Officer's decision to refuse the planning application be upheld, for the reasons detailed in Appendix II to this Minute.**

The meeting concluded at 10.52 am

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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: 23/00048/RREF

Planning Application Reference: 23/00492/FUL

Development Proposal: Erection of dwellinghouse

Location: Land North of Ivanhoe, Dingleton Road, Melrose

Applicant: Rivertree Residential Ltd

DECISION

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

The development would be contrary to policy 6 of the National Planning Framework 4 and policies EP10 and EP13 of the Scottish Borders Local Development Plan 2016 and SBC Supplementary Planning Guidance: Trees and Development 2020 in that there would be an unacceptable loss of protected trees, which would undermine the value of the site as a historic orchard of amenity value, compromising the character and amenity of the local area, the setting of the Dingleton Hospital redevelopment and the integrity of the Dingleton Designed Landscape, prejudicing the health and future retention of the remaining trees whilst allowing insufficient space for adequate compensatory planting. Furthermore, it has not been demonstrated that the public benefit of the development would outweigh the loss of, and impacts on, the protected trees.

DEVELOPMENT PROPOSAL

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

Plan Reference No.	Plan Type
(-L)000	Location Plan
(-L)001	A Existing Site Plan

PRELIMINARY MATTERS

The Local Review Body considered the review, which had been competently made, under section 43A (8) of the Town & Country Planning (Scotland) Act 1997 at its meeting on 22nd January 2024.

After examining the review documentation at that meeting, which included a) Notice of Review; b) Additional Information (including LRB Decision Notice 22/00015/RNONDT; c) Further Representation and Applicant's Response; d) Objections; and e) List of Policies. The Review Body then proceeded to determine the case.

REASONING

The determining issues in this Review were:

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

The Development Plan comprises: the Scottish Borders Local Development Plan 2016 (LDP) and National Planning Framework 4 (NPF4). The LRB considered that the relevant listed policies were:

- Local Development Plan policies: PMD1, PMD2, PMD3, PMD5, HD3, EP1, EP2, EP3, EP4, EP7, EP8, EP10, EP13, IS2, IS3, IS7, IS9
- NPF4 Policies: 1, 2, 3, 4, 6, 7, 14, 15, 16

Other Material Considerations

Supplementary Planning Guidance on:

- Placemaking and Design 2010
- Householder Development (Privacy and Sunlight) 2006
- Trees and Development updated October 2020
- Biodiversity 2005
- Development Contributions updated April 2023
- Sustainable Urban Drainage Systems August 2020

The Review Body noted that the proposal was for the erection of a single dwellinghouse on land North of Ivanhoe, Dingleton Road, Melrose. The LRB also noted that they previously refused permission for appeal 22/00015/RONDT which sought permission for two houses on this site primarily on grounds that the development would result in the loss of existing trees within the site, to the detriment of the character and visual amenity of the surrounding area with insufficient space left for adequate compensatory planting.

Members firstly considered the application against Policies PMD2 and PMD5 of the Local Development Plan and Policies 14 and 16 of NPF4. They accepted that the site was within the settlement boundary of Melrose and may present an infill opportunity. They recognised that the site was still part of the overall housing allocation EM32B in the Local Development Plan, albeit shown on the Settlement Proposals Map as part of the structure planting and landscaping within that land allocation, reflecting the fact that the site contained orchard trees protected by SBC TPO 21.

The Review Body noted that the application was for planning permission in principle and that there were no detailed siting and design proposals, although a site plan with house position

and tree positions had been submitted. The indicative positioning of the house had been informed by a detailed Arboricultural Impact Assessment.

Having considered all the submissions, the Review Body were of the opinion that the key issue was whether the site has the capacity to accommodate the revised proposal for a single house without adversely affecting the protected trees in a manner which would allow the site to be developed without harming the amenity of the surrounding area.

The LRB remained of the opinion that the orchard trees within the site represented an historic and important element of the natural landscape and environment of the area, providing a valued public amenity for residents around the site. Despite this latest application reducing the number of houses from two to one and also reducing the number of trees which would have to be removed to allow the site to be developed, Members remained concerned that the proposal would still result in the loss of a number of protected trees. Additionally, concerns were raised that if the site were developed for residential purposes it may result in future pressure to remove any remaining trees to improve the amenity of a dwelling's garden. Consequently, the development was found to result in the loss of protected trees within the site which would have an adverse impact on the character and amenity of the area and there remained insufficient benefits or mitigation that would outweigh the adverse impact.

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

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was contrary to the Development Plan and that there were no other material considerations that would justify departure from the Development Plan. Consequently, the application was refused for the reasons stated above.

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

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

Signed Councillor S Mountford
Chairman of the Loal Review Body

Date 7 February 2024



**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: 23/00050/RREF

Planning Application Reference: 23/00684/FUL

Development Proposal: Change of use from amenity land to garden ground

Location: 58 Waldie Griffiths Drive, Kelso

Applicant: M&J Ballantyne Ltd

DECISION

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

The proposal would be contrary to Policy 20 of National Planning Framework 4 and Policies PMD2 and EP11 of the Local Development Plan 2016 and the Supplementary Planning Guidance on Placemaking and Design 2010 in that it would result in the loss of public open space that would be out of character with the existing and proposed development pattern to the detriment of the visual amenity and character of the surrounding area. In addition, it has not been demonstrated that there is a social, economic or community benefit for the loss of open space or that the need for development outweighs the need to retain the space. No comparable or enhancement of existing open space has been provided to mitigate the potential loss.

DEVELOPMENT PROPOSAL

The application relates to the change of use of amenity land from garden ground and the erection of a new boundary fence on land adjacent to 58 Waldie Griffiths Drive, Kelso. The application drawings and documentation consisted of the following:

Plan Reference No.

P65 L 101
P65 LOC
P65 L 102

Plan Type

Proposed Site Plan
Location Plan
Specifications

PRELIMINARY MATTERS

The Local Review Body considered the review, which had been competently made, under section 43A (8) of the Town & Country Planning (Scotland) Act 1997 at its meeting on 22nd January 2024.

After examining the review documentation at that meeting, which included a) Notice of Review; b) Papers referred to in Officer's Report; c) Additional Information; d) Consultation Replies; and e) List of Policies, 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: the Scottish Borders Local Development Plan 2016 (LDP) and National Planning Framework 4 (NPF4). The LRB considered that the relevant listed policies were:

- Local Development Plan policies: PMD1, PMD2, EP11, HD3
- NPF4 Policies: 14, 15, 16, 20, 21

Other Material Considerations

SBC Supplementary Planning Guidance on;

- Householder Development (incorporating Privacy and Sunlight Guide) 2006
- Placemaking and Design 2010

The Local Review Body noted that 58 Waldie Griffiths Drive was a new build dwellinghouse which has been constructed as part of the East Broomlands residential development. The proposals sought to extend the garden of the dwelling by including land which forms part of a wedge of open space within the residential development into the property's curtilage. Members observed that if approved the development would require the existing boundary fence to be repositioned and a public footpath which is to be constructed adjacent to the boundary of the application to be re-routed.

The Review Body accepted that the proposal resulted in the loss of only a small area of open space. Members observed that the wider residential development did not benefit from large areas of open space and any loss of open space potentially impacting on its usability. Although the area of ground would provide the applicants with additional garden ground, the extent of the proposed extension was not necessarily judged to significantly improve the applicant's amenity.

Members were concerned that the repositioning of the fence to the southwest closer to the road would increase its prominence and affect the balance of the landscape layout at this part of the development. Additionally, it would require an awkward realignment of the path which could affect its usability by elderly residents. Members considered that the repositioning of the fence and its intrusion into an area of open space would detract from the streetscape of development and its wider masterplan layout.

Overall, Members agreed with the Appointed Officer that the development resulted in the unjustified loss of open space, contrary to Policy EP11 of the LDP and to the detriment of the

visual amenity and setting of the wider East Broomlands residential development. Members determined that the original decision should be upheld.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was contrary to the Development Plan and that there were no other material considerations that would justify departure from the Development Plan. Consequently, the application was refused for the reasons stated above.

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

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

Date 7 February 2024

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