

APPENDIX I

**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: 16/00010/RREF

Planning Application Reference: 15/00890/FUL

Development Proposal: Erection of Dwellinghouse and upgrade of access track

**Location: Redundant Water Treatment Works, North East of Broughton Place
Cottage, Broughton**

Applicant: Mr S Kane

DECISION

The Local Review Body (LRB) upholds the decision of the appointed officer and refuses planning permission for the reasons set out in this decision notice on the following grounds:

- 1 The proposal is contrary to Supplementary Planning Guidance on New Housing in the Borders Countryside and Policy HD2 - Housing in the Countryside of adopted Local Development Plan 2016 in that the site for the new house is not within the recognisable building group at Broughton Place and it does not relate well to this group.
- 2 The proposal would be contrary to Policies HD2 and PMD4 of the adopted Local Development Plan 2016 in that the stated need for the dwellinghouse would not justify the proposed development in this specific location.
- 3 The proposed dwellinghouse would be contrary to Policy HD2 of the adopted Local Development Plan 2016 in that satisfactory access and other road requirements cannot be met.

DEVELOPMENT PROPOSAL

The application relates to the erection of a house on the site of a former redundant water treatment works in a field to the north east of Broughton Place Cottage, near Broughton. The application drawings consisted of the following drawings :

Plan Type	Plan Reference No.
Location Plan	051105/LOC
Planning layout	141412/PL/01
Site Plan	141412/PL/02

PRELIMINARY MATTERS

The Local Review Body (the “LRB”) considered at its meeting on 6th June 2016 that the Review had been competently made under section 43A (8) of the Town & Country Planning (Scotland) Act 1997.

After examining the review documentation at that meeting, which included: a) Notice of Review including the Decision Notice and the Officer’s report; b) Papers referred to in report; c) Consultations; d) Objections; e) Additional representations and f) List of policies the LRB concluded that it had sufficient information to determine the review and proceeded to consider the case.

REASONING

The determining issues in this Review were:

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

The Development Plan comprises: SESplan 2013 and the adopted Scottish Borders Local Development Plan (LDP) 2016. Members noted that the new LDP was adopted on 12th May 2016 and therefore relevant policies within it were now the primary material policy considerations and that policies within the consolidated Local Plan 2011 were now superseded. Although the planning application had been considered primarily taking cognisance of the policies within the consolidated Plan which was in force when the application was submitted, it was agreed that the LRB should consider the proposal only against policies within the LDP 2016. The LRB considered that the most relevant of the listed policies within the LDP 2016 were :

- Local Development Plan policies : HD2 and PMD4

The LRB noted that although these new policies replaced policies D2 and G8 respectively within the consolidated Local Plan 2011, it was considered that the new policies did not raise any new material considerations in this instance.

OTHER MATERIAL CONSIDERATIONS

SBC Supplementary Planning Guidance on New Housing in the Borders Countryside 2008
Scottish Planning Policy
Equality Act 2010

The Equality Act 2010 had been referred to in the appellant's submissions and in particular section 149 as a key material consideration to this application, however no extract had been provided. The Council's Legal representative explained to the LRB the terms of section 149 "the public sector equality duty" of the Equality Act 2010 and provided them with an extract of it for reference. The Council's Legal representative confirmed that the disabilities suffered by the appellant's son referred to within the appellant's appeal meant that the public sector equality duty was applicable to this case and that accordingly it was a material consideration to the determination of the application. The LRB was reminded that as with any material consideration it was for Members to decide how much weight should be given to it and in the event they considered the development was otherwise contrary to the Development Plan whether this material consideration justified departure from the Development Plan.

Although the Housing in the Countryside policy can allow more flexibility in the Southern Housing Market Area in respect of extending what are considered to be dispersed housing groups, it was confirmed Broughton is located within the northern housing market area and therefore this part of the policy was not relevant.

Members noted that a previous similar application (07/01075/FUL) by the same applicant for a dwellinghouse on this site was refused consent on the grounds that it was contrary to the Housing in the Countryside policy in that it did not relate to a building group, there was no other justified need for the house and that the access was unsatisfactory. A subsequent appeal was dismissed by a Reporter.

Members noted objections had been submitted by six parties and the Upper Tweed Community Council regarding the current proposal.

Members noted the location of existing properties within the vicinity of the application site and a wooded area on the northern side of the application side which the planning officer had considered to be a natural and strong boundary which defined the setting on the group. Members considered the application site fell outwith any recognised building group and considered the proposal had no connection with the sense of place created by the existing buildings. Consequently it was considered that the proposal did not comply with the Housing in the Countryside policy in that it was not considered an appropriate addition to the existing group of buildings.

Having decided that the proposed location of the proposal was contrary to the Housing in the Countryside policy, consideration was then given to any other material considerations. This primarily related to the case submitted by the appellants regarding the need for the house to achieve better facilities for the appellant's disabled son.

Members noted that the appellant had stated that:

- (i) policy PMD4 could support proposals outwith development boundaries if they would offer significant community benefits that outweigh the need to protect the development boundary.
- (ii) The community benefits would be that the family will continue to live in Broughton where the children will attend school and where the family operate their business.
- (iii) the specific medical needs of the applicant's family are the most significant material consideration which must, in this case, outweigh any planning policy objection to this proposal.
- (iv) although the family had recently moved to a single storey house within the village supplied by Eildon Housing which had been altered to accommodate

disabled needs, that they considered it remained inadequate for the needs of the family.

In respect of the issue of whether the proposal delivered community benefits that would outweigh the need to protect the development boundary Members considered that as the family already live in Broughton the proposal would not offer any improved or other community benefits.

The LRB expressed sympathy with the needs of the appellant's disabled son and acknowledged that as he grows older his needs will likely increase. Members consequently gave careful consideration to whether the material consideration of "the public sector equality duty" justified departure from the Development Plan.

In considering this issue, the LRB considered that it was a further material consideration that the family had recently moved to a single storey house within the village supplied by Eildon Housing which had been altered to accommodate disabled needs, which better met their needs than their previous home.

The LRB was concerned that locating this house for special needs in this remote location could be problematic in terms of gaining an appropriate access to the site, particularly for emergency vehicles and any support care staff. The LRB considered from the evidence presented that this issue would likely be significant in the winter time. Members considered there appeared to be uncertainties as to whether the appellant had the necessary ownership of land to upgrade the access route to standards required by Roads Planning and Building Standards. Members expressed concern as to the suitability of the access at the junction onto the A701 where the single lane bridge would not allow two vehicles to pass. Consequently the LRB did not consider this was a suitable site for the needs of the appellant's family.

The LRB did not consider that the appellant had demonstrated a specific need for the house to be located in the proposed location, which would otherwise be contrary to Planning Policy. The LRB observed that there were two allocated housing sites within the village within which the appellant could potentially build a custom designed house for the family's needs in compliance with Planning Policy.

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.

Notice Under Section 21 of the Town & Country Planning (Schemes of Delegation and Local Review procedure) (Scotland) Regulations 2008.

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....Cllr R Smith
Chairman of the Local Review Body

Date.....16 June 2016
