

APPENDIX II

**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: 16/00011/RREF

Planning Application Reference: 16/00041/FUL

**Development Proposal: Removal of Condition no 3 of planning permission
04/02011/FUL pertaining to occupancy of dwellinghouse**

Location: Craigie Knowe, Blainslie Road, Earlston

Applicant: Eileen Cockburn

DECISION

The Local Review Body (LRB) decided that an occupancy condition remained necessary but that planning condition no 3 required to be amended to read:

“The occupation of the dwellinghouse hereby approved shall be limited to a person solely or mainly involved, or last employed, in the operation of the adjoining land for agriculture, as defined in section 277 of the Town and Country Planning (Scotland) Act 1997, or equestrian or other use approved by the Planning Authority, or any dependent of such person residing with him or her including a widow or widower of such person.

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 operational enterprise needs

DEVELOPMENT PROPOSAL

The application relates to the removal of condition no 3 which was attached to planning permission ref 16/00041/FUL pertaining to the occupancy of a dwellinghouse. The application drawings consisted of the following drawing :

Plan Type

Plan Reference No.

PRELIMINARY MATTERS

The Local Review Body 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 (the "1997 Act").

After examining the review documentation at that meeting, which included: a) Notice of Review including the Decision Notice; b) Officer's Report; c) Papers referred to in the report and d) 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 Local Development Plan 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 of the LDP 2016 was :

- Local Plan policy : HD2

Other Material Considerations

SBC Supplementary Planning Guidance on New Housing in the Borders Countryside 2008

Scottish Planning Policy

Circular 4/1998 – The Use of Conditions in Planning Permissions

Circular 3/2012 – Planning Obligations and Good Neighbour Agreements

Within the Notice of Review it was noted that new material had been submitted. This related to a letter stating that the selling agents had marketed the property as a rural business premises. The letter stated that "the subjects were actively marketed, encouraging interest particularly from those with rural or equestrian background". Within the officer's report reference is made to the fact that this information was requested during the processing of the application but this was not submitted. This request was made by the planning officer to seek confirmation that any interested purchasers were aware of the tied occupancy requirement.

Members agreed that the issue to which the new material related was a material consideration in this application and that as such in terms of Section 43B(2)(b) of the 1997 Act it was appropriate that the LRB had regard to it.

Members noted that planning consent was granted in 2004 for this house and associated business. The proposal for housing in the countryside was supported on the business case submitted and a condition was attached to the consent to ensure occupancy of the house was tied with the proposed business. The condition stated that:

"The occupation of the dwellinghouse hereby approved shall be limited to a person solely or mainly employed in the operation of the adjoining land and building as a Horse Breeder, Potato Merchant, Horse Feed Merchant or Farrier or other business approved by the planning authority.

Reason: The erection of a dwellinghouse for normal residential occupation would be contrary to the Council's policy on housing in the countryside."

A legal agreement was also entered into which ensured no further houses were built on the land and that the house and the business were not sold off separately.

Members noted that the appellant's husband has regrettably passed away and the business does not now operate. The house is now for sale and the appellant wishes to have the aforesaid planning condition removed. It was confirmed that the proposal solely related to the removal of the planning condition and the LRB were not requested to consider amending the legal agreement. Members observed that they did consider that the legal agreement remained necessary.

Members were advised that 3no options were available to them in determining this appeal. These were:

- 1) Uphold the planning officer's recommendation and retain the wording of the condition
- 2) Overturn the planning officer's recommendation and remove the condition, or
- 3) Amend the wording of the planning condition

Whilst clearly having sympathy with the appellant's circumstances, Members acknowledged that the approval was granted for this house solely on the grounds that the identified business would operate from the site and if the condition was removed then any party could reside on the site without any business ties and that this would be contrary to Council's policies on housing in the countryside. This was a concern as it was considered some type of business should be operated from the site in order to maintain the spirit and reasoning as to why the house was allowed in the first instance.

The LRB considered that the house had only been on the market six months which was not considered a long enough period of time to test the market and to justify the complete removal of the planning condition. Members were also not satisfied that it had been demonstrated that the house had been specifically marketed for relevant business uses, rather than just within the general housing market.

However, the LRB acknowledged that the condition as currently framed did not technically allow the applicant, as the widow of someone operating a relevant business, to remain in the house and that the condition needed to be amended to address this. Members further considered that the condition was overly narrow and specific to the appellant's husband's business operations which consequently may limit options for any other interested parties to take occupancy of the house and operate a business as identified within the planning condition. Consequently Members considered that the condition could be made more flexible in allowing more options for the land to be operated for other agricultural or equestrian uses, and ensure that occupancy of the house was tied to that use.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the planning condition should be amended to allow more flexibility for the land to be operated for an agricultural or equestrian use associated with the occupancy of the house.

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
