

SCOTTISH BORDERS COUNCIL LOCAL REVIEW BODY

MINUTE of Meeting of the LOCAL REVIEW
BODY held in Council Chamber, Council
Headquarters, Newtown St Boswells, TD6
0SA on Monday, 16 May, 2016 at 10.00 am

- Present:- Councillors R. Smith (Chairman), J. Brown (Vice-Chairman), J. Campbell,
J. A. Fullarton, I. Gillespie, D. Moffat, S. Mountford and B White
- Apologies:- Councillors M. Ballantyne
- In Attendance:- Lead Officer Plans and Research, Solicitor (G. Nelson), Democratic Services
Team Leader, Democratic Services Officer (F. Walling).

1. **REVIEW OF APPLICATION 15/01323/FUL**

There had been circulated copies of the request from Angela Fairbairn, per Andrew McCafferty Associates, Burn House, Collessie, Fife, to review the decision to refuse the planning application in respect of the erection of a dwellinghouse on land north east of The Cottage, Lauder Barns, Lauder. Included in the supporting papers were the Decision Notice, Notice of Review, officer's report, consultations, objections and concern, a support comment and list of relevant policies. The Local Review Body considered pieces of new evidence that had been submitted with the Notice of Review as detailed in Appendix I to this Minute and concluded, for the reasons given, that determination of the review could be made with reference to this new evidence. In their initial discussion Members agreed that the three houses in the vicinity of the site formed a recognised building group. Members had sympathy with the applicant in that the site had previously had planning consent which had now lapsed and in principle they were content that the proposed dwellinghouse would be a suitable and appropriate addition to the building group. Members' discussion focused on the Council's Housing in the Countryside Policy and the fact that the allowable extension of the building group had been taken up by outline consent for two dwellings on land adjacent to the site, albeit that development had not commenced on that site. Members recognised the anomalous situation that, had work begun on the adjacent development site there could have been further expansion of the building group permitted in the new plan period which was about to commence. Members therefore turned their attention to other material factors affecting the suitability of the proposed development including the facts that there had been previous building consent, that this was a brownfield site and that any on-site contamination issues could be addressed by the proposal. Members agreed that, should the application be approved the height of the proposed fencing on the curtilage of the plot should be reduced. However, they were content with the orientation of the site.

VOTE

Councillor Fullarton, seconded by Councillor Smith, moved that the decision to refuse the application be upheld.

Councillor Moffat, seconded by Councillor White, moved as an amendment that the decision to refuse the application be reversed and the application approved.

On a show of hands Members voted as follows:-

Motion - 3 votes

Amendment - 5 votes

The amendment was accordingly carried.

DECISION

AGREED that:-

- (a) **the request for a review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;**
- (b) **in accordance with Section 43B of the Town and Country Planning (Scotland) Act 1997 the review could be determined with reference to the new evidence submitted with the Notice of Review documentation;**
- (c) **the review could be considered without the need for any further procedure on the basis of the papers submitted;**
- (d) **the development was not fully consistent with the development plan but that there were other material factors which justified departure from the Development Plan; and**
- (d) **the decision of the appointed officer to refuse the application be reversed and the application for planning permission be granted, subject to conditions and a legal agreement, as detailed in Appendix I to this Minute.**

2. REVIEW OF REFUSAL OF APPLICATION 15/01557/FUL

There had been circulated copies of the request from Book Developments, per Camerons Ltd, 1 Wilderhaugh, Galashiels, to review the decision to refuse the planning application in respect of erection of a dwellinghouse on land south west of 76 St Andrew Street, Galashiels. Included in the supporting papers were the Notice of Review including the Decision Notice, officer's report, consultations and a list of relevant policies. The Local Review Body noted that new information had been submitted with the Notice of Review as detailed in Appendix II to this Minute and concluded, for the reasons given, that determination of the review could be made with reference to this new information. In discussing the application Members were generally complimentary about the innovative design of the proposed house but opinion was divided about whether the design was suitable and appropriate for this particular location where it would be highly visible from the surrounding properties and gardens.

VOTE

Councillor Moffat, seconded by Councillor Campbell, moved that the decision to refuse the application be upheld.

Councillor Fullarton, seconded by Councillor Mountford, moved as an amendment that the decision to refuse the application be reversed and the application approved.

On a show of hands Members voted as follows:-

Motion - 5 votes

Amendment - 3 votes

The motion was accordingly carried.

DECISION

AGREED that:-

- (a) the request for a review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;
- (b) in accordance with Section 43B of the Town and Country Planning (Scotland) Act 1997 the review could be determined with reference to the new evidence submitted with the Notice of Review documentation;
- (c) the review could be considered without the need for any further procedure on the basis of the papers submitted;
- (d) the proposal would be contrary to the Development Plan and that there were no other material considerations that would justify departure from the Development Plan; and
- (e) the officer's decision to refuse the application be upheld for the reasons detailed in Appendix II to this Minute.

3. **REVIEW OF REFUSAL OF APPLICATION 15/01484/FUL**

There had been circulated copies of the request from Mrs M Dick, 5 East High Street, Lauder to review the decision to refuse the planning application in respect of replacement windows at 5 East High Street, Lauder. The supporting papers included the Decision Notice, Notice of Review, officer's report, drawings and a list of relevant policies. The Planning Advisor referred to the relevant policies and also circulated to the Local Review Body copies of an extract from the updated Supplementary Planning Guidance on Replacement Windows and Doors (2015). Members noted that the property concerned was within the Conservation Area at Lauder and on the Area of Prime Frontage of the High Street. Members also noted that the applicant was attempting to meet the needs of the policy by replicating the appearance and opening mechanism of the existing windows which were of traditional design and material similar to adjoining properties. In principle they were not opposed to the use of double glazing in the replacement windows nor to the use of uPVC. However, they were concerned that the proposed white uPVC units with 'stick-on' glazing bars would not accord with policy and would differ in appearance from the windows being replaced. After further discussion Members agreed that before coming to a decision as to the suitability of the appearance of the proposed replacement windows it would be helpful to see an actual sample of the uPVC window frame and stick-on glazing bars.

DECISION

AGREED:-

- (a) that the request for a review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;
- (b) that the review could not be considered without further procedure in the form of a physical production;
- (c) to request the applicant to provide a sample of the proposed uPVC window frame and stick-on glazing bars for examination at the Local Review Body meeting of 18th July 2016, when consideration of the review of the application would be continued.

The meeting concluded at 12.20 pm

APPENDIX I

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: 16/00007/RREF

Planning Application Reference: 15/01323/FUL

Development Proposal: Erection of dwelling house

Location: Land north east of the Cottage, Lauder Barns, Lauder

Applicant: Angela Fairbairn

DECISION

The Local Review Body (LRB) reverses the decision of the appointed planning officer and gives notice that it intends to grant planning permission subject to conditions and the conclusion of a legal agreement as set out in this intentions notice.

DEVELOPMENT PROPOSAL

The application relates to the erection of a house on land to the north east of the Cottage at Lauder Barns. The application drawings consist of the following:

Plan Type	Plan Reference No.
Location Plan	A4
Location Plan	LOC-01
Site Plan	PL-01
Elevations	
Other	EX-01

PRELIMINARY MATTERS

The LRB considered at its meeting on 16th May 2016, that the review had competently been 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) Decision Notice; b) Notice of Review; c) Officer's report; d) Consultations; e) Objections and concern; f) Support comment; and g) List of policies;
the LRB considered they had enough information to determine the review and proceeded to consider the case. In coming to the conclusion, the LRB noted the request from the appellant for a site inspection and one or more hearing sessions

Members noted that new information had been submitted namely:

- 1) a photomontage of the proposal,
- 2) photos of the site and surrounding area
- 3) reference to Reporter's recommendations regarding the Local Development Plan in respect of housing land supply

Members considered whether it was appropriate to have regard to each item of new information in terms of the Statutory test set out in section 43B of the 1997 Act.

While acknowledging that items 1 & 2 were technically new information, Members took the view that as the Planning Officer was well aware of characteristics of the site and surrounding area, and how the proposal would appear in relation to other buildings, that this information did form part of the Planning Officer's considerations during the determination of the proposal. Accordingly Members were content that items 1 & 2 could be considered without applying the section 43B test of the 1997 Act. In terms of item 3, Members considered that both they and the Planning Officer would have been aware of the Reporter's recommendations with regards to the Local Development Plan, and that this would have been a material consideration when the Planning Officer determined the proposal. It was therefore decided item 3 was also not truly new information and that the section 43B test of the 1997 Act did not require to be considered.

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 against policies within the LDP 2016. The LRB considered that the most relevant of the listed policies of the LDP 2016 were:

- Local Development Plan policies : PMD2 and HD2

The LRB noted that although these new policies replaced policies G1 and D2 respectively within the consolidated Local Plan, it was considered that the new policies did not raise any new material considerations in this instance.

Other material considerations the LRB took into account related to:

Other Material Considerations

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

- SBC Supplementary Planning Guidance – Placemaking and Design 2010
- Scottish Planning Policy

Members noted that in 2004, against officer recommendation, the Eildon Area Committee considered that the 3no houses in the vicinity of the site comprising of the Lauder Barns farmhouse (to the east), The Cottage (to the west) and Riverside (to the north) formed a recognised building group and consequently approved an outline application for a house on the site subject to this Review. Planning officers acknowledged the Committee's acceptance of the building group and determined consequent applications within the building group taking this on board. The LRB confirmed that they considered the aforesaid houses to form a recognised building group of 3no houses.

Members noted that following the aforesaid outline approval in 2004, a consequent Reserved Matters application in 2006 was approved. However, Members noted that these consents lapsed in 2009.

Members also noted that planning approval has been given for the principle of two new-build dwellings on land to the immediate northeast of the site (07/02397/OUT). That decision was taken at a time when planning policy allowed for the potential for building groups to expand by up to 100% within any one statutory development plan period. The Council's Housing in the Countryside Policy has since been revised, and now only allows for the addition of two new dwellings within the statutory development plan period.

There was a delay in the approval being released for the 2no houses to the north east due to the Legal Agreement regarding Development Contributions being sorted out. The approval for these 2no plots was granted in November 2013 meaning the consent expires in November 2016, if works on the Development remain uncommenced.

Members acknowledged that as works had not commenced on the two houses approved in terms of the planning consent 07/02397/OUT prior to the new Local Development Plan being adopted, that in terms of the Council's current Housing in the Countryside Policy the expansion limit of two new dwellings within a statutory development plan period remains taken up by that consent.

Members did have sympathy with the applicant in that the site previously had planning consent but noted that the proposal did not now comply with the Housing in the Countryside policy as the 2no allowable number of houses the policy could allow had already been taken up.

Comment was made that when it came to renew these consents consideration should be given as to whether the Planning Officer could give consideration to only granting consent to, for example, a single unit which would allow the site subject to this Review to effectively become the second approval within the group. However, it was confirmed that the renewal of the application could only be judged as to whether the proposal did or did not comply with policy, and it was not reasonable nor legitimate to withhold the renewal of a consent when it otherwise complied with policy

The LRB considered that the house design and the proposed finished materials were appropriate for the location. They did consider that the proposed 1.8m boundary fence would be inappropriate in the rural location and noted that the applicant was agreeable to some other type of boundary treatment. Members agreed that if the application was to be approved an alternative means of boundary treatment should be agreed.

In light of their conclusion that the proposal did not fully comply with the Housing in the Countryside policy, Members considered whether there were any material considerations to outweigh this and justify approval. Members considered the following matters to be material considerations:

- The history of a previous full permission for the site;

- That had any works commenced in respect of the houses approved in terms of 07/02397/OUT prior to the new LDP being adopted, then this proposal would have complied with the Housing in the Countryside policy;
- the fact the site was brownfield, and this proposal represented an opportunity to address any on-site contamination issues; and critically
- that the house was well designed and appropriate for this location and would complement and improve the building group as a whole;

CONCLUSION

After considering all relevant information, the Local Review Body concluded that although technically the proposal exceeded the stated extent to what Development Plan policy would allow the building group to be extended, Members considered that there were other material considerations which on balance allowed them to support the proposal.

DIRECTION

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

CONDITIONS

1. Details of all proposed means of boundary enclosure shall be submitted to and approved in writing by the Local Planning Authority before work on the site is commenced.

Reason: To ensure appropriate screening is carried out in this rural setting.

2. Mains water and foul drainage connections to be confirmed with Scottish Water prior to the commencement of the site

Reason : To ensure adequate service provision of the site

3. A plan to be submitted confirming finished site and floor levels to be agreed with the planning authority prior to the commencement of any on-site works

Reason : To ensure the satisfactory development of the site

4. Transport Scotland requires that the width of the access shall be at least 5.5 metres wide for a distance of 5 metres from the nearest edge of the trunk road carriageway

Reason : To ensure that the access is wide enough to allow vehicles to enter and exit the access at the same time without conflict

5. Any noise emitted by plant used on the premises will not exceed Noise Rating Curve NR20 between the hours of 2300 – 0700 and NR 30 at all other times when measured within the nearest noise sensitive dwelling (windows can be open for ventilation). The noise emanating from any plant used on the premises should not contain any discernible tonal component. Tonality shall be determined with reference to BS 7445-2

Reason : To protect the residential amenity of nearby properties.

6. The Unit shall be maintained and serviced in accordance with the manufacturer's instructions so as to stay in compliance with the aforementioned noise limits.

Reason : To protect the residential amenity of nearby properties.

7. 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.

Informative

Notwithstanding that any works required to the junction with the A68 and out with the verge of the same, if required at all, would be both minimal and in the wider interests of all users of the same access, it is not clear whether or not, or to what extent, the Applicant would have any legal right to carry out such works.

For her own reassurance, and in advance of making a new planning application for this proposal, the Applicant is strongly advised to establish whether or not there would be any legal obstacle to her carrying out the works that Transport Scotland had identified.

Transport Scotland also stated that the applicant should be informed that the granting of planning consent does not carry with it the right to carry out works within the trunk round boundary and that permission must be granted by Transport Scotland Trunk Road and Bus Operations. Where any works are required on the trunk road, contact details are

provided on Transport Scotland's response to the planning authority which is available on the Council's planning portal. Trunk road modification works shall, in all respects, comply with the Design Manual for Roads and Bridges and the Specification for Highway Works published by HMSO. The developer shall issue a certificate to that effect, signed by the design organisation. Trunk road modifications shall, in all respects, be designed and constructed to arrangements that comply with the Disability Discrimination Act: Good Practice Guide for Roads published by Transport Scotland. The developer shall provide written confirmation of this, signed by the design organisation.

Legal Agreements

The Local Review Body required that a Section 75 Agreement, or other suitable legal agreement, be entered into regarding the payment of a financial contribution towards educational facilities and towards the re-instatement of the Borders Railway

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

Date...6 June 2016

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: 16/00008/RREF

Planning Application Reference: 15/01557/FUL

Development Proposal: Erection of dwellinghouse

Location: Builder's yard, Land south west of 76 St Andrew Street, Galashiels

Applicant: Book Developments

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:

The development would conflict with Policies G1 and G7 of the Consolidated Local Plan 2011 and Supplementary Planning Guidance "Placemaking and Design" 2010 because the scale, form and design of the development would, in this backland location, lead to an unacceptable visual impact on the character of the surrounding area and neighbouring built form

DEVELOPMENT PROPOSAL

The application relates to the erection of a house on land to the south west of 76 St Andrew Street in Galashiels. The application drawings consisted of the following drawings :

Plan Type	Plan Reference No.
Location Plan	9249/1.01
Existing layout	9249/1.02
Existing elevations	9249/1.03
Site Plan	9249/1.04
Floor Plans	9249/1.05
Sections	9249/1.06
Elevations	9249/1.07

PRELIMINARY MATTERS

The Local Review Body considered at its meeting on 16th May 2016 that the Review had been 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 decision notice; b) Officer's Report; c) Consultations and d) List of policies, the LRB concluded that it had sufficient information to determine the review and proceeded to consider the case.

Within the Notice of Review it was noted that new material had been submitted. This related to a statement by the appellants that the proposal was an affordable property. Members noted that the applicant had submitted this information but it was received by the Planning Officer after the application had been determined. Members noted there was some disagreement between the applicant and the Planning Officer as to what the deadline was within the Processing Agreement for the submission of this information leading up to the determination of the application. Members, although satisfied the Planning Officer had acted properly, had some sympathy with the applicant regarding the misunderstanding of the submission date. Members agreed that the information could be accepted by them under 43B(1)(a) of the 1997 Act on the basis that it could not have been raised before that time. It was considered that in order to ensure this uncertainty did not happen again, Planning Officers should state within Processing Agreements a date when any further information should be submitted "before" which would eliminate any dubiety.

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 against policies within the LDP 2016. The LRB considered that the most relevant of the listed policies of the LDP 2016 were :

- Local Development Plan policies : PMD2 and PMD5

The LRB noted that although these new policies replaced policies G1 and G7 respectively within the consolidated Local Plan, it was considered that the new policies did not raise any new material considerations in this instance.

Members noted the proposed location of the new house, its relationship with surrounding properties and gardens and that the plans proposed a hipped zinc roof with brick walls. Members noted that in order to ensure daylighting into the property yet minimise any privacy or neighbouring amenity issues, external windows comprised of high rooflights and a window on a stairwell. An internal courtyard was incorporated within the design which allowed daylighting to main rooms via hit and miss brickwork and the use of translucent glass bricks. Members noted there had been no third party objections and

considered that the planning officer considered it would be an improvement on the historical use of the site as a workshop.

Members considered the design to be innovative and confirmed the design could be supported in many development case scenarios, but debated whether the proposed design was appropriate in this particular location. In this instance it was considered that the proposal was on a backland site which would be highly visible from surrounding properties and gardens and in essence would be a focal point within the general area. While considering a more traditional designed house may be acceptable in this location, Members considered the overall massing, design and finishing materials of the proposed house to be out of character, in particular the zinc roof, with the surrounding properties.

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.

3. 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.
4. 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 R Smith
Chairman of the Local Review Body

Date...6 June 2016
