

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: 17/00004/RREF

Planning Application Reference: 16/01422/FUL

Development Proposal: Erection of cattle building with welfare accommodation

Location: Field No 0328 Kirkburn, Cardrona

Applicant: Cleek Poultry Ltd

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 and on the following grounds:

- 1 The application is contrary to Policies PMD2, EP5 and ED7 of the Scottish Borders Local Development Plan 2016 and Supplementary Planning Policies relating to Special Landscape Area 2-Tweed Valley in that the proposed building will be prominent in height, elevation and visibility within the landscape and will have a significant detrimental impact on the character and quality of the designated landscape.
- 2 The application is contrary to Policies PMD2 and ED7 of the Scottish Borders Local Development Plan 2016 in that it has not been adequately demonstrated that there is an overriding justification for the proposed building that would justify an exceptional permission for it in this rural location and, therefore, the development would appear as unwarranted development in the open countryside. The proposed building is not of a design or scale that appears suited either to the proposed use for which it is intended or the size of the holding on which it would be situated, which further undermines the case for justification in this location.
- 3 The application is contrary to Policy EP8 of the Scottish Borders Local Development Plan 2016 in that it has not been adequately demonstrated that

the building would not have an adverse impact on the setting of the archaeological site of Our Lady's Church and Churchyard adjoining the application site.

- 4 The application is contrary to Policy ED7 of the Scottish Borders Local Development Plan 2016 in that it has not been adequately demonstrated that any traffic generated by the proposal can access the site without detriment to road safety.

DEVELOPMENT PROPOSAL

The application relates to the erection of a cattle building with welfare accommodation at Kirkburn, Cardrona. The application drawings consisted of the following drawings:

Plan Type	Plan Reference No.
Site Plan	19670
General Arrangement	19671

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 March 2017.

After examining the review documentation at that meeting, which included: a) Notice of Review; b) Officer's Report; c) Papers referred to in Report; d) Consultations and e) List of policies, the LRB concluded that it had sufficient information to determine the review and proceeded to consider the case. In coming to its conclusion the LRB considered the request from the applicant for further written submissions and one or more hearing session.

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 Strategic Development Plan 2013 and the Scottish Borders Local Development Plan 2016. The LRB considered that the most relevant of the listed policies were:

- Local Development Plan policies: PMD2, EP5, EP8 and ED7.

Other Material Considerations

- Scottish Planning Policy
- SBC Supplementary Planning Guidance on Local Landscape Designations 2012

The Review Body noted that the proposal was to erect a large cattle building on an elevated site within the applicant's land holding at Kirkburn. They accepted that

existing roadside trees would afford a degree of screening of the site and the building from the B7062 road but they were concerned that it would be prominent from more distant views across the valley. In considering the extent of visual and landscape impact, Members gave great weight to the views of the landscape architect and they agreed that the impact of the new building was harmful and therefore unacceptable. They concluded that it would constitute a prominent feature on an elevated site, which would detract from the intrinsic qualities of the Tweed Valley Special Landscape Area.

The Review Body noted that the application for the cattle building was supported by a business plan but they were not convinced that it outlined a viable or sustainable economic justification for the building to set aside the strong landscape objections to the development.

The Review Body were conscious of the sensitivities in terms of the building's relationship to the archaeological site of Our Lady's Church and churchyard. Members did not feel that this had been adequately taken into account or resolved by the applicant.

There is an extensive planning history associated with the landholding and a number of applications have been considered for the application site itself. Members were concerned about how the proposal would relate to all of those, how compatible they would be with one another and whether there would be conflict between the uses on such a limited area of land. In particular, they were concerned about how the cattle shed and the business would relate to the holiday development approved on this and the adjoining plot.

The Review Body reiterated their request that the applicant submit a business case/masterplan for the landholding that would set out clearly the objectives for the landholding.

Members noted the comments of the Roads Planning officer and agreed that the application was deficient in term of the required traffic study to enable a full assessment of the road safety implications of the development to be undertaken.

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.

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.....30 March 2017