

APPENDIX III

**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: 17/00006/RREF

Planning Application Reference: 16/01536/PPP

Development Proposal: Erection of dwellinghouse

Location: Land East of Highland Brae, Lilliesleaf

Applicant: Miss Kerrie Johnston

DECISION

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

DEVELOPMENT PROPOSAL

The application relates to the erection of a dwellinghouse on land east of Highland Brae, Lilliesleaf. The application drawings consisted of the following drawings:

Plan Type	Plan Reference No.
Location Plan	OS EXTRACT

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.

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: HD3, PMD1, PMD2, IS2, IS3, HD2, IS7, EP13 and IS9

Other Material Considerations

- Scottish Planning Policy
- SBC Supplementary Planning Guidance on Development Contributions 2015
- SBC Supplementary Planning Guidance on New Housing in the Borders Countryside 2008
- SBC Supplementary Planning Guidance on Placemaking & Design 2010
- SBC Supplementary Planning Guidance on Householder Development 2006
- SBC Supplementary Planning Guidance on Trees and Development 2008
- SBC Supplementary Planning Guidance on Landscape and Development 2008

The Local Review Body noted that, as the site lay out with the settlement boundary of Lilliesleaf, the application fell to be determined within the terms of the Council's Housing in the Countryside policies.

After considering the evidence before them and the slide presentation, the Review Body concluded that a building group, as defined in Policy HD2 of the Local Development Plan, did not exist at the locus. There was only one house, Highland Brae, and the existing barn associated with the house was neither capable nor suitable for conversion to residential use. In any event, to count towards a building group, the conversion of the barn to residential use would have had to have been granted and implemented. No such permission had been sought and granted. There was therefore, no realistic prospect of three residential units being formed at the site. Members agreed that the development was contrary to Part A of Policy HD2.

The Review Body then debated whether, in terms of Part (F) of Policy HD2, a direct operational need or requirement for a new house could be substantiated on economic grounds. After debating the issue, Members concluded that no such case had been made and that there was no economic justification for a new house. The development was therefore contrary to Part F of Policy HD2.

The Review Body came to the conclusion that the proposal was contrary to Policy HD2 of the development plan.

Members then considered whether, within the terms of the Section 25 of the Act, there were material considerations that they should take into account that would override the presumption to determine the case in accordance with the Development

Plan. In this regard, Members gave weight to the personal circumstances of the applicant and in particular, the need for her to live near her parents to provide for their care and health needs and also the lack of availability of alternative affordable housing in the locality to enable her to do this. They also took into account the recent decision for a new house at Easter Lilliesleaf House (13/00104/PPP) where the health requirements of the applicant's family were material to the granting of planning permission. In their view, there were exceptional circumstances in this case to justify granting consent.

Members were content that this decision would not set a precedent for further houses at the locality, as the erection of the new house would not trigger the formation of a building group at the site that could be added to.

In terms of the development of the site, Members wanted to ensure a satisfactory relationship between the new house and Highland Brae. In their view, the new house should be located to the north eastern side of the application site to allow for a degree of separation between the properties and they asked that a condition be imposed to that effect. This would also allow for sufficient landscaping between the properties. They requested that the access arrangements for the site also be designed to ensure this separation between the properties.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that whilst the development was contrary to the Development Plan there were exceptional circumstances that were material to justify a departure from the Development Plan. Consequently, the application was approved.

DIRECTIONS

1. Application for approval of matters specified in the conditions set out in this decision shall be made to the Planning Authority before whichever is the latest of the following:
 - (a) the expiration of three years from the date of this permission, or
 - (b) the expiration of six months from the date on which an earlier application for approval of matters specified in the conditions set out in this decision notice was refused or dismissed following an appeal.Only one application may be submitted under paragraph (b) of this condition, where such an application is made later than three years after the date of this consent.
Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.
2. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the matters specified in the conditions set out in this decision.
Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

CONDITIONS

1. No development shall commence until the details of the layout, siting, design and external appearance of the building(s), the means of access thereto and

the landscaping of the site have been submitted to and approved in writing by the Planning Authority.

Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

2. No development shall commence until all matters specified in conditions have, where required, been submitted to and approved in writing by the Planning Authority. Thereafter the development shall only take place except in strict accordance with the details so approved.

Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

3. The means of surface water and foul drainage to be submitted to and approved in writing by the Planning Authority before the development is commenced. The development then to be implemented in accordance with the approved details.

Reason: To ensure that the site is adequately serviced.

4. No development shall take place except in strict accordance with a scheme of hard and soft landscaping works, which has first been submitted to and approved in writing by the planning authority. Details of the scheme shall include (as appropriate):

- i. existing and finished ground levels in relation to a fixed datum preferably ordnance
- ii. measures to protect existing trees and hedgerows along the northern and western boundaries of the site during the construction phase and to ensure their retention thereafter and, in the case of damage, restored
- iii. details of a substantial shelter belt to be planted to the eastern boundary of the site
- iv. location and design, including materials, of walls, fences and gates
- v. soft and hard landscaping works
- vi. existing and proposed services such as cables, pipelines, sub-stations
- vii. other artefacts and structures such as street furniture, play equipment
- viii. A programme for the implementation and completion of the scheme of landscape works and subsequent maintenance thereof.

Reason: To ensure the satisfactory form, layout and assimilation of the development into the landscape and to ensure a degree of separation between the new dwelling house and the property known as Highland Brae.

5. The proposed new dwellinghouse to be located to the north eastern side of the application site.

Reason: To ensure the satisfactory form, layout and assimilation of the development into the landscape and to ensure a degree of separation between the new dwelling house and the property known as Highland Brae.

6. Prior to the occupation of the dwellinghouse, hereby approved, details of the new access to the site and the parking and turning for a minimum of two vehicles, excluding any garages, within the application site shall be submitted to and approved by the Planning Authority. The new access shall be designed in a manner to allow separation from the access into

Highland Brae. The parking and turning area should be retained for this use thereafter.

Reason: In the interests of road safety to ensure the satisfactory access, off road parking and turning for vehicles is provided at the site. In addition, so that the form and layout of the access road assists in ensuring a degree of separation between the new dwelling house and the property known as Highland Brae.

LEGAL AGREEMENT

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 education provision in the locality and 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.
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Signed..Councillor R. Smith
Chairman of the Local Review Body

Date.....23 March 2017