

APPENDIX IV

**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: 17/00017/RCOND

Planning Application Reference: 16/01467/AMC

Development Proposal: Erection of dwelling house and detached garage (approval of matters specified in all conditions pursuant to planning permission 15/00301/PPP)

Location: Land North East Of Dundas Cottage Ettrick Selkirk

Applicant: Mr J McGrath

DECISION

The Local Review Body (LRB) varies the decision of the appointed officer and grants planning permission for the reasons set out in this decision notice and subject the conditions and informatives listed below.

DEVELOPMENT PROPOSAL

The application relates to the erection of dwelling house and detached garage on land North East of Dundas Cottage, Ettrick, Selkirk. The application drawings consisted of the following drawings:

| Plan Type | Plan Reference No. |
|------------------|--------------------------------|
| Elevations | SF25181-001 A |
| Site Plan | 16-015-001 REV A |
| Sections | 16-015-002 |
| Location Plan | OS EXTRACT |
| Other | "CYCLONE" GARAGE LETTER / PLAN |

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 19th June 2017.

After examining the review documentation at that meeting, which included:
a) Decision Notice; b) Notice of Review; c) Officer's report; d) Papers referred to in report; e) Consultations; f) Representations and g) List of policies, the LRB concluded that it had sufficient information to determine the review. In coming to this conclusion the Review Body considered the applicant's request for a site visit and determined that this was not necessary and they then 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: ER13, IS5, IS7, PMD4 PMD2 and HD3.

Other Material Considerations

- 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

The Review Body noted the applicant sought a review of condition 3 imposed on planning permission 16/01467/AMC and in particular, the element of said condition that required the use of slate on the roof of the proposed house. However, Members were mindful that their deliberations did not relate solely to the condition the applicant sought to vary but they were required to "review the case". The review of the case was to be "de novo" and so they considered the application afresh.

The Review Body noted that Planning Permission in Principle (15/00301/PPP) had been granted for the development of the site and that as the application at review was an application for Approval of Matters Specified in Conditions (AMSC) pursuant to that earlier approval, they could not question the principle of the erection of a dwelling on the land.

After considering the material before them, Members accepted that the development was appropriate in terms of its design, layout, landscaping, etc and was consistent with the Council's policies on housing in the countryside. In view of this decision, they turned their attention to the terms and reasoning for the conditions imposed on the planning consent.

The Review Body examined, in the first instance, all of the conditions imposed on 16/01467/AMC, with the exception of condition 3. In this regard Members were content that they all met the tests of validity set out in planning circular 4/1998 and that should all stand as drafted and be imposed on the new permission.

Turning to condition 3, this required a slate roof on the dwellinghouse rather than the applicant's suggested use of a metal profile sheet roof, either rust or grey in colour.

Members gave weight to the evidence submitted by the applicant illustrating a number of buildings in the local area with corrugated roofing and walling. In particular, they noted from the presentation slides that the adjoining farm to the north east of the site was composed of a collection of buildings with slate roofs and grey corrugated sheeting external cladding. They therefore concluded that provided the building had a grey roof the material proposed by the developer would be appropriate as it would be consistent with and complimentary to buildings in the immediate vicinity of the site.

Members agreed that condition 3 should be varied to allow the use of the metal sheet profile roof but that this should be restricted to being grey in colour; Members did not consider that a rust coloured roof was acceptable or appropriate.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was consistent with the Development Plan and that there were no other material considerations that would justify departure from the Development Plan. Consequently, the application was approved subject to revised conditions.

CONDITIONS

- 1 No water supply other than public mains water shall be used for human consumption without the written consent of the Planning Authority.
Reason: To ensure that the development does not have a detrimental effect on public health.
- 2 Prior to occupation of the property written evidence shall be supplied to the planning Authority that the property has been connected to the public water supply network.
Reason: To ensure that the development does not have a detrimental effect on public health.
- 3 The roof of the dwelling shall be a grey metal profile roof cladding the details of which shall submitted to and approved in writing by the planning authority. The development is thereafter to be completed using the agreed roof covering, prior to occupation of the dwelling. The external parts of the flue of the wood burning stove are to be matt black or matt grey in colour. The remaining external surfaces of the development hereby approved shall be of materials indicated on the submitted application form and approved plans, and no other materials shall be used without the prior written consent of the Planning Authority.
Reason: To ensure a satisfactory form of development, which contributes appropriately to its setting.
- 4 Prior to commencement of the development, the widening of the junction must be to the following specification "A 40mm layer of 14mm size close graded bituminous surface course to BS 4987 laid on a 100mm layer of 28mm size dense base (road base) to the same BS laid on a 310mm layer of 100mm broken stone bottoming blinded with sub-base, type 1." These works must be completed to the satisfaction of the Council prior to the occupation of the dwelling.

Reason: In the interests of road safety at the junction of the B709 with the Captains Road.

- 5 Furthermore, the existing road gully must be relocated prior to commencement of development, to an agreed location that has first been submitted to and approved in writing with the Planning Authority. These works must thereafter be completed to the satisfaction of the Council prior to the occupation of the dwelling.

Reason: In the interests of road safety at the junction of the B709 with the Captains Road.

- 6 The first two metres of the private access into the plot must be formed with a bituminous surface, or approved equivalent, in order to provide a consolidated surface for vehicles to pull away from. These works must thereafter be completed to the satisfaction of the Council prior to the occupation of the dwelling.

Reason: In the interests of road safety at the Captains Road.

- 7 Before any part of the permitted development is commenced, the trees to be retained on the site shall be protected by a chestnut paling fence 1.5 metres high, placed in the location indicated on drawing 16/015-001 Rev A, and the fencing shall be removed only when the development has been completed. During the period of construction of the development:

(a) No excavations, site works, trenches or channels shall be cut, or pipes or services laid in such a way as to cause damage or injury to the trees by interference with their root structure;

(b) No fires shall be lit within the spread of the branches of the trees;

(c) No materials or equipment shall be stored within the spread of the branches of the trees;

(d) Any accidental damage to the trees shall be cleared back to undamaged wood and be treated with a preservative if appropriate;

(e) Ground levels within the spread of the branches of the trees shall not be raised or lowered in relation to the existing ground level, or trenches excavated except in accordance with details shown on the approved plans.

Reason: In the interests of preserving the health and vitality of existing trees on the development site, the loss of which would have an adverse effect on the visual amenity of the area.

- 8 Unless otherwise agreed in writing by the Planning Authority only the trees identified on drawing 16/015-001 Rev A and the corresponding Ballantynes Tree Services Survey Plan shall be removed.

Reason: The existing trees represent an important visual feature which the Planning Authority consider should be substantially maintained.

- 9 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:

i. existing and finished ground levels in relation to a fixed datum preferably ordnance

ii. existing landscaping features and vegetation to be retained and, in the case of damage, restored

iii. location and design, including materials, of walls, fences and gates

iv. soft and hard landscaping works

v. existing and proposed services such as cables, pipelines, sub-stations

- vi. other artefacts and structures such as street furniture, play equipment
 - vii. A programme for completion and subsequent maintenance.
- Reason: To ensure the satisfactory form, layout and assimilation of the development.

- 10 All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner, and shall be maintained thereafter and replaced as may be necessary for a period of two years from the date of completion of the planting, seeding or turfing.
- Reason: To ensure that the proposed landscaping is carried out as approved.

INFORMATIVES

It should be noted that:

- 1 The Environmental Health Service advises:

Private drainage systems often cause public health problems when no clear responsibility or access rights exists for maintaining the system in a working condition. Problems can also arise when new properties connect into an existing system and the rights and duties have not been set down in law.

- 2 The Environmental Health Service advises:

Wood Burning Stove installations can cause smoke and odour complaints and any Building and Planning Consents for the installation do not indemnify the applicant in respect of Nuisance action. In the event of nuisance action being taken there is no guarantee that remedial work will be granted building/planning permission.

Accordingly this advice can assist you to avoid future problems.

The location of the flue should take into account other properties that may be downwind.

The discharge point for the flue should be located as high as possible to allow for maximum dispersion of the flue gasses.

The flue should be terminated with a cap that encourages a high gas efflux velocity.

The flue and appliance should be checked and serviced at regular intervals to ensure that they continue to operate efficiently and cleanly.

The appliance should only burn fuel of a type and grade that is recommended by the manufacturer.

If you live in a Smoke Control Area you must only use an Exempt Appliance <http://smokecontrol.defra.gov.uk/appliances.php?country=s> and the fuel that is Approved for use in it <http://smokecontrol.defra.gov.uk/fuels.php?country=s>

In wood burning stoves you should only burn dry, seasoned timber. Guidance is available on -

[http://www.forestry.gov.uk/pdf/eng-woodfuel-woodasfuelguide.pdf/\\$FILE/eng-woodfuel-woodasfuelguide.pdf](http://www.forestry.gov.uk/pdf/eng-woodfuel-woodasfuelguide.pdf/$FILE/eng-woodfuel-woodasfuelguide.pdf)

Treated timber, waste wood, manufactured timber and laminates etc. should not be used as fuel.

Paper and kindling can be used for lighting, but purpose made firelighters can cause fewer odour problems.

- 3 The further landscaping details brought forward to address the conditions of this consent should address the comments of the Council's Landscape Architect.

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 T. Miers
Chairman of the Local Review Body

Date.....27 June 2017