

# Public Document Pack

## SCOTTISH BORDERS COUNCIL LOCAL REVIEW BODY

MINUTE of Meeting of the LOCAL REVIEW  
BODY held in the Council Chamber, Council  
Headquarters, Newtown St Boswells, TD6  
0SA on Monday, 19 June 2017 at 10.00 am

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Present:- Councillors T. Miers (Chairman), S. Aitchison, A. Anderson, J. A. Fullarton,  
S. Hamilton, H. Laing, S. Mountford, C. Ramage and E. Small

In Attendance:- Chief Planning Officer, Chief Legal Officer, Democratic Services Officer  
(F. Walling).

### 1. **REVIEW OF 17/00011/FUL**

There had been circulated copies of the request for review from Ms Evelyn Brown and Mr John Kirk, per Keith Renton Architect, Humestanes Studio, Greenlaw, concerning the failure of the Council to determine their application within the period prescribed by the regulations. The application was for the erection of a detached garage with first floor studio, alterations and extension to dwellinghouse at Danderhall Cottage, St Boswells. Included in the supporting papers were the Notice of Review; consultation; officer's report; response to officer's report; and a list of relevant policies. In their initial consideration the majority view of Members was that the proposed extension was well designed and complementary to the existing dwellinghouse. A lengthy discussion followed about the suitability of the proposed garage building in terms of its height, scale, visual impact and relationship to the house and Members' opinion was divided.

#### VOTE

*Councillor Aitchison, seconded by Councillor Small, moved in support of the deemed decision of the officer that the application be refused for the reasons set out in the officer's report.*

*Councillor Miers, seconded by Councillor Mountford, moved as an amendment that the officer's deemed decision be reversed and the application be approved, subject to conditions to ensure that the ridgeline of the garage be no higher than that of the dwellinghouse Danderhall Cottage and that the garage building be used only as an ancillary building to the dwellinghouse.*

*On a show of hands Members voted as follows:-*

*Motion - 2 votes  
Amendment - 7 votes*

*The amendment was accordingly carried and the application approved.*

#### **DECISION**

**DECIDED 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) the review could be considered without the need for any further procedure on the basis of the papers submitted;**
- (c) the proposal was consistent with the Development Plan and that there were no other material considerations that would justify departure from the Development Plan; and**
- (d) the officer's deemed decision to refuse the application be reversed and the application for planning permission be granted, subject to conditions, as detailed in Appendix I to this Minute.**

**2. REVIEW OF 17/00027/FUL**

There had been circulated copies of the request from Cleek Poultry Ltd, The Tractor Shed, Kirkburn, Cardrona, to review the decision to refuse the planning application in respect of erection of an agricultural storage building with welfare accommodation on land west of former William Cree Memorial Church, Kirkburn, Cardrona. Included in the supporting papers were the Notice of Review (including the Decision Notice); officer's report; papers referred to in the report; consultations; and a list of relevant policies. Members expressed concern at the potential visual impact of the proposed building and the potential conflict of the proposal with the consented holiday development on the site, noting that the proposed building was higher than that which had been required by condition for the proposed holiday chalets. Members also commented that, in the absence of a business plan, they could not consider whether there was any economic justification for the development.

**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) the review could be considered without the need for any further procedure on the basis of the papers submitted;**
- (c) 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**
- (d) the officer's decision to refuse the application be upheld for the reasons detailed in Appendix II to this Minute.**

**3. REVIEW OF 17/00028/FUL**

There had been circulated copies of the request from Cleek Poultry Ltd, The Tractor Shed, Kirkburn, Cardrona, to review the decision to refuse the planning application in respect of erection of an agricultural storage building with welfare accommodation on land west of former William Cree Memorial Church, Kirkburn, Cardrona. Included in the supporting papers were the Notice of Review (including the Decision Notice); officer's report; papers referred to in the report; consultations; and a list of relevant policies. Members expressed concern at the potential visual impact of the proposed building and the potential conflict of the proposal with the consented holiday development on the site, noting that the proposed building was higher than that which had been required by condition for the proposed holiday chalets. Members also commented that, in the absence of a business plan, they could not consider whether there was any economic justification for the development.

**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) **the review could be considered without the need for any further procedure on the basis of the papers submitted;**
- (c) **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**
- (d) **the officer's decision to refuse the application be upheld for the reasons detailed in Appendix III to this Minute.**

**4. REVIEW OF 16/01174/PPP**

There had been circulated copies of the request from GS Chapman Vehicle Body Repairs, per Ericht Planning & Property Consultants, Gifford House, Bonnington Road, Peebles, to review the decision to refuse the planning application in respect of the erection of a vehicle body repair workshop and associated parking on land north west of Dunrig, Spylaw Farm, Lamancha, West Linton. The supporting papers included the Notice of Review (including the Decision Notice); officer's report; papers referred to in the report; consultations; and a list of relevant policies. The Local Review Body considered new evidence that had been submitted with the Notice of Review. In terms of Section 43B of the Act, Members concluded that this material had not been properly raised and proceeded to consider the case without reference to this evidence. Members were satisfied that there was an economic need for the proposed development and noted that the applicant's attempts to find a site within the development boundary had been unsuccessful. After lengthy discussion about whether this particular countryside location was the appropriate site, a majority of Members were of the opinion that they could not make a decision without a site visit. There was no opposition to the proposal to defer consideration of the case to allow an unaccompanied site visit to take place.

**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 be determined without reference to the new evidence submitted with the Notice of Review documentation; and**
- (c) **the review could not be considered without further procedure in the form of an unaccompanied site visit to take place on a date to be arranged.**

**5. REVIEW OF 16/01467/AMC**

There had been circulated copies of the request for review from Mr J McGrath, per RM Architecture Ltd, Bloomfield, Heatherlie Park, Selkirk, concerning the decision to grant planning permission subject to conditions relating to the erection of a dwellinghouse and detached garage on land north east of Dundas Cottage, Ettrick, Selkirk. Included in the supporting papers were the Decision Notice; Notice of Review; officer's report; papers referred to in the report; consultations; representation; and a list of relevant policies. Although the applicant had sought review of one condition imposed on the planning permission Members noted that the review of the case was "de novo" and considered afresh the application for Approval of Matters Specified in Conditions relating to the earlier Planning Permission in Principle. After agreeing that the proposal was acceptable and that all the other conditions imposed on the planning consent were appropriate, Members

turned their attention to the condition which was the subject of the Notice of Review, which required a slate roof on the dwellinghouse rather than the applicant's proposed use of a metal profile sheet roof. Members considered the evidence presented of the buildings, in the vicinity of the site, with corrugated roofing. Although a view was expressed that a slate roof would be more suitable the majority of Members concluded that the material proposed by the applicant would be complimentary to buildings in the local area subject to this being grey in colour.

**DECISION  
AGREED:-**

- (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) the review could be considered without the need for any further procedure on the basis of the papers submitted;**
- (c) the proposal was consistent with the Development Plan and that there were no other material considerations that would justify departure from the Development Plan; and**
- (d) the officer's decision be varied and the application for planning permission be granted, subject to revised conditions and informatives, as detailed in Appendix IV to this Minute.**

*The meeting concluded at 11.55 am*



**APPENDIX I**

**SCOTTISH BORDERS COUNCIL  
LOCAL REVIEW BODY DECISION NOTICE**

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**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**

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**Local Review Reference:** 17/00011/RNONDT

**Planning Application Reference:** 17/00011/FUL

**Development Proposal:** Erection of detached garage with first floor studio,  
alterations and extension to dwellinghouse

**Location:** Danderhall Cottage, St Boswells, Melrose

**Applicant:** Ms Evelyn Brown and Mr John Kirk

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**DECISION**

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

**DEVELOPMENT PROPOSAL**

The application relates to the erection of a detached garage with first floor studio within the garden ground of Danderhall Cottage, St Boswells and alterations and extension to dwellinghouse.

The application drawings consisted of the following drawings:

<b>Plan Type</b>	<b>Plan Reference No.</b>
Location Plan	815P-01
Existing Elevations	815P-03
Existing Floor Plans	815P-02
3D Views	815P-07
Elevations	815P-08
Floor Plans	815P-05
Elevations	815P-06
Floor Plans	815P-04

## **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 19<sup>th</sup> June 2017.

After examining the review documentation at that meeting, which included: a) Notice of Review; b) Consultation; c) Officer's report; d) Response to officer's report 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: PMD2 and HD3.

Other Material Considerations

- SBC Supplementary Planning Guidance on Placemaking & Design 2010
- SBC Supplementary Planning Guidance on Householder Development 2006

The Review Body considered the proposed two storey extension was well designed and would be complementary to the existing dwellinghouse in terms of its scale and form. Members were also content that the proposed external materials were appropriate and that the extension would be an attractive contemporary addition to this traditional cottage.

The Review Body debated, in some detail, the relationship of the existing house and the garage/studio building. Whilst there was some concern expressed about the height and scale of the garage/studio Members were satisfied that the height could be controlled by a suitably worded condition. The condition would set the finished floor level of the new building such that its ridge height would be, as far as was practicably possible, no higher than the existing dwellinghouse.

The Review Body also accepted that a building of the scale proposed could be satisfactorily accommodated on the site, without detriment to the existing property or the locality. Whilst the building was large it would be situated in a large garden, behind the house and would only have limited visibility from the public domain. The distance the building would be from the public road and the extent of tree cover along the road side meant that there would be no adverse visual impact.

Members acceptance of the development was on the condition that the building was used for purposes incidental to the enjoyment of Danderhall Cottage only and not as a separate dwellinghouse or for any other purpose.

## 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.

## CONDITIONS

1. The garage/studio building, hereby approved, shall only be used for purposes incidental to the enjoyment of the existing dwellinghouse Danderhall Cottage and shall be used for no other purpose.  
Reason: To ensure that the development is compatible with the residential nature of the site and the use of the garage/studio building for other purposes would not be appropriate in this location.
2. Notwithstanding the description of the materials in the application, no development shall be commenced until precise details of the materials to be used in the construction of the external walls and roofs of the garage/studio building and the extension have been submitted to and approved in writing by the Planning Authority, and thereafter no development shall take place except in strict accordance with those details.  
Reason: The materials require further consideration to ensure a satisfactory form of development, which contributes appropriately to its setting.
3. No development shall commence on site until details of the finished floor level of the proposed garage/studio have been submitted to and approved by the Planning Authority. The finished floor level shall be set to ensure that, as far as is practicable, the ridgeline of the building is no higher than that of Danderhall Cottage. Thereafter, no development shall take place except in strict accordance with those details, unless agreed in writing by the Planning Authority.  
Reason: To ensure a satisfactory relationship between the buildings and that the garage/studio building is subservient to the existing dwellinghouse.

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### **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 T. Miers  
Chairman of the Local Review Body

**Date.....**27 June 2017





**APPENDIX II**

**SCOTTISH BORDERS COUNCIL  
LOCAL REVIEW BODY DECISION NOTICE**

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**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**

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**Local Review Reference:** 17/00013/RREF

**Planning Application Reference:** 17/00027/FUL

**Development Proposal:** Erection of agricultural storage building with welfare accommodation

**Location:** Land West Of Former William Cree Memorial Church Kirkburn  
Cardrona Peebles

**Applicant:** Cleek Poultry Ltd

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**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 Guidance relating to Special Landscape Area 2 - Tweed Valley 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 with adverse visual impacts on the local environment. The proposed building is not of a design or scale that appears suited to the size of the holding on which it would be situated, which further undermines the case for justification in this location.
- 2 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 an agricultural storage building with welfare accommodation at Kirkburn, Cardrona. The application drawings consisted of the following drawings:

<b>Plan Type</b>	<b>Plan Reference No.</b>
Site Plan	19673B
General Arrangement	19672

## **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 19<sup>th</sup> June 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: 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 an agricultural storage building with welfare accommodation. The building, which incorporated a mezzanine floor, had a footprint of 12m x 18m and a ridge height of 7.5m. The building would be erected in a currently undeveloped field to the north east of the existing vehicular access and the main yard at the applicant's land holding at Kirkburn.

The Review Body acknowledged that the site occupied land that had previously had planning permission for holiday chalets and a hub building. However, in their view, this raised concerns about the potential for conflict between the proposed use and the other consented and existing uses at the locus, especially on such a limited area of land.

The approved chalet buildings were 6m in height and smaller in size and scale to the agricultural building now proposed. Members noted that the chalets were required by planning condition to be lowered to reduce further any visual impact. In their view, the proposed agricultural building at 7.5m would be visible and dominant in the local landscape and have an adverse and harmful impact on the Tweed Valley landscape.

The application proposes the creation of provision for small “nest” agricultural businesses at the site. However, the application was not supported by a business plan for this activity or any statement that set out the development strategy for the landholding for the activities carried out at the site. In the absence of a credible or sustainable economic justification for the building on this size of landholding they had no reason to set aside the visual and landscape objections to the development and overturn the decision.

The applicant asserts that the access bellmouth had been suitably upgraded and that the development would lessen the traffic generated at the site. However, Members accepted that the application was deficient in term of traffic information (showing the number, type and frequency of vehicular movements associated with this proposal) to substantiate that view.

## **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.

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### **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 T. Miers  
Chairman of the Local Review Body

**Date.....**26 June 2017

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### APPENDIX III

#### SCOTTISH BORDERS COUNCIL LOCAL REVIEW BODY DECISION NOTICE

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#### 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

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**Local Review Reference:** 17/00014/RREF

**Planning Application Reference:** 17/00028/FUL

**Development Proposal:** Erection of agricultural storage building with welfare accommodation

**Location:** Land West Of Former William Cree Memorial Church, Kirkburn, Cardrona, Peebles

**Applicant:** Cleek Poultry Ltd

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#### 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 Guidance relating to Special Landscape Area 2 - Tweed Valley 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 with adverse visual impacts on the local environment. The proposed building is not of a design or scale that appears suited to the size of the holding on which it would be situated, which further undermines the case for justification in this location.
- 2 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 an agricultural storage building with welfare accommodation at Kirkburn, Cardrona. The application drawings consisted of the following drawings:

<b>Plan Type</b>	<b>Plan Reference No.</b>
Site Plan	19673C
General Arrangement	19672

## **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 19<sup>th</sup> June 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: 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 an agricultural storage building with welfare accommodation. The building, which incorporated a mezzanine floor, had a footprint of 12m x 18m and a ridge height of 7.5m. The building would be erected in a currently undeveloped field to the north east of the existing vehicular access and the main yard at the applicant's land holding at Kirkburn.

The Review Body acknowledged that the site occupied land that had previously had planning permission for holiday chalets and a hub building. However, in their view, this raised concerns about the potential for conflict between the proposed use and the other consented and existing uses at the locus, especially on such a limited area of land.

The approved chalet buildings were 6m in height and smaller in size and scale to the agricultural building now proposed. Members noted that the chalets were required by planning condition to be lowered to reduce further any visual impact. In their view, the proposed agricultural building at 7.5m would be visible and dominant in the local landscape and have an adverse and harmful impact on the Tweed Valley landscape.

The application proposes the creation of provision for small “nest” agricultural businesses at the site. However, the application was not supported by a business plan for this activity or any statement that set out the development strategy for the landholding for the activities carried out at the site. In the absence of a credible or sustainable economic justification for the building on this size of landholding they had no reason to set aside the visual and landscape objections to the development and overturn the decision.

The applicant asserts that the access bellmouth had been suitably upgraded and that the development would lessen the traffic generated at the site. However, Members accepted that the application was deficient in term of traffic information (showing the number, type and frequency of vehicular movements associated with this proposal) to substantiate that view.

## **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.

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### **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 T. Miers  
Chairman of the Local Review Body

**Date.....**27 June 2017

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**APPENDIX IV**

**SCOTTISH BORDERS COUNCIL  
LOCAL REVIEW BODY DECISION NOTICE**

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**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**

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**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

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**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:

<b>Plan Type</b>	<b>Plan Reference No.</b>
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 19<sup>th</sup> 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.

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**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 T. Miers  
Chairman of the Local Review Body

**Date.....**27 June 2017