

## 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:** 17/00028/RREF

**Planning Application Reference:** 17/00257/FUL

**Development Proposal:** Replacement windows and installation of chimney flue,

**Location:** 5 High Street, Innerleithen

**Applicant:** David & Jane Gordon

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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 Policy EP16 of the Scottish Borders Local Development Plan in that the proposed flue is of insufficient height to allow fumes to disperse properly without adversely affecting the air quality and residential amenity of surrounding property occupiers.

### DEVELOPMENT PROPOSAL

The application relates to the replacement windows and installation of chimney flue at 5 High Street, Innerleithen. The application drawings and documentation consisted of the following:

<b>Plan Type</b>	<b>Plan Reference No.</b>
Location Plan	13011-LOC
Proposed Plans & Elevations	13011-101-B
Sections	ECOLINK SOLUTIONS
Report	ABCAT TEST
Specifications	EMISSIONS GRAPHS
Specifications	PRODUCT SPECIFICATIONS

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 21<sup>st</sup> August 2017.

After examining the review documentation at that meeting, which included: a) Notice of Review; b) Decision Notice c) Officer's Report; d) Papers referred to in report; e) Consultations; and f) List of Policies, the LRB concluded that it did not have sufficient information to determine the review and that it required Further Procedure in the form of an oral hearing.

Members considered a hearing necessary to allow the applicant, Environmental Health Officer and Planning Officer to provide information on: the technical elements regarding the use of a chimney flue, specifically in relation to the proposed use of an ABCAT flue gas filter; nuisance issues associated with the proposed chimney flue; and the implications of the increase in length of the flue.

The hearing was held at 10am on Monday 16<sup>th</sup> October, after which the Review Body re-convened to consider the case. Members noted with regret that the applicant did not take up the opportunity to be represented at the hearing.

## **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 relevant listed policies were:

- Local Development Plan policies: PMD1, PMD2, HD3, ED9, EP16

Other Material Considerations

- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006

The Local Review Body noted that whilst the application related to the installation of replacement windows and a chimney flue at the property, the windows had already been approved by the Council under planning reference 15/01079/FUL and in the circumstances, they focussed their deliberations on the acceptability, or otherwise, of the proposed flue.

The Review Body noted that the proposed flue, which would be in a grey powder coated metal, would emerge from the hipped roof to the rear of the applicant's office terminating just above ridge of the roof and would be approximately 1.6m in length. The Review Body were content that, at the height proposed, the flue would be no adverse impact on the appearance or character of the building or the Conservation Area.

The Review Body discussed the question of the potential nuisance impact the flue emissions may have on adjoining residential properties and sought greater clarity on this issue through the holding of an oral hearing session. Members felt that the hearing had helped their understanding of the issue; explaining how the proximity and relationship to the neighbouring properties windows and the lack of height of the flue to disperse smoke and odour was problematic and explaining why the proposed mitigation measures, in the form of an ABCAT gas oxidizing catalytic converter and raising the flue by 1m in height, would not address the potential impacts on local amenity and human health raised by the Environmental Health. After considering the evidence presented to them the Review Body concluded that the flue would adversely affect the air quality and residential amenity of the occupants of surrounding property.

The Review Body did not accept that the existence historically of a chimney on this building provided any justification for the new flue. Circumstances and regulations have altered significantly since that chimney was in operation.

The Review Body determined that it would not be reasonable or necessary to impose a condition that required the removal of the stove and associated flue should it be proven, following operation, that it was causing a nuisance.

## **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 S Hamilton  
Vice Chairman of the Local Review Body

**Date**...24 October 2017