

APPENDIX III

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: 17/00033/RREF

Planning Application Reference: 17/00647/FUL

Development Proposal: Formation of hardstanding, steps, retaining wall and new foot path

Location: Land North West of Kirkburn Parish Church, 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, HD3, EP7 and ED7 of the Scottish Borders Local Development Plan 2016 in that the proposal would create adverse effects on the setting of a Category B Statutorily Listed Building adjoining the site and on the amenity of nearby residential amenity properties.
- 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 formation of hardstanding, steps, retaining wall and new footpath on land to the north west of the applicant's landholding at Kirkburn, Cardrona. The application drawings consisted of the following drawings:

Plan Type	Plan Reference No.
General Arrangement Location Plan	196 92

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 16th October 2017.

After examining the review documentation at that meeting, which included: a) Notice of Review; b) Consultations; c) Objections; d) Additional representations; and f) 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, PMD2, ED7, EP5, EP7 & EP8

Other Material Considerations

- SBC Supplementary Planning Guidance on Local Landscape Designations 2012

The Review Body noted that the proposal would involve the formation of a new pedestrian footpath along the eastern edge of the applicant's landholding running along the boundary of the land with Our Lady's Church and graveyard and the former William Cree Memorial Church. Due to the site's topography the footpath required a flight of steps and a two tier row of gabions next to the church to deal with the change in levels. A large gravel hardstanding was also proposed at the end of the footpath next to the site's boundary with Kirkburn.

The Review Body noted that unusually the footpath and the gravel hardstanding had no direct access to the Kirkburn road; the grass verge remaining between the application site and the road. Members had just considered the review for the alterations to existing bellmouth and formation of new access ref: 17/00032/RREF,

which would have provided such an access and, in their view, it would have been better if the applications had been submitted as a singular coherent proposal. As such the proposal must be judged against the possible increase in traffic on the current access junction. However, in the absence of a Transport Statement outlining the type, frequency and number of vehicles anticipated it is not possible to judge whether the existing access is suitable to serve the development.

After considering the evidence before them, the Review Body were not convinced that a sufficiently strong case had been made to justify the footpath or the

hardstanding to serve the landholding. Members noted that in approving permission for holiday chalets and a hub building on the adjoining land there had been concerns expressed regarding the potential for conflict between the proposed use and the building group at Kirkburn and that a planted buffer had been required to screen the development. The current proposal would appear to remove this buffer and the separation between the uses, increasing the potential for a mix of traffic using the Kirkburn access, and this would likely have a detrimental impact on the amenity of residents. The Review Body was content that the existing access from the B7062 further to the west was suitable to serve the applicant's landholding and the consented developments.

The Review Body were conscious of the sensitivities in terms of the works relationship to the listed former William Cree Memorial Church. Members did not feel that this had been adequately taken into account or resolved by the applicant and that there would be an unacceptable impact on the setting of the listed building.

The Review Body noted that the application was not supported by a masterplan or any statement that set out the development strategy for the landholding. They had no detailed evidence before them as to the activities carried out at the site or why the footpath and hardstanding were needed and how they fitted with the overall strategy for the landholding. The Review Body requested that the applicant submit a business case/masterplan for the landholding that would set out clearly the objectives for the landholding with any subsequent planning applications lodged with the Council.

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.
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Signed.....
Councillor S Hamilton
Vice Chairman of the Local Review Body

Date.....24 October 2017