

## APPENDIX

### 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:** 17/00052/RREF

**Planning Application Reference:** 17/01007/FUL

**Development Proposal:** Variation of Condition No. 9 of planning consent 10/00172/FUL relating to occupancy of building

**Location:** The Pavilion, Coldingham

**Applicant:** David Lee

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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 proposed variation of Condition 9 of planning permission 10/00172/FUL would be contrary to Policy ED7 of the Scottish Borders Local Development Plan 2016 in that it would enable the use of the building for purposes which would not constitute direct tourism purposes, which would result in the loss of a tourism development that has the potential to generate year-round economic benefit to the surrounding area. Other material considerations do not justify a departure from the Development Plan in this case.

## DEVELOPMENT PROPOSAL

The application relates to a proposed variation of Condition No. 9 of planning consent 10/00172/FUL relating to occupancy of building. The application drawings and documentation consisted of the following:

**Plan Type**

**Plan Reference No.**

Location 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 22<sup>nd</sup> January 2018.

After examining the review documentation at that meeting, which included: a) Notice of Review (including the Decision Notice and Officer's Report); b) Papers referred to in Officer's Report; and c) List of Policies, the LRB concluded that it had sufficient information to determine the review and proceeded to consider the case. In coming to this decision Members considered the applicant's request for further procedure in the form of a site visit but concluded this was not necessary.

## **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, ED7, HD2, HD3 and IS2

Other Material Considerations

- Scottish Planning Policy
- Circular 4/1998 "The Use of Conditions in Planning Permission"

The Local Review Body noted that the proposal was to replace Condition 9 of planning consent 10/00172/FUL which limited occupancy of the building known as The Pavilion for holidaying purposes for individual periods of no more than 4 weeks in any 13 week period. It was noted that the variation sought to replace the time limits of occupation with wording that limited occupancy to genuine holiday makers only and not to be a person's sole or main residence.

The Review Body noted that there had already been a successful application to vary a previous condition to allow year-round occupation at the premises and, whilst appreciating that the time limit restrictions may cause issues as identified in the applicant's submissions, they understood and accepted the reasons why the restrictions had initially been imposed to seek genuine holiday usage of the property and not permanent residential occupation.

The Review Body discussed the question of how to define tourism and holiday use and how the existing and proposed conditions would ensure such occupation. They considered the actual restrictions imposed by the existing condition. They then considered the submissions made by the applicant and what approach had been taken to conditions attached to other consents. They attached weight to the enforceability of the conditions, noting that this was one of the tests applied by Circular 4/1998, together with the other tests including precision and relevance. They also discussed the operation and veracity of the mutual element of both

the existing and proposed conditions which seeks a register of holidaymakers to be available to the Council.

The Review Body concluded that, whilst an option open to the applicant was also to apply for planning permission for change of use to a dwellinghouse, the restrictions currently in place under Condition 9 were both necessary and sufficiently flexible to allow tourism and holiday use, no matter what the circumstances of the ownership or occupation. They understood that year-round occupation of the premises was possible and full occupation within each 13 week period, albeit only for total periods of 4 weeks by an individual person or group of persons.

They did not accept that the proposed variation of condition would achieve the same precision or degree of control to ensure continued operation of the property for genuine holiday or tourism purposes and agreed that the existing condition must be maintained, with its time limit restrictions.

## **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  
Chairman of the Local Review Body

**Date.....**23 January 2018

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