

LOCAL REVIEW BODY
WRITTEN STATEMENT OF APPOINTED OFFICER
17/00479/FUL
Erection of dwellinghouse

ISSUES TO BE CONSIDERED:

For further consideration to be given to:

- 1) an updated finished floor level to preserve the necessary freeboard to mitigate against a 1 in 200 flood risk and the impact on ridge height as a result of the updated floor level; and
- 2) safe access and methods of mitigating potential impact on surrounding properties.

RESPONSE:

At the Hearing on 22 January it became apparent that there were significant discrepancies within the Appellant's description of the existing and proposed site levels; specifically between the description of these levels on the Proposal Drawings and the description of the same levels within the flood risk assessment reports which sought to identify flood risk mitigation. Additionally, it was unclear whether the proposal would be able to be accommodated in terms that would otherwise address the wider concerns of the Local Flood Prevention Authority with respect to the management of surface water at the site during a flood event. Beyond this, it was unclear whether or not all of the flood risk mitigation required, could be incorporated into the detailed design of the proposal without this being liable to have any unacceptable impacts upon the amenity and environment of the site and surrounding area, including upon the amenity of neighbouring residential properties.

Unfortunately, and for the reasons set out below, the revised and updated information provided by the Appellant further to the Local Review Body's request, does not in fact address these deficiencies.

It is still not apparent whether or not measures sufficient to address in full the concerns of the Local Flood Prevention Authority could be accommodated on site; and, if so, whether or not this accommodation would be liable to have, or contribute towards, unacceptable impacts upon surrounding properties.

Beyond these ambiguities however, there are new and additional considerations:

First of all, the proposed revised design in so far as it is described, is considered liable to have unacceptable impacts upon the visual amenities of the surrounding area, both in itself, and in culmination with other aspects of the proposal that were found to be objectionable at the time of the determination of Planning Application 17/00479/FUL.

Secondly, there would also be potential for new, and potentially significant, impacts upon the residential amenity of surrounding properties, which would be more appropriately made the subject of a new public consultation, to allow the owners and

occupiers of affected properties sufficient opportunity to consider these impacts. This is due to the potential for the revised proposal to impact more significantly upon neighbouring properties than the proposal that was the subject of Planning Application 17/00479/FUL.

For these reasons, it is considered that the appeal should be dismissed. The Appellant retains the option of making a new planning application. Any new proposal would require to be determined on its own planning merits at that time, but a new application would be the appropriate context for the Appellant to seek to address the deficiencies of the current proposal; would further, allow appropriate public consultation to be carried out; would afford a new opportunity for consultees, including SEPA, to be advised with respect to the new information that has been presented with respect to flood risk in the period since Planning Application 17/00479/FUL was determined; and would also allow an opportunity for the Appellant to address fully, the reasons for refusal of Planning Application 17/00479/FUL.

Finished Floor Level Height and Achievement of Freeboard

In requesting new and updated information from the Appellant, the Local Review Body is understood to have been particularly concerned:

- (1) firstly, to see the demonstration of a Finished Floor Level (FFL) height consistent with the preservation of the freeboard necessary to mitigate against a 1 in 200 flood risk; and
- (2) secondly, to review an accurate description of the proposal updated to accommodate the achievement of this same FFL height for the purpose of establishing whether or not this accommodation would be liable to have any unacceptable impacts upon the amenity of surrounding residential properties, primarily as a consequence of any requirement to increase the height of the proposal beyond that described on the original Proposal Drawings.

The Council's Flood Prevention Section has now reviewed Terrenus' report of 6 February. Based on that report's advice, the Local Flood Prevention Section concurs that the achievement of a FFL of "102.64mAOD" or above, would need to be taken forward in order to ensure the achievement of the necessary freeboard. This is in addition to the Flood Prevention Section's further concern that: "*ground levels surrounding the dwelling should be designed to convey overland flow away from the development and drainage measures are considered to intercept overland flow*". The implications of the latter requirement, is considered below, within the section of this statement entitled, 'Safe Access and Treatment of Curtilage'.

Apparently in response to the conclusions of Terrenus' report, the Appellant's revised Proposal Drawing, now describes a Finished Floor Level of "102.64" (specifically: "Proposed GFL 102.64"), and further notes a second level within the curtilage of the property, which is given simply as: "101.40". However, neither of these levels is either directly or indirectly related within the description of the revised Proposals Drawing to any absolute levels (Ordnance Datum). As such, this description would not appropriately serve to regulate the finished levels within any development that were approved on the basis of this information. In reality "102.64" and "101.40" are unqualified and therefore arbitrary levels. They do not, and would not, commit the Appellant to the achievement of a FFL height of 102.64mAOD. On the contrary, the annotation "Proposed GFL 102.64" includes no information that is practically capable of enforcement in planning terms. The actual finished floor level could therefore be set

entirely at the Appellant's discretion were the revised Proposal Drawing approved.

Given that the Proposal Drawing's description does not in fact demonstrate the achievement of a FFL height of 102.64mAOD, it follows that it is also unclear whether or not the revised elevation drawings themselves do actually describe an appearance for the dwellinghouse that would be consistent with the achievement of a FFL height of 102.64mAOD. At least, any unqualified approval of the scheme as it is now proposed, would run the risk that the FFL might have to be established at a lower level below 102.64mAOD in order to achieve the appearance of the dwellinghouse that is described on the revised elevation drawings. This would therefore be directly contrary to the recommendation of the Local Flood Prevention Authority that the FFL height should be above 102.64mAOD.

Conversely, the imposition by planning condition of any direct and explicit requirement that the development should have a FFL height of 102.64mAOD would in turn, run the risk of directly requiring the addition of an even greater height of under-build to the proposed dwellinghouse than that which is described by the revised Proposal Drawing. For clarity, this would be height in addition to the one metre that it is now explicitly described by the revised Proposal Drawings (please see below). This would have potential then to raise the overall height of the dwellinghouse, perhaps quite notably, above the height of 8.74m which is now being explicitly described by the revised Proposals Drawing. (This is dependent upon the extent of any discrepancy between what is described by the drawings and what is required on site, to actually achieve a FFL height of 102.64mAOD). The point is considered in more detail below in the next section, but there is potential for this to result in, or at least exaggerate, unacceptable impacts upon the amenity (both visual and residential) of the site and surrounding area, including upon the amenity of surrounding dwellings, whose daylight, sunlight, privacy and outlook might be adversely impacted by a significant increase in the height of both, or either, of the FFL itself, or of the overall height of the dwelling (lifted to achieve the required FFL height).

It may be that there is in fact no inconsistency here between the description of the revised Proposal Drawings and the achievement of a FFL height of 102.64mAOD, but this is not reasonably discernible from the information that the Appellant has actually provided. (If there is in fact no inconsistency, it might be said that much of the above noted ambiguity and confusion could have been avoided, had the Appellant otherwise been concerned to confirm in writing on the Proposal Drawing that the levels shown there are in fact to be levels in "mAOD"). In the current circumstances, it is unfortunately not reasonably understood from the Appellant's latest submission that the development could be realised in accordance with both the description of the Proposal Drawings and with an FFL height of 102.64mAOD. This then unfortunately introduces an unacceptable level of uncertainty with respect to the form in which the development would actually be delivered, were it now approved on the basis of the revised Proposal Drawing, while as noted above, the imposition of planning conditions might be liable to exacerbate this concern, even exaggerating adverse impacts that have not been adequately identified and accounted for, within the revised proposals.

Taking account of all of the above, there is in any event, a risk inherent within issuing an approval for the scheme as it is currently described. There is potential for it to result in a form of development, which either does not address the flood risk concerns fully to the Flood Prevention Authority's satisfaction; or in so doing, has impacts upon the amenity and environment of the site, including upon neighbouring properties;

impacts that were simply not discernible from the proposal description (and which were therefore not capable of being adequately assessed at the time of the application's determination). It is the Appellant's responsibility to provide appropriate clarification with respect to these matters, and without sufficient reassurance as to what would in fact be built out on the site were the proposal to be progressed in accordance with the revised scheme, the appeal would be more safely and reasonably dismissed, than progressed to an approval.

Design, Overall Height (Ridge Height) and Residential and Visual Amenity

Even if it has been established to Members' satisfaction that the Appellant is describing the development as it would be accommodated on the site relative to the achievement of a Finished Floor Level height of 102.64mAOD, it should still be noted that the revised version of the proposal does in any case, describe an actual increase in the overall height of the proposed dwellinghouse, by one metre; namely through the addition of an under-build to the design. For clarity, this is a proposed increase in the overall height of the proposed dwellinghouse relative to the description of the proposal that was before the Planning Department at the time of its determination of Planning Application 17/00479/FUL; specifically, it is an increase in height from 7.7m (original proposal) to 8.74m (revised proposal) above ground level.

As noted in the previous section, an even greater increase in overall height could still result, were a greater depth of under-build now needed to achieve a FFL height of 102.64mAOD (the Appellant's ability to achieve the latter in accordance with the revised proposal, not having been demonstrated to this point). However, even the addition of the under-build described to the advised depth of 1m, would still materially change the appearance of the proposed dwellinghouse, and has the potential to impact more significantly upon the visual amenities of the surrounding area, and upon the residential amenity of neighbouring properties, principally by increasing the overall height of the proposal.

With respect to visual impacts, the simple addition of 1m of under-build to the dwellinghouse, has the effect that all of the doors and windows, eaves and roof ridge would all be raised up above the positions in which they were originally proposed. This then would have the effect of making the house appear notably out-of-alignment with surrounding properties; its windows and doors, eaves and roof ridge all being raised obviously higher than those of surrounding buildings. This would give the building an unsympathetic and incongruous appearance relative to the surrounding streetscape, which would be detrimental to the visual amenities of the area. Given the concern that there should be no land raising within the site and appropriate measures incorporated to ensure the appropriate management of surface water within the site, there is also no significant opportunity existing to screen out, or otherwise mitigate visually, the appearance of such an obviously misaligned building on so open a site.

The misalignment of windows, doors, eaves and roof ridges relative to surrounding properties, would also exaggerate further the adverse visual impacts associated with the poor siting and orientation of the dwellinghouse on the site (the second identified reason for refusal of Planning Application 17/00479/FUL). As such, the proposed change to the design of the dwellinghouse would certainly exacerbate the unacceptable visual impacts of the original proposal already identified within the Report of Handling; making the visual disconnection of the house from its site and surroundings, all the more entrenched. The overall effect would certainly be extremely

unsympathetic to the visual amenities of the site and surrounding area; being visually incongruous and not in keeping with surrounding properties.

Beyond visual impacts, consideration also has to be given to impacts upon the residential amenity of surrounding properties. Given that 1m is a notable increase in overall height, the proposed revised scheme would also be liable to have more significant impacts upon the residential amenity of surrounding properties than the original proposal; particularly upon those properties on the opposite side of Rhymers Avenue, which would face directly towards the site. An increase in overall height has potential to have adverse effects on the outlook, daylighting and sunlighting of these neighbouring properties. Further, the proposed increase in the height of the ground floor level relative to the ground floor levels of these other properties, has the potential to increase overlooking of windows on the fronts of these neighbouring dwellings, and therefore to have adverse impacts upon these neighbours' privacy as well.

While the Planning Authority would ultimately have to come to a view as to whether or not these residential amenity impacts were in any respects considered to be unacceptable, it is not reasonably assumed that neighbouring households might not be concerned by the proposal that the dwellinghouse should now be raised by 1m. They might reasonably expect to have their views on this matter taken into account at the time of the determination of this version of the proposal. Notifiable neighbours were consulted at the time of the planning application on a version of the proposal which they could only reasonably have understood to be 7.7m in height, based on the drawings that were then before the Planning Authority. In the event that the current proposal at a height of 8.74m were now approved by the Local Review Body and then the scheme were built out on the site at this height (or higher), those neighbours would not have had any opportunity at all, to comment upon whether or not this increase in height was in itself a source of concern to them, or even objectionable to them in terms of its impacts upon their properties or the surrounding area.

There is then a risk ultimately to the Planning Authority that any approval of this revised proposal by the Local Review Body without this revised design first having been made the subject of a new public consultation, might be liable to legal challenge by, or on behalf of, any impacted neighbours; that is, if the latter consider that they were not, but should have been, afforded the opportunity to comment upon a version of the proposal that was – due to its greater height – liable to have potentially more adverse impacts upon the amenity of their properties (compared to the version of the proposal that was previously before them at the time of the public consultation on the planning application). Moreover, these concerns would become even greater, were it ultimately to transpire that the actual increase in height required to achieve a FFL height of 102.64mAOD was in fact, much greater than the one metre increase that is explicitly acknowledged by the revised Proposal Drawing (please see previous section). Accordingly, it is considered that if the Appellant is now concerned to progress this design for the dwellinghouse, this would be more appropriately progressed as the subject of a new planning application, to allow sufficient opportunity for appropriate public consultation to be carried out.

Safe Access and Treatment of Land within the Site's Curtilage

Notwithstanding the conditional support of the Local Flood Prevention Section, it is not clear whether or not; or precisely how; the proposal, even in its revised form, would incorporate appropriate provision for the achievement of safe access. This is because

besides the above noted confusion over the achievement and delivery of an FFL height that would preserve the freeboard to mitigate against a 1 in 200 flood risk, there are still concerns with respect to the treatment of land within the curtilage of the site.

The Local Flood Prevention Section has advised of its concern that ground levels surrounding the dwelling should be designed to convey overland flow away from the development, and that drainage measures should be considered to intercept overland flow. However, it is unclear what specifically is actually required to address this matter to the Flood Prevention Section's satisfaction. Moreover - and for the same reasons that were noted above with respect to the advice about the FFL - it is not actually apparent to begin with what the Appellant is in fact proposing with respect to the finished site levels within the curtilage of the property. The only level given out with the footprint of the proposed dwellinghouse, is unqualified by any unit of measurement. It is simply given as, "101.40". It is not clear whether or not this is, or can be, related to Ordnance Datum; and it is not clear whether or not the level represented by "101.40" is in fact intended to denote an existing surface level, and/or whether it is a proposed finished ground level. Further, the revised Proposal Drawing also appears to indicate (albeit described very lightly on the Site Plan drawing) the formation of a banking between the new proposed ramp and steps to the north of the property, which would be land raising within the site, and therefore potentially contrary in principle to the concerns and recommendations of both SEPA and the Local Flood Prevention Authority.

The Appellant has therefore not adequately established within the revised drawings whether or not, and to what extent, it is proposed that any land raising would actually take place within the site. It is also not apparent whether or not ground levels surrounding the dwelling would, or could, be designed to convey overland flow away from the development, and whether or not drainage measures would be, or would need to be, incorporated to intercept overland flow; and ultimately, if these matters could be addressed, and all in terms that would be supported by the Local Flood Prevention Authority. Again, the concern is as much what is not shown and established within the proposal drawings, as what is actually described.

Given a fundamental lack of uncertainty about what is being proposed with respect to the treatment of finished levels, as well as whether or not Flood Prevention Authority's concerns could be addressed satisfactorily, it is not appropriate to seek to regulate these matters under planning conditions attached to any consent issued. It is simply unclear what is being proposed, and therefore what would be progressed, were the scheme approved on this basis. These matters would be more appropriately referred back to the Appellant and to the Flood Prevention Authority for their respective consideration and clarification as to what is being proposed and what is being required, respectively. Finished levels and surface water management measures consistent with the appropriate and effective management of the disposal of surface water on, and from, the site, have simply not been demonstrated.

Conclusion

Notwithstanding the Flood Prevention Section's conditional support for the proposed revised scheme, it is considered for the reasons noted above, that the description of the proposal remains too ambivalent, as to be acceptably progressed as the subject of an approval, at least not without risk to the Planning Authority as to what might ultimately be built out on site. It has not been established how precisely the

development would in fact be accommodated on site, and ultimately whether or not it would in fact be capable of being accommodated in such a way that would address the flood risk concerns to the Local Flood Prevention Authority's satisfaction, and without exaggerating adverse impacts upon the amenity and environment of the site and surrounding area.

While it might technically be possible to impose planning conditions to require the Appellant to address particular concerns or adhere to particular requirements, it is considered that the development has been too inadequately described to this point, that there is insufficient reassurance that such matters could be regulated effectively by conditions, at least without such regulation itself not being liable to have unintended and unacceptably detrimental impacts upon the amenity and environment of the site and surrounding area. This is because measures that would be required to reconcile the description of the development on the revised Proposal Drawings with the actual achievement of a FFL height of 102.64mAOD are not discernible, and this has potential to exaggerate the impacts of the proposal upon the visual amenities of the site and surrounding area, and upon the residential amenity of surrounding properties, while it is not even certain that the flood risk concerns would be met to the satisfaction of the Flood Prevention Authority given further ambiguity about precisely what would require to be incorporated to address concerns with respect to the conveyance of overland flow within the site.

However, in the event that the Local Review Body is ultimately content that the development would be capable of being realised:

- (a) as it is described on the revised Proposal Drawings;
- (b) with a Finished Floor Level height of 102.64mAOD;
- (c) with no unacceptable land raising within its curtilage; and
- (d) with appropriate arrangements in place on site for the management of surface water drainage,

and that the resulting appearance is acceptable in residential and visual amenity terms, there remains the concern that an approval of the development raised by at least an additional metre in its overall height, might still be liable to, and capable of, legal challenge by any neighbours. The latter require to be statutorily neighbour notified about any proposal that would be materially different to the scheme they previously had the opportunity to review. Given the change in appearance; the potential for the FFL height to be raised by at least a metre; and the increase in overall height of the building, it is considered that the new proposal is materially different from the previous scheme, and moreover, does have potential to have more significant impacts upon neighbouring properties than the version of the proposal that neighbours previously reviewed at the time of the public consultation on Planning Application 17/00479/FUL. In the event of approval of the appeal, Members would therefore need to be satisfied that there would be no statutory requirement to re-consult neighbours with respect to the new proposal, and that the decision would be defensible in the event of any legal challenge.

Finally, and besides the concerns with respect to flood risk that were the central concern of the hearing, Planning Application 17/00479/FUL was also refused on the basis of the potential for other unacceptable impacts upon the amenity and environment of the site and surrounding area: principally as a consequence of the siting and orientation of the dwellinghouse on the site (the second reason for refusal); the lack of adequate provision for parking (the third reason for refusal); and the potential for there to be unacceptable impacts upon the residential amenity of the

proposed house as a consequence of its proximity to an existing workshop building (the fourth reason for refusal). These reasons for refusal have not been addressed within the description of the revised Proposal Drawing and accordingly, are maintained. Moreover, the addition of an extra metre in overall height to the building; the changes to the building's design; and the description of some land raising in the north of the site, would only contribute negatively to the overall impacts in all cases, as well as raising new concerns in themselves .

With respect to the flood risk objection (the first reason for refusal), it is also reiterated that SEPA's objection in principle to this proposal, remains outstanding, regardless of the modified position of the Local Flood Prevention Section.

Taking account of all of the above, it is considered that the new and revised information provided by the Appellant further to the hearing, would more reasonably be taken as a new planning proposal, and is not considered appropriately progressed as a continuation of the appeal. The appeal should therefore be dismissed.

Any new planning application would need to be determined on its own planning merits, but the Appellant retains the option of making a new planning application in which he would have an opportunity to address the deficiencies of the current proposal. A new planning application would also allow for the full and appropriate consultation of the public and statutory consultees. Neighbours would have the opportunity therein, to review and comment upon any proposal that was liable to have potentially greater impacts upon the amenity and environment of the site and surrounding area. Consultees, including SEPA, would be able to take account of the new and updated flood risk advice that has come to light in the period since the determination of the planning application. The Appellant might also address in full, the identified reasons for refusal of Planning Application 17/00479/FUL within a revised scheme.

SUPPORTING DOCUMENTS:

- 1) Adopted Scottish Borders Council Local Development Plan:

https://www.scotborders.gov.uk/info/20051/plans_and_guidance/121/local_development_plan

- 2) Planning Officer's Delegated Report of Handling:

<https://eplanning.scotborders.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=ONJ5MLNTLXQ00>