

APPENDIX II

SCOTTISH BORDERS COUNCIL LOCAL REVIEW BODY INTENTIONS 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: 18/00002/RREF

Planning Application Reference: 17/01406/FUL

Development Proposal: Erection of dwellinghouse with attached garage

Location: Land North West of Alderbank, Macbiehill, West Linton

Applicant: Mr & Mrs D Gold

DECISION

The Local Review Body reverses the decision of the appointed officer and grants planning permission for the reasons set out in this decision notice subject to conditions, informatives and the applicant entering into a Section 75 agreement as set out below.

DEVELOPMENT PROPOSAL

The application relates to the erection of a dwellinghouse with attached garage. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	OGS 265 01
Site Plan	OGS 265 02
Floor Plans	OGS 265 03
Elevations	OGS 265 04
Sections	OGS 265 05

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 19th February 2018.

After examining the review documentation at that meeting, which included: a) Notice of Review (including the Decision Notice and LRB Decision Notice relating to 17/00530/FUL); b) Officer's report; c) Papers referred to in Officer's 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 relevant listed policies were:

- Local Development Plan policies: PMD1, PMD2, HD2, HD3, EP13, IS2, IS7 and IS9

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 Development Contributions 2011
- SBC Supplementary Planning Guidance on Trees and Development 2008
- SBC Supplementary Planning Guidance on Landscape and Development 2008
- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006

The Local Review Body was satisfied that there was a building group at Macbiehill, as defined in Local Plan Policy HD2 and in the approved Supplementary Planning Guidance on New Housing in the Borders Countryside, that consisted of more than three existing dwellinghouses. They accepted that the proposed dwellinghouse would not exceed the maximum two houses allowed in such small groups, allowing for other development approved but not yet implemented.

The Review Body then turned its attention to whether the site was a suitable addition to the building group. After considering the presentation slides in detail, they noted that the house position had relocated some distance north-west from "Alderbank", compared to the house position intended under application 17/00530/FUL which had been refused. Whilst there was acceptance that the relocation resulted in a more linear expansion of the building group, the Review Body noted from the slides and photographic submissions that the building group boundary was more clearly demarcated by the field boundary further to the north-west. Combined with the lowered floor level shown on the cross section and with the visual impact further lessened by the presence of an agricultural building at higher level outwith the site to the north-west, they concluded that the relocated site was still within the natural boundaries

of the building group at Macbiehill and that visual impacts would not be significant as a result.

In determining this, the Review Body noted and generally welcomed the measures taken by the applicant to address the previous reason for refusal in terms of overbearing impacts on "Alderbank". They noted the significant movement north-west, the excavation of the ground to lower the floor level/building height and the truncated roof height with flat-topped section. However, the Review Body had concerns over the roof design which they felt was not appropriate to the overall character of the building group and they felt that the relocation and excavated floor level were sufficient measures to alleviate residential impact on "Alderbank" without the need to propose the flat-topped roof. Noting that the concerns of the Appointed Officer on this matter could be addressed by condition, they agreed that an amended roof design should be sought by planning condition, understanding that this would result in an increase in height.

The Review Body also considered other matters with regard to development of the site including the potential for contamination and ground conditions associated with the response from the Coal Authority. They were content that all other matters could be adequately addressed by appropriate planning conditions and informatives.

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.

DIRECTIONS

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
Reason: To comply with Section 58 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

CONDITIONS

1. Notwithstanding the details of the roof shown in the submitted drawings, no development shall be commenced until a revised roof design without flat topped section has been submitted to and approved in writing by the Local Planning Authority, and thereafter no development shall take place except in strict accordance with those details.
Reason: The roof design requires further consideration to ensure a satisfactory form of development, which is sympathetic in character to its setting.
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 house have been submitted to and approved in writing by the Local 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 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 (as appropriate):

- existing and finished ground levels in relation to a fixed datum preferably ordnance
- existing landscaping features and vegetation to be retained and, in the case of damage, restored
- location and design, including materials, of walls, fences and gates
- soft and hard landscaping works
- existing and proposed services such as cables, pipelines, sub-stations
- other artefacts and structures such as street furniture, play equipment
- A programme for completion and subsequent maintenance.

Reason: To ensure the satisfactory form, layout and assimilation of the development.

4. No development is to commence until a report has been submitted to and approved in writing by the Planning Authority that the public mains water supply is available and can be provided for the development. Prior to the occupation of the building(s), written confirmation shall be provided to the approval of the Planning Authority that the development has been connected to the public mains water supply.

Reason: To ensure that the Development is adequately serviced with a sufficient supply of wholesome water and there are no unacceptable impacts upon the amenity of any neighbouring properties.

5. No water supply other than the public mains shall be used to supply the Development without the written agreement of the Planning Authority.

Reason: To ensure that the Development is adequately serviced with a sufficient supply of wholesome water and there are no unacceptable impacts upon the amenity of any neighbouring properties.

6. No development is to commence until a report has been submitted to and approved in writing by the Planning Authority providing evidence that arrangements are in place to ensure that the private drainage system is provided and thereafter maintained in a serviceable condition. The provisions of the approved report shall be implemented prior to the occupation of the dwellinghouse hereby approved.

Reason: To ensure that the development does not have a detrimental effect on public health.

7. In terms of the vehicular access and servicing of the site, the following shall be provided:

- Section of private road between Alderbank and the plot to be upgraded to provide a well compacted free draining smooth running surface capable of withstanding a minimum axle loading of 14 tonne prior to occupation of the dwelling.
- Parking and turning for a minimum of two vehicles, not including any garages, provided within the curtilage of the property prior to occupation. These facilities shall be retained thereafter perpetuity for that purpose only.

Reason: In the interests of road safety and to ensure that the site is adequately serviced.

INFORMATIVES

1. Private Drainage System

Private drainage systems often cause public health problems when no clear responsibility or access rights exist 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.

To discharge the Condition relating to the private drainage arrangements, the Applicant should produce documentary evidence that the maintenance duties on each dwelling served by the system have been clearly established by way of a binding legal agreement. Access rights should also be specified.

The waste water drainage proposals will require authorisation from SEPA under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (as amended). Details of regulatory requirements and good practice advice for the applicant can be found on the [Regulations section](#) of our website. If you are unable to find the advice you need for a specific regulatory matter, please contact a member of the regulatory team in your local SEPA office at:

SEPA Galashiels, Burnbrae, Mossilee Road, Galashiels, Borders, TD1 1NF, Tel: 01896 754797

2. Stoves and Use of Solid Fuel

These 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. Coal Authority

The proposed development lies within an area that has been defined by The Coal Authority as containing potential hazards arising from former coal mining activity. These hazards can include: mine entries (shafts and adits); shallow coal workings; geological features (fissures and break lines); mine gas and previous surface mining sites. Although such hazards are seldom readily visible, they can often be present and problems can occur in the future, particularly as a result of development taking place. It is recommended that information outlining how the former mining activities affect the proposed development, along with any mitigation measures required (for example the need for gas protection measures within the foundations), be submitted alongside any subsequent application for Building Standards approval (if relevant). Your attention is drawn to the Coal Authority policy in relation to new development and mine entries available at www.coal.decc.gov.uk

Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires the prior written permission of The Coal Authority. Such activities could include site investigation boreholes, digging of foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Failure to obtain Coal Authority permission for such activities is trespass, with the potential for court action.

Property specific summary information on past, current and future coal mining activity can be obtained from The Coal Authority's Property Search Service on 0845 762 6848 or at www.groundstability.com

If any of the coal mining features are unexpectedly encountered during development, this should be reported immediately to The Coal Authority on 0845 762 6848. Further information is available on The Coal Authority website www.coal.decc.gov.uk

LEGAL AGREEMENT

The Local Review Body required that a Section 75 Agreement, or other suitable legal agreement, be entered into regarding the payment of a financial contribution towards education facilities in the locality.

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.

Signed....Councillor T Miers
Chairman of the Local Review Body

Date.....20 February 2018

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