

APPENDIX I

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: 17/00037/RREF

Planning Application Reference: 17/00479/FUL

Development Proposal: Erection of dwellinghouse

Location: Land North East of and incorporating J Rutherford Workshop, Rhymer's Mill, Mill Road, Earlston

Applicant: Austin Travel

DECISION

The Local Review Body (LRB) varies the decision of the appointed officer and refuses planning permission as explained in this decision notice and on the following grounds:

1. The proposal does not comply with Adopted Local Development Plan Policies PMD2, PMD5 and HD3 in that it has not been adequately demonstrated that the height and design amendments resulting from the submissions aimed at addressing flood risk would not have adverse impacts on residential amenity or be sympathetic to the character of the surrounding area.
2. The proposal in the positioning of the dwellinghouse and the overall site layout, does not comply with Adopted Local Development Plan Policies PMD2 and PMD5 in that it would not respect the character of the surrounding area and neighbouring built form.
3. The proposal does not comply with Adopted Local Development Plan Policies PMD2 and IS7 in that the access arrangements are unsuitable to serve the development and inadequate provision has been made for the accommodation of the parking of two vehicles within the curtilage of the site, such that there would be adverse impacts upon road safety.

DEVELOPMENT PROPOSAL

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

| Plan Type | Plan Reference No. |
|------------------|---------------------------|
| Location Plan | LOC-01A |
| Elevations | PP-01B |

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 16 October 2017.

After examining the review documentation at that meeting, which included a) Notice of Review (including Decision Notice); b) Officer's Report; c) Consultations; and d) 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, Flood Risk Officer and Planning Officer to provide information on discrepancies between the assessments of flood risk to the site and the finished floor level required for the proposed dwellinghouse to mitigate against a 1 in 200 year flood event and blockage of the Clatteringford Bridge.

The hearing was held at 10am on 22 January 2018, after which the Review Body reconvened to consider the case. Following the hearing, Members agreed that it had been useful in providing further information about the degree of potential flood risk and proposed mitigation measures in the event of flooding. However, as the information was based on new data in the form of the recently completed Earlston Flood Study and despite the technical detail supplied, they remained unclear about the actual floor level required to mitigate against flood risk in the light of that new data and, if this resulted in a change in the ridge height of the house, any impact this may have on neighbourhood amenity. They also required further information about proposals for compensatory storage or alternative method of mitigation for any water flow over the site. After further discussion Members concluded that they could not make a determination without further procedure in the form of written submissions from the applicant to clarify these matters.

The Review was, therefore, continued to the Local Review Body meeting on 12 March 2018 where written submissions from the applicant were considered together with responses from the Flood Risk Officer and Planning Officer. The Review Body then proceeded to determine 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, PMD5, EP16, HD3, IS2, IS7, IS8 and IS9

Other Material Considerations

- SBC Supplementary Planning Guidance on Placemaking and Design 2010
- SBC Supplementary Planning Guidance on Householder Development 2006
- SBC Supplementary Planning Guidance on Development Contributions 2011
- Scottish Planning Policy

The Review Body accepted that the site was an infill site within the settlement of Earlston and had no objections to the principle of a dwellinghouse on the site under Infill Policy PMD5. They also noted that the additional flood study information, floor levels and flow routes seemed to have resolved the issues of flood risk and the proposal's compliance with Policy IS8, in that the Council's Flood Risk Officer had removed objection to the proposal on the basis of the additional information submitted on floor and ground levels. The Review Body noted, in reaching that conclusion, that SEPA had not responded to the additional information and that their objection was still outstanding.

Members noted that there was mixed architecture and ridge heights in the area. However, they also agreed with the Planning Officer's concerns over the lack of detail on floor and site levels on the application drawings, what these levels were related to and how they would be enforced. Given this, the Review Body was concerned at the scale and degree of changes required to ensure the house was free from flood risk and noted that this would result in a floor and ridge increase of a metre. They also noted changes to the design of the lower floor of the house and the repositioning of it towards Mill Road.

The Review Body considered that, whilst such changes may have been necessary to attempt to address flood risk issues, subsequent impacts on residential amenity and sympathy of design within the surrounding area had not been adequately demonstrated given the significance of the potential changes. They considered that impacts could only be properly considered within a fully detailed resubmission, and noted this would provide neighbouring proprietors with the opportunity to assess and comment on any revised design and siting.

Consequently, whilst acknowledging that information had been submitted that suggested flood risk could be satisfactorily addressed, the Review Body were not in a position to support the development.

The Review Body also considered that the reasons for refusal relating to sympathetic layout and access/parking would be impacted by the flood mitigation proposals and could not be considered to have been satisfactorily addressed by the proposals. They agreed with the original reasons for refusal on these matters.

The Review Body also discussed the reason for refusal relating to residential amenity impacts from the adjoining workshop. They considered that the presence of the workshop on the site would be known to any occupant of the proposed dwellinghouse who would be aware of potential impacts. Consequently, they did not consider that the existing workshop represented a reason to oppose the application.

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
Chairman of the Local Review Body

Date...19 March 2018

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