

## APPENDIX I

### SCOTTISH BORDERS COUNCIL LOCAL REVIEW BODY INTENTIONS 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:** 18/00013/RREF

**Planning Application Reference:** 16/01371/FUL

**Development Proposal:** Change of use of agricultural buildings and alterations to form 11  
No dwellinghouses

**Location:** Agricultural buildings, South-East of Merlewood, Hutton Castle Barns, Hutton

**Applicant:** Mr Geoffrey Bain

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## 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 change of use of agricultural buildings and alterations to form 11 No dwellinghouses, reduced from the original proposal for 12. The application drawings and documentation consisted of the following:

<b>Plan Type</b>	<b>Plan Reference No.</b>
Location Plan	PL01
Site Plan	PL002
Floor Plans	PL009
Floor Plans	PL010
Roof Plan	PL011
Elevations	PL012
Roof Plan	PL013
Elevations	PL014
Elevations	PL015

Elevations  
Elevations

PL016  
PL017

## **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 July 2018.

After examining the review documentation at that meeting, which included: a) Notice of Review; b) Decision Notice; c) Officer's Report; d) Papers referred to in Officer's Report; e) Consultations; f) Support comments; g) Objections; h) Further representation (in support); i) Further representation (objection); j) Response to further representations; and k) List of Policies, the Review Body proceeded to determine the case. They also noted the applicant's request for further procedure in the form of a hearing, written submissions and site visit but did not consider these necessary after considering the case and viewing photographs and plans of the site and surroundings.

## **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, EP1, EP2, EP3, EP7, EP8, IS2, IS5, IS7, IS9 and IS13

Other Material Considerations

- SBC Supplementary Planning Guidance on New Housing in the Borders Countryside 2008
- SBC Supplementary Planning Guidance on Placemaking and Design 2010
- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006
- SBC Supplementary Planning Guidance on Development Contributions 2011
- SBC Supplementary Planning Guidance on Affordable Housing 2015
- SBC Supplementary Planning Guidance on Biodiversity 2005
- Prevention of Environmental Pollution from Agricultural Activity – A Code of Good Practice 2005 – Scottish Government

The Review Body noted that the proposal was for planning permission to change the use of agricultural buildings and alterations to form 11 No dwellinghouses.

Members considered the proposal principally against Policies HD2 and EP7 of the Local Development Plan and the New Housing in the Borders Countryside SPG. In considering the initial criteria under Policy HD2, they noted that the buildings were statutorily listed and were of considerable architectural merit. They considered that the scheme for conversion would

represent an appropriate way to save historic buildings worthy of retention and noted that the details of the conversion were supported both by the Heritage Officer and the wider community. There was concern that if an appropriate scheme was not accepted for conversion, the historic buildings may attract no other use and could deteriorate further.

The Review Body then considered the issue of potential conflict between residential and agricultural uses and noted that advice on this issue was contained within the SPG, Policy HD2 requiring compliance with the SPG. They noted that there had been a considerable amount of correspondence and representation over the issues of use conflict and potential impacts on a working farm, as well as an objection from the Environmental Health Officer, and they took some time to understand these impacts in the context of the current nature of the building group. The Review Body recognised that the building group already had a mixture of dwellinghouses and agricultural uses within it, including a number of poultry units around the group. Taking into account the decisions referred to at “Merlewood” and on the site to the east of the application site, they still considered that there was a character of mixed uses within the group where agricultural and residential uses already co-exist and have some impact on each other.

Members then discussed the issue of existing and proposed agricultural uses within the adjoining building currently used as a grain store and surrounding farmyard. They clarified that the Appointed Officer’s decision to refuse the application was based not only upon the potential impacts of livestock being housed within the grain store but also on the potential conflict with existing agricultural uses. In this respect, they noted the submissions and photographs indicating grain drying and storage, hay bale stacking and stone storage. There was much discussion about the likely impacts of such existing or proposed agricultural uses on the potential occupants of the steading buildings and what types of conflict and challenges could occur. Ultimately, however, the Review Body considered that purchasers of the properties would be subject to the principles of *caveat emptor* and would be knowingly locating next to an agricultural use and that this was part of the mixed nature of the current group. In the overall planning balance, Members felt any such impacts were outweighed by the importance of preserving and saving an historic set of steading buildings.

In coming to this conclusion, Members noted that the access to the grain store and adjoining farmyard would not be impeded by the access or parking proposals for the development. They also noted that Unit 1, which adjoined the grain store, had been removed from the proposals and that, with the retention of steading walls, the new residential units would generally be separated by walled garden grounds giving more buffer protection. There was some concern over the impacts on windows and doors of the eastern and northern facades of Units 6 and 8 which directly faced onto the farmyard and agricultural access but it was felt that this could be addressed with redesign of those units through an appropriate condition. Taking all these matters and adjustments into account, the Review Body felt, on balance, that there would not be sufficient impact on the operations of a working farm to justify refusal.

The Review Body then considered other matters including drainage, biodiversity, road access, parking and developer contributions. It was noted that drainage and biodiversity matters could be addressed by suspensive planning conditions. With regard to parking and turning, Members felt that the middle access serving the removed Unit 1 was no longer needed as a vehicular access and that a suitable turning area could be requested by condition at the westerly access. Discussion ensued in relation to the number and location of passing places on the public road leading to the site but it was ultimately decided that, provided they could be achieved within public road verge, this was a matter for the Roads Planning Service to agree by an appropriate condition.

## 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.

## DIRECTION

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. This consent is for the conversion and alteration of the existing buildings to form 11 dwellinghouses as per the amended drawing PL009 submitted in October 2017 which omits any conversion of Unit 1.  
Reason: To reflect the revisions submitted to the scheme and reduce potential conflict with adjoining uses.
2. Notwithstanding the description of the materials in the application, no development shall commence until precise details of the materials to be used in the construction of the external walls, roofs, rainwater goods and all windows and doors of the buildings have been submitted to and approved in writing by the 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 and to safeguard a statutorily listed building.
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 (unless otherwise agreed in writing by the Planning Authority):
  - i. existing and finished ground levels in relation to a fixed datum preferably ordnance
  - ii. existing landscaping features and planting to be retained and, in the case of damage, restored
  - iii. location and design, including extent, treatment and materials, of retained and new walls, fences and gates
  - iv. soft and hard landscaping works including roadside treatment
  - v. existing and proposed services such as cables, pipelines, sub-stations
  - vi. A programme for completion and subsequent maintenance.  
Reason: To ensure the satisfactory form, layout and assimilation of the development.
4. No development shall commence until further details have been submitted to, and approved in writing by, the Planning Authority relating to a revised design for the conversion of Units 6 and 8, including internal rearrangement and minimisation of operational windows and doors to the northern and eastern elevations. Once approved, the works to be carried out and maintained thereafter in accordance with the agreed details.

Reason: To reduce potential conflict with adjoining uses and safeguard a statutorily listed building.

5. No development shall commence until further details have been submitted to, and approved in writing by, the Planning Authority relating to a scheme of obscure glazing to address potential overlooking issues between Units 3, 4 and 10. Once approved, the works to be carried out and maintained thereafter in accordance with the agreed scheme.

Reason: To reduce potential overlooking between properties and safeguard a statutorily listed building.

6. No development shall commence until a scheme of passing places on the public road between the site and Hutton and the site with the B6460 is submitted to, and approved in writing by, the Planning Authority, and then completed in accordance with the approved details and within an agreed timescale.

Reason: To ensure the site is adequately serviced and in the interests of road safety.

7. No development shall commence until further details of the accesses serving the site have been submitted to, and approved in writing by, the Planning Authority. This shall include a service lay-by, engineering details, interceptive drainage measures, a turning facility as part of the westernmost access and a pedestrian only access at the centre of the site. Thereafter, the works shall be implemented in accordance with the approved details and within an agreed timescale.

Reason: To ensure the site is adequately serviced and in the interests of road safety.

8. No development shall commence until further details of the provision of water, foul and surface water drainage are submitted to, and approved by, the Planning Authority. The development then to proceed in accordance with the approved details. Furthermore:

- i. no development shall commence until the applicant has provided evidence that arrangements are in place to ensure that the private drainage system will be maintained in a serviceable condition
- ii. no water supply other than public mains water shall be used for human consumption without the written consent of the Planning Authority.
- iii. prior to occupation of the property written evidence shall be supplied to the planning Authority that the property has been connected to the public water supply network.

Reason: To ensure that the site is adequately serviced and that the site does not have a detrimental effect on public health.

9. No development shall commence (unless otherwise agreed in writing and in advance by the Planning Authority), until a scheme is submitted by the Developer (at their expense) to identify and assess potential contamination on site. No construction work shall commence until the scheme has been approved, by the Planning Authority, and is thereafter implemented in accordance with the scheme so approved.

The scheme shall be undertaken by a competent person or persons in accordance with the advice of relevant authoritative guidance including PAN 33 (2000) and BS10175:2011 or, in the event of these being superseded or supplemented, the most up-to-date version(s) of any subsequent revision(s) of, and/or supplement(s) to, these documents. This scheme shall contain details of proposals to investigate and remediate potential contamination and must include:-

- i. A desk study and development of a conceptual site model including (unless otherwise agreed in writing by the Planning Authority) a detailed site investigation strategy. The desk study and the scope and method of recommended further

investigations shall be agreed with the Council prior to addressing parts ii, iii, iv, and, v of this condition.

and thereafter

- ii. Where required by the desk study, undertaking a detailed investigation of the nature and extent of contamination on site, and assessment of risk such contamination presents.
- iii. Remedial Strategy (if required) to treat/remove contamination to ensure that the site is fit for its proposed use (this shall include a method statement, programme of works, and proposed validation plan).
- iv. Submission of a Validation Report (should remedial action be required) by the developer which will validate and verify the completion of works to a satisfaction of the Council.
- v. Submission, if necessary, of monitoring statements at periods to be agreed with the Council for such time period as is considered appropriate by the Council.

No development shall commence until the developer has received written confirmation from the Planning Authority, that the scheme has been implemented, completed and (if appropriate), monitoring measures are satisfactorily in place. Where remedial measures are required as part of the development construction detail, commencement must be agreed in writing with the Planning Authority.

Reason: To ensure that the potential risks to human health, the water environment, property, and, ecological systems arising from any identified land contamination have been adequately addressed.

10. No development shall commence until the applicant has secured and implemented an approved programme of archaeological work in accordance with a Written Scheme of Investigation outlining an Historic Building Survey. This will be formulated by a developer contracted archaeologist(s) and approved in writing by the Planning Authority. Development and archaeological investigation shall only proceed in accordance with the WSI.

The requirements of this are:

- i. The WSI shall be formulated and implemented by a contracted archaeological organisation working to the standards of the Chartered Institute for Archaeologists (CIfA) approval of which shall be in writing by the Planning Authority.
- ii. Historic Building Survey will be in accordance with the ALGAO:Scotland guidance as requested by the Planning Authority.
- iii. In accordance with the WSI, access shall be afforded to the nominated archaeologist(s) to allow archaeological investigation, at all reasonable times.
- iv. Initial results shall be submitted to the Planning Authority for approval in the form of a Historic Building Survey Report (HBSR) within one month following completion of all on-site archaeological works.
- v. Once approved the site archive and HBSR shall also be reported to the National Monuments Record of Scotland (NMRS) via the OASIS system within three months of on-site completion.
- vi. Results will be summarised in *Discovery and Excavation in Scotland* (DES) within one year of on-site completion.
- vii. The results of the DSR will be used by the Council's Archaeologist to make recommendations to the Planning Authority for further archaeological

investigations, reporting and dissemination of results as required. The developer will be expected to fund and implement all further archaeological work.

Reason: To preserve by record a building of historical interest.

11. No development shall commence until a Preliminary Ecological Appraisal (PEA) is undertaken, submitted to, and approved in writing by the Planning Authority. If any further surveys for ecological interest are identified as necessary by the PEA, then all should be submitted to, and approved in writing by, the Planning Authority and, thereafter, implemented in accordance with agreed timescales. This should include a mitigation plan for the protection of breeding birds, badger and other protected species and habitats as appropriate.

Reason: To safeguard ecological interests at the site.

12. No development shall commence until details of external waste storage for all properties are submitted to, and approved in writing by, the Planning Authority. Once approved, the relevant storage to be provided in accordance with the approved details before the occupation of each residential unit.

Reason: To ensure satisfactory refuse and waste storage provision on the site.

## **INFORMATIVES**

1. Please be aware that the works shown in this consent also require a Listed Building Consent. You will need to ensure a new application for LBC is submitted to, and approved by, the Planning Authority before any development is commenced.
2. With regards to Condition 1, nothing in this consent allows the removal of the building termed "Unit 1" nor any use of the building as a dwellinghouse. Any proposals for removal, alteration or alternative uses would require the submission of new applications for planning permission and listed building consent as appropriate.
3. With regards to Conditions 6 and 7, the Roads Planning Service advises that the passing places should be designed as per SBC specification DC-1 or DC-1a and the service lay-by should be designed as per SBC specification DC-3. This should be:

40mm of 14mm size close graded bituminous surface course to BS 4987 laid on 60mm of 20mm size dense binder course (basecourse) to the same BS laid on 350mm of 100mm broken stone bottoming blinded with sub-base, type 1.

Only contractors approved by the Council may work within public road boundary.

4. With regards to Condition 8, Environmental Health advise the following:

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

5. Environmental Health also advise the following:

The Control of Pollution Act 1974 allows the Council to set times during which work may be carried out and the methods used.

The following are the recommended hours for noisy work

Monday – Friday            0700 – 1900

Saturday                      0700 – 1300

Sunday (Public Holidays) – no permitted work (except by prior notification to Scottish Borders Council.

Contractors will be expected to adhere to the noise control measures contained in British Standard 5228:2009 Code of practice for noise and vibration control on construction and open sites.

For more information or to make a request to carry out works outside the above hours please contact an Environmental Health Officer.

6. With regards to Condition 11, you are advised of the following:

The applicant is reminded that, regardless of whether planning permission has been granted, it is a criminal offence (subject to certain defences) to deliberately or recklessly harm European Protected Species without a licence, which would only be issued if the statutory licensing body (Scottish Natural Heritage), is satisfied that strict derogation criteria are met. Further information is available at: <https://www.nature.scot/professional-advice/safeguarding-protected-areas-and-species/licensing/species-licensing-z-guide/bats-and-licensing/bats-licences-development>. Failure to fully assess the site for other protected species and to apply appropriate mitigation, may result in additional offences under wildlife law.

## **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 and affordable housing in the locality.

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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 T Miers  
Chairman of the Local Review Body

**Date.....**20 July 2018

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