

## Appendix IV

### 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:** 18/00030/RREF

**Planning Application Reference:** 18/00644/PPP

**Development Proposal:** Erection of dwellinghouse (renewal of planning permission  
15/00036/PPP)

**Location:** Land North West of Chapel Cottage, Melrose

**Applicant:** Mr, Mrs and Mr Archie, Helen & Hugh Shaw Stewart

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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 and informatives as set out below.

### DEVELOPMENT PROPOSAL

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

<b>Plan Type</b>	<b>Plan Reference No.</b>
Site Plan	9176/A/01-02 A
Other	ASK 140709/01

### 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 19<sup>th</sup> November 2018.

After examining the review documentation at that meeting, which included: a) Notice of Review (including officer's report); b) Decision Notice; c) Papers referred to in officer's

report; d) Consultations; and e) 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 site visit and hearing 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, EP8, EP13, IS2, IS3, 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 Privacy and Sunlight 2006
- SBC Supplementary Planning Guidance on Trees and Development 2008
- SBC Supplementary Planning Guidance on Landscape and Development 2008
- SBC Supplementary Planning Guidance on Waste Management 2015
- SBC Supplementary Planning Guidance on Development Contributions 2011

The Review Body noted that the proposal was for planning permission in principle to erect a dwellinghouse on the site and that a previous consent had been granted for the same proposal in July 2015. Members understood that the previous consent was accepted by the Council as being in compliance with the Consolidated Local Plan in force at that time which accepted the erection of a replacement dwellinghouse on a site where only documentary evidence was verified of the existence of a previous dwellinghouse.

Members gave significant weight to the fact that this consent was still in existence at the time that the new application was submitted to renew. They understood that an alternative approach could have been to submit an application for the details of the design and siting in the form of an Application for Approval of Matters Specified as Conditions. However, as an application was submitted instead to renew the planning permission in principle, they agreed that the Appointed Officer correctly had to apply the current Local Development Plan Policy.

There was further discussion about the terms of Policy HD2 in relation to whether it continued to support dwellinghouses on the site of a former house where no physical evidence remained. Members noted that the former Policy D2 supported such cases but there was some debate about whether Clauses D and E of Policy HD2 contained the same support as contended by the applicant. In particular, the Review Body discussed the use of the term "original" building in criterion b) of Clause E. They also agreed that there was no building group present and that there was no submitted justification for occupation of the house for economic reasons.

Ultimately, Members concluded that HD2 did not clearly support development on the site of a former house where no physical remains exist. However, Members were of the opinion that considerable weight must still be attached to the fact that a consent existed at the time of application for renewal and that this should outweigh the terms of the Local Development Plan Policy in this instance.

It was accepted that the design and siting of the house, which should reflect the history of the site as a location for a lodge house, would be properly addressed at the stage of an application for Approval of Matters Specified as Conditions. Members also noted that development contributions had already been paid by legal agreement associated with the previous consent.

## **CONCLUSION**

After considering all relevant information, the Local Review Body concluded that whilst the development was not consistent with Policies PMD2 and HD2 of the Local Development Plan and relevant Supplementary Planning Guidance, the existence of a previous consent at the time of application for renewal was a significant material consideration which outweighed the Local Development Plan and Guidance in this instance.

## **DIRECTIONS**

1. Application for approval of matters specified in the conditions set out in this decision shall be made to the Planning Authority before whichever is the latest of the following:
  - a. the expiration of three years from the date of this permission, or
  - b. the expiration of six months from the date on which an earlier application for approval of matters specified in the conditions set out in this decision notice was refused or dismissed following an appeal.

Only one application may be submitted under paragraph (b) of this condition, where such an application is made later than three years after the date of this consent.

Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

2. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the matters specified in the conditions set out in this decision.

Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

## **CONDITIONS**

1. No development shall commence until the details of the layout, siting, design and external appearance of the building(s), the means of access thereto and the landscaping of the site have been submitted to and approved in writing by the Planning Authority. Thereafter the development shall be carried out in accordance with the agreed details.

Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

2. No development shall commence until all matters specified in conditions have, where required, been submitted to and approved in writing by the Planning Authority.

Thereafter the development shall only take place in strict accordance with the details so approved.

Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

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):
  - a) existing and finished ground levels in relation to a fixed datum preferably ordnance
  - b) existing landscaping features and trees to be retained, protected and, in the case of damage, restored
  - c) prior to any works on the existing hedgerow, a detailed scheme for the replanting outwith the splay to be submitted to, and approved in writing by, the Planning Authority. Thereafter the replanting is to be carried out concurrently with the wider landscaping of the application site.
  - d) location and design, including materials, of walls, fences and gates
  - e) soft and hard landscaping works including establishment of firm planted boundaries to the plot
  - f) existing and proposed services such as cables, pipelines, sub-stations
  - g) 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 the details of the access and the parking and turning facilities within the site have been submitted to and approved in writing by the Planning Authority. The details to include:
  - a) parking and turning for two vehicles, excluding garages, within the site
  - b) visibility splays (2.4m x 90m and 2.4m x 160m) to be provided at the main junction with the public road. Thereafter the splays are to be retained in perpetuity.
  - c) A programme for completion and maintenance.

Reason: In the interests of road safety on the junction of the Linthill estate road and the B6359.

5. No development to commence until further details of the provision of foul and surface water drainage are submitted to, and approved by, the Planning Authority. The details should include evidence that arrangements are in place to ensure that the private drainage system will be maintained in a serviceable condition. The development then to proceed in accordance with the approved details.

Reason: To ensure that satisfactory arrangements are made for the disposal of surface and foul water.

6. No development is to commence until a report has been submitted to and approved in writing by the Planning Authority, demonstrating the provision of an adequate water supply to the development in terms of quality and quantity. The report must also detail all mitigation measures to be delivered to secure the quality, quantity and continuity of water supplies to properties in the locality which are served by private water supplies and which may be affected by the development. The provisions of the approved report shall be implemented prior to the occupation of the building(s) hereby approved.

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.

7. No development shall commence until further details of the provision of waste storage are submitted to, and approved in writing by, the Planning Authority. The development then to proceed in accordance with the approved details.

Reason: To ensure that satisfactory arrangements are made for waste storage and collection.

## **INFORMATIVES**

1. With regard to Condition 4, all work within the public road boundary must be undertaken by a contractor first approved by the Council. Any proposed gate to the access must open into the driveway away from the public road.
2. Please note that there may be the potential to encounter buried and unknown archaeology within the site. You would be advised to contact the Council Archaeology Officer should any be encountered.
3. Whilst not subject to a condition limiting materials or design, it should be noted that the Planning Authority would expect that any subsequent application for Approval of Matters Specified in Conditions, should propose a traditional lodge style dwellinghouse design, making use of traditional materials (stone and render walls, slated roof with appropriate eaves details and a steep roof pitch). Further advice is provided in the SPGs on Placemaking and Design and on New Housing in the Borders Countryside, available from the Council website: [www.scotborders.gov.uk](http://www.scotborders.gov.uk). With regards the design of a subsequent application for a dwelling on the plot, it should be noted that high quality contemporary design features that are sympathetic to the context will be considered, though a design statement in such cases would be recommended

N.B: This permission does not include any consent, approval or licence necessary for the proposed development under the building regulations or any other statutory enactment and the development should not be commenced until all consents are obtained.

Under The Control of Pollution Act 1974, the Council recommends the following hours for noisy construction-related work:

Monday-Friday 0700-1900

Saturday 0800-1300

Sunday and Public Holidays - no permitted work (except by prior agreement with the Council)

Contractors will be expected to adhere to the measures contained in BS 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 at the Council.

## **Notice of Initiation of Development**

Section 27 of the Town and Country Planning (Scotland) Act (as amended) requires that any person who has been granted planning permission (including planning permission in principle) and intends to start development must, once they have decided the date they will start work on the development, inform the planning authority of that date as soon as is practicable.

## **Notice of Completion of Development**

Section 27B requires that any person who completes a development for which planning permission (including planning permission in principle) has been given must, as soon as practicable after doing so, give notice of completion to the planning authority.

When planning permission is granted for phased development then under section 27B(2) the permission is to be granted subject to a condition that as soon as practicable after each phase, other than the last, is completed, the person carrying out the development is to give notice of that completion to the planning authority.

In advance of carrying out any works it is recommended that you contact Utility Bodies whose equipment or apparatus may be affected by any works you undertake. Contacts include:

Transco, Susiephone Department, 95 Kilbirnie Street, Glasgow, G5 8JD  
Scottish Power, Riccarton Mains Road, Currie, Edinburgh, EH14 5AA  
Scottish Water, Developer Services, 419 Balmore Road, Possilpark, Glasgow G22 6NU  
British Telecom, National Notice Handling Centre, PP404B Telecom House, Trinity Street, Stoke on Trent, ST1 5ND  
Scottish Borders Council, Street Lighting Section, Council HQ, Newtown St Boswells, Melrose, TD6 0SA  
Cable & Wireless, 1 Dove Wynd, Strathclyde Business Park, Bellshill, ML4 3AL  
BP Chemicals Ltd, PO Box 21, Bo'ness Road, Grangemouth, FK2 9XH  
THUS, Susiephone Department, 4<sup>th</sup> Floor, 75 Waterloo Street, Glasgow, G2 7BD  
Susiephone System – **0800 800 333**

If you are in a Coal Authority Area (Carlops or Newcastleton), please contact the Coal Authority at the following address: The Coal Authority 200 Lichfield Lane, Berry Hill, Mansfield, Nottinghamshire NG18 4RG.

**Notice Under Section 21 of the Town & Country Planning (Schemes of Delegation and Local Review procedure) (Scotland) Regulations 2008.**

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.

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.....**26 November 2018