

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: 18/00038/RREF

Planning Application Reference: 18/00956/FUL

Development Proposal: Erection of dwellinghouse

Location: Land North West of Chapel Cottage, Melrose

Applicant: Mr & Mrs Rose and Alexis Kennedy

DECISION

The Local Review Body varies the decision of the appointed officer and refuses planning permission for the reason set out in this decision notice as set out below:

1. The proposed development is contrary in principle to Adopted Local Plan Policies HD2, PMD2, EP10 and the advice of Supplementary Planning Guidance - New Housing in the Borders Countryside (December 2008) and Supplementary Planning Guidance - Place-Making and Design (January 2010), in that it is not in keeping with the sense of place of the countryside character and setting of the site and the surrounding area, principally through the introduction of an unsympathetic and suburban form of development into an isolated rural location, which would be harmful to the visual amenities of the site and surrounding area; including the Linthill Designed Landscape.

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	1427-02-01
Location Plan	1427-02-02A
Site Plan	1427-02-03

Floor Plans	1427-02-04
Floor Plans	1427-02-05
Roof Plan	1427-02-06
Elevations	1427-02-07
Sections	1427-02-08
Permaculture Zoning Plan	1427-02-18
Visibility Sightlines	1427-02-19

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 21 January 2019.

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 report; e) Consultations and f) List of Policies, the Review Body considered whether certain matters included in the review documents constituted new evidence under Section 43B of the Act and whether or not this evidence could be referred to in their deliberations. This related to a tree survey and a drawing proposing visibility sightlines. Members considered that the information did meet the Section 43B test, was material to their consideration and could be considered. In order to allow the Appointed Officer, Landscape Architect and Roads Planning Officer to submit their views on the new information, they requested further procedure in the form of written submissions. Members disregarded a further piece of new evidence which related to a site plan with a boundary drawn along the driveway to the public road which was different from the boundary on the site plan submitted with the original application as it was not open to the applicant to amend the site boundary at this juncture.

The LRB reconvened to consider the Review, following further procedure, at its meeting on 18 February 2019. After examining the review documentation at that meeting which included a) Statement from Officers on New Information; b) Response from applicant; and c) Review Papers (including the Decision Notice and Officer's Report), the Review Body proceeded to determine the case. They noted the applicant's suggestion for further procedure but did not consider any further procedure necessary, including a site visit, after 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, EP10, EP13, IS2, IS3, IS7 and IS9

Other Material Considerations

- SBC Supplementary Planning Guidance on Placemaking and Design 2010

- SBC Supplementary Planning Guidance on New Housing in the Borders Countryside 2008
- SBC Supplementary Planning Guidance on Privacy and Sunlight 2011
- 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 to erect a dwellinghouse North-West of Chapel Cottage, Linthill near Melrose.

The Review Body firstly considered the principle of a dwellinghouse on the site, applying Policy HD2 of the Local Development Plan and Supplementary Planning Guidance on “New Housing in the Borders Countryside”. Members noted that planning permission in principle had already been granted by the Review Body for a house on the site in relation to application reference 18/00644/PPP. This permission had granted planning permission in principle on the basis that the existence of a previous consent at the time of the application for a dwellinghouse on this site outweighed the terms of Policy HD2, which the Review Body determined did not support a dwellinghouse in this location. The Review Body, therefore, accepted the principle of a house and this addressed the Appointed Officer’s first reason for refusal. Whilst the additional hobby farming justification was noted, Members did not consider it necessary to give any weight to the justification as the principle of a replacement house had already been established and that consent was still extant therefore there was no need to consider an economic requirement justification.

The Review Body then considered the issue of the design and siting of the house, applying Policies PMD2, HD2 and EP10 of the Local Development Plan and Supplementary Planning Guidance on “New Housing in the Borders Countryside” and “Placemaking and Design”. Whilst some Members were not averse to the contemporary design in itself, others felt that the design was too modern and inappropriate for the site itself and did not comply with Policies, Guidance or meet the intentions of the Informative which the Review Body had added to the permission granted for application 18/00644/PPP specifically advising that the Review Body expected a traditional lodge style dwellinghouse design to be brought forward in any subsequent application. It was considered that the design failed to respect the rural character of the area and the Review Body felt that a more traditional approach was needed to a standard and quality that the site and setting demanded. The contemporary design and features were, ultimately, not considered to be sufficiently sympathetic to the character or context of the site, which is located in the Linthill Designed Landscape .

Members then considered the impacts of the development on the local landscape, particularly existing trees and hedging. Assessing the proposals against Policies PMD2, HD2 and EP13 in particular, it was noted that further information in the form of a tree survey had been submitted and that this had been accepted by both the Appointed Officer and the Landscape Architect. The Review Body were content that with appropriate conditions on new planting, tree retention and a slight movement of the site access, the additional information had addressed the third reason for refusal.

Members finally considered the aspects of road safety and, in particular, the achievement of satisfactory visibility at the junction of the driveway with the public road. Assessing the proposal against Policy PMD2, the Review Body noted that hedging had already been removed in a northerly direction and that the new information relating to a visibility sightline plan had been accepted by the Appointed Officer and Roads Planning Officer, subject to conditions. Members were content that the additional information, subject to conditions, had addressed the fourth reason for refusal.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was contrary to the Development Plan and Supplementary Planning Guidance 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 T Miers
Chairman of the Local Review Body

Date.....25 February 2019

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