

**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:** 17/00030/RREF

**Planning Application Reference:** 16/00947/FUL

**Development Proposal:** Erection of dwellinghouse with attached garage

**Location:** Land North East of The Old Church, Lamberton

**Applicant:** Mr Malcolm Pearson

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**DECISION**

The Local Review Body reversed the decision of the appointed officer and indicated that it intended to grant planning permission for the reasons set out in this decision notice subject to conditions and the conclusion of a legal agreement as set out below.

The necessary Section 75 agreement has now been concluded.

**DEVELOPMENT PROPOSAL**

The full application relates to the erection of dwellinghouse with attached garage on land North East of The Old Church, Lamberton The application drawings consisted of the following drawings:

<b>Plan Type</b>	<b>Plan Reference No.</b>
Location Plan	1:2500
Plan – NE Elevation	PL-001-001
Plan – SE Elevation	PL-002-001
Plan – SW Elevation	PL-003-001
Plan – NW Elevation	PL-004-001
Plans & Elevations All Levels	PL-100-001
Plan – Ground Floor	PL-101-001
Plan – First Floor	PL-102-001
Plan – Roof Plan	PL-103-001

## **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 18<sup>th</sup> September 2017.

After examining the review documentation at that meeting, which included: a) Notice of Review (including officer's report and Decision Notice); b) Papers referred to in report; c) Consultations; d) Objections and e) List of policies, the LRB concluded that it had sufficient information to determine the review and proceeded to consider the case. In coming to this decision Members considered the applicants request for further procedure in the form of a site visit.

## **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 most relevant of the policies were:

- Local Development Plan policies: PMD1, PMD2, HD2, HD3, EP8, EP13, IS2, IS5, IS7 & 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

The Local Review Body was satisfied there was a building group at Lamberton, as defined in Local Plan Policy HD2 and in the approved Supplementary Planning Guidance on New Housing in the Borders Countryside that consisted of 7 dwellinghouses located in the immediate vicinity of Lamberton Church.

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 concluded that the site was well related to the group and that its development would be consistent with the pattern of development at Lamberton. They also gave weight to fact that historically there had been buildings on the site.

In terms of the capacity of the group to accommodate the proposed house this was within the limits set by Policy HD2 of 2 or 30% within a Local Plan period.

The Review Body debated at length the scale, design and appearance of the new house. Whilst some concerns were expressed about the size of the house and its prominence, ultimately Members concluded that it was an attractive traditionally designed house and that subject to its being set into the site at an appropriate level it would complemented the character and appearance of the group.

The Review Body was satisfied that the protection of the trees adjoining the site and the right of way that runs through the site, along with the servicing of the site, could be covered by appropriately worded planning conditions. In respect of the right of way, Members also noted that there was potential for the route to be diverted should that prove necessary.

## **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 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. The external walls of the proposed house shall not be white or off-white in colour.  
Reason: The materials require further consideration to ensure a satisfactory form of development, which contributes appropriately to its setting.
2. 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.

3. The existing mature trees to the southern boundary of the site with No.3 Lamberton Holdings shall be protected at all times during construction and building operations, by the erection of substantial timber fence around the trees, together with such other measures as are necessary to protect the trees and their roots from damage. Details of the methods it is proposed to use shall be submitted by the applicant to the Local Planning Authority and be approved by them in writing. The approved protective measures shall be undertaken before any works commence on the site and must, thereafter be observed at all times until the development is completed.

Reason: To ensure that adequate precautions are taken to protect trees during building operations.

4. No development shall take place on site until the position of the proposed house has been plotted on site and approved in writing by the Local Planning Authority. The house thereafter shall be erected to accord with the agreed position.

Reason: To ensure that the house minimises the potential impact on adjoining mature trees.

5. No development is to commence until a report, by a suitably qualified person, 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, quantity and the impacts of this proposed supply on surrounding supplies or properties. The provisions of the approved report shall be implemented prior to the occupation of the dwellinghouse hereby approved.

Reason: To ensure that the development is adequately serviced with water without a detrimental effect on the water supplies of surrounding 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. Right of Way BB53 that runs through the site must be maintained open and free from obstruction in the course of development and in perpetuity. There should be no additional gates, steps, stiles, fences, walls or hedges on this route shown which would restrict public access.

Reason: To protect general rights of responsible public access.

8. Prior to the commencement of the development, a cross section drawing through the site illustrating the finished floor level of the dwellinghouse and the relationship of the proposed dwelling with No.3 Lamberton Holdings shall be submitted to and approved in writing by the Planning Authority. The dwellinghouse thereafter shall be erected to accord with the agreed level.

Reason: To ensure that the house has a satisfactory relationship with the neighbouring property and is not unduly prominent in the landscape.

- 9 No development shall take place until the applicant has secured a programme of archaeological work in accordance with an approved Written Scheme of Investigation (WSI) outlining a Watching Brief. Development and archaeological investigation shall only proceed in accordance with the WSI.

The requirements of this are:

- 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.
- If significant finds, features or deposits are identified by the attending archaeologist(s), all works shall cease and the nominated archaeologist(s) will contact the Council's Archaeology Officer immediately for verification. The discovery of significant archaeology may result in further developer funded archaeological mitigation as determined by the Council.
- Development should seek to mitigate the loss of significant archaeology through avoidance in the first instance according to an approved plan.
- If avoidance is not possible, further developer funded mitigation for significant archaeology will be implemented through either an approved and amended WSI, a new WSI to cover substantial excavation, and a Post-Excavation Research Design (PERD).
- Initial results shall be submitted to the Planning Authority for approval in the form of a Data Structure Report (DSR) within one month following completion of all on-site archaeological works. These shall also be reported to the National Monuments Record of Scotland (NMRS) and Discovery and Excavation in Scotland (DES) within three months of on-site completion
- The results of further mitigation of significant archaeology shall be reported to the Council following completion for approval and published as appropriate once approved.

Reason: The site is within an area where ground works may interfere with, or result in the destruction of, archaeological remains, and it is therefore desirable to afford a reasonable opportunity to record the history of the site.

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

- A service lay-by constructed to the Council's specification (DC-3) at the junction of the site access with the public road.
- A passing place constructed to the Council's specification (DC-1) on the public road at a location to be agreed by the Local Planning Authority prior to any construction work on the dwellinghouse.
- Parking and turning for a minimum of two vehicles, not including any garages, provided within the curtilage of the property. These facilities shall be retained thereafter perpetuity for that purpose only.
- Measures to prevent the flow of water onto the public road.

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

## **INFORMATIVE**

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 condition 6 above relating to the private drainage arrangements, documentary evidence must be provided 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.

## **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. A Section 75 Agreement has now been concluded.

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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.....**16 April 2018