

## **APPENDIX II**

### **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:** 19/00010/RREF

**Planning Application Reference:** 18/01469/PPP

**Development Proposal:** Erection of two dwellinghouses

**Location:** Paddock south of and incorporating part garden ground of 1 Cowdenburn Cottages, West Linton

**Applicant:** Mr A Anderson

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## **DECISION**

The Local Review Body reverses the decision of the appointed officer and indicates that it intends to grant planning permission for the reasons set out in this intentions notice subject to conditions and informatives and the applicants entering into a Section 75 Agreement as set out below.

## **DEVELOPMENT PROPOSAL**

The application relates to the erection two dwellinghouses. The application drawings and documentation consisted of the following:

<b>Plan Type</b>	<b>Plan Reference No.</b>
Locality Plan	
Indicative Site Layout	18-020/PPP/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 17<sup>th</sup> June 2019. After examining the review documentation which included: a) Notice of Review (including Decision Notice, Officer's Report and Consultations); b) Papers referred to in officer's report; and c) List of Policies, the Review Body 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, HD2, HD3, HD4, EP3, EP8, EP13, IS2, 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 Development Contributions 2011
- 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
- Scottish Planning Policy 2014

The Review Body noted that the proposal was for Planning Permission in Principle to erect two dwellinghouses on the site.

Members firstly considered whether there was a building group present at Cowdenburn Cottages and concluded that, in terms of Local Development Plan Policy, at least five houses currently existed, consisting of the four cottages and a modern house at the north-eastern end. They also noted two further houses were sited to the south-west across the public road, including the former railway station building. Members agreed this constituted a building group in terms of Policy HD2. They also recognised that the group could expand by up to two houses and that the proposal was within that scale of addition capacity.

The Review Body then considered whether the site and its development for two houses was well-related to the group and in keeping with its character, albeit noting that the application was for planning permission in principle and that the suggested layout was only indicative. In this respect, they had regard to the linear and traditional row of cottages and outbuildings adjoining the site but also the angled modern house to the north-eastern end of the row which they considered provided a suitable “bookend” to the group. Members considered that the site was an appropriate gap site at the other end forming a natural completion to the group, with the boundary clearly formed by the old railway line. Subject to suitable augmentation with new planting, they considered that to be the defensible boundary to the group rather than the garden boundary of the applicant’s own house.

Although the Review Body did discuss whether the proposal was more appropriate as a single dwellinghouse, they concluded that the site was large enough to achieve two houses whilst still respecting the nature and character of the group. Members considered it important, however, to provide advice in an Informative to ensure that the design of the houses should respect the character, colour and height of the existing houses in the row.

The Review Body then considered Local Development Plan Policy EP13 and the potential impacts of the development on trees within and on the boundaries of the site. They noted the concerns of the Appointed Officer and Landscape Architect, particularly with regard to the access and potential impacts on the mature Sycamore tree. They also noted there was no specific information submitted at this stage demonstrating tree protection. Nevertheless, they considered that with appropriate protection of the Sycamore tree and mitigation through condition, the development could comply with Policy EP13. The condition could also require a revised access point, should protection and retention of the tree require it. Members were less concerned about impacts on the roadside trees should the access require partial removal or trimming to achieve visibility improvement.

The Review Body finally considered other material issues relating to the proposal including land contamination, water and drainage but were of the opinion that appropriate conditions could address them satisfactorily. They also noted that development contributions for affordable housing and Peebles High School were required and could be secured by legal agreement.

## **CONCLUSION**

After considering all relevant information, the Local Review Body concluded that the development was consistent with Policies PMD2 and HD2 of the Local Development Plan and relevant Supplementary Planning Guidance. The development was considered to be an appropriate addition to the building group, well related to, and in keeping with the character of, the group. Tree protection could be addressed by condition. Consequently, the application was approved.

## **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):
  - existing and finished ground levels in relation to a fixed datum preferably ordnance
  - existing landscaping features and trees to be retained, protected and, in the case of damage, restored
  - location and design, including materials, of walls, fences and gates
  - soft and hard landscaping works including establishment of firm planted boundaries to the plots, including along the former railway line
  - existing and proposed services such as cables, pipelines, sub-stations
  - 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:
  - 2 no. parking spaces, not including any garage, and turning area for each dwellinghouse to be provided within the curtilage of the site and retained thereafter in perpetuity
  - visibility at the access onto the public road to be improved by removing/cutting back the roadside trees to provide splays of 2.4m by 215m
  - full construction specifications and dimensions of the access point
  - full details of the protection of the existing sycamore tree and roadside trees including a tree survey, root protection areas and full tree protection mitigation to BS: 5837Thereafter, the works shall be implemented in accordance with the agreed details and within an agreed timescale.

Reason: To ensure that development is served by a safe means of access and provides adequate off-street parking.

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. Thereafter, development shall proceed in strict 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. Unless otherwise agreed in writing and in advance by the Planning Authority, prior to any development commencing on site, a scheme will be 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 submitted to, and approved, by the Council, and is thereafter implemented in accordance with the scheme so approved.
  - a) 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 should contain details of proposals to investigate and remediate potential contamination and must include:-
  - b) A desk study and development of a conceptual site model including (where necessary) 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 b, c, d, and, e of this condition.

and thereafter

- a) 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.
- b) 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).
- c) 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.
- d) 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.
- e) Written confirmation from the Council, that the scheme has been implemented completed and (if appropriate), monitoring measures are satisfactorily in place, shall be required by the Developer before any development hereby approved commences. Where remedial measures are required as part of the development construction detail, commencement must be agreed in writing with the Council.

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.

## **INFORMATIVES**

With regard to Condition 1 and to comply with Local Development Plan Policy PMD2, the design and siting of the dwellinghouses shall respect and reflect the character and high quality architecture of the existing cottages and outbuildings adjoining the site, including materials, colour and height.

## **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 for affordable housing and education.

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.

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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.....**19 June 2019

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