

## APPENDIX II

### 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:** 19/00016/RREF

**Planning Application Reference:** 18/01161/FUL

**Development Proposal:** Change of use of agricultural land to dog care walking facility and erection of boundary fence

**Location:** Land South West of Milkieston Toll House, Peebles

**Applicant:** Mr Paul Lawrie

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### DECISION

The Local Review Body upholds the decision of the appointed officer and refuses planning permission as explained in this decision notice and on the following grounds:

- 1 The development is contrary to Policy PMD2 of the Local Development Plan 2016 in that intensified traffic usage of the sub-standard vehicular access creates a detrimental impact on road safety on the A703. The continued use of the existing sub-standard access would result in an unacceptable adverse impact on road safety, including but not limited to the site access.

### DEVELOPMENT PROPOSAL

The application relates to the change of use of agricultural land to a dog care walking facility and erection of boundary fence. The application drawings and documentation consisted of the following:

#### Plan Type

#### Plan Reference No.

Location Plan  
Proposed Site Plan  
Visibility Splay Plan

Annex B

## **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> August 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 Officer's Report; e) Consultations; f) Objection; g) Additional Representation; h) Response to additional representation and i) List of Policies, the Review Body noted that new evidence had been submitted regarding access to the site, relating to a visibility sightlines plan and information about improvement to visibility brought about by clearance of vegetation associated with Cringletie Hotel. They accepted that this information met the test set out in Section 43B of The Town and Country Planning (Scotland) Act 1997 and was material to the determination of the Review. They agreed to further procedure to enable the views of the Roads Planning Officer to be obtained on this new evidence.

The Review was, therefore, continued to the Local Review Body meeting on 16<sup>th</sup> September 2019 where the response from Roads Planning was considered, together with a further response from the applicant. Whilst noting the applicant's request for further procedure in the form of a site inspection, the Review Body did not require any further procedure and 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: PMD2, ED7, HD3, EP1, EP8, IS5, IS7, IS8 and IS9

The Review Body noted that the proposal was for planning permission to change the use of agricultural land to a dog care walking facility and erection of boundary fence. They noted that the development differed from the previous case on the land in a number of aspects, including the submission of a business case, extension of the site area and the removal of the previous building.

Members firstly noted that the business case established the need for the dog care and walking business in the local area. They accepted that the justification for the proposal had now been demonstrated under Policy ED7, subject to compliance with various criteria

The Review Body then considered the key issue of access to the site from the A703. They took into account all submissions on this matter including the visibility sightlines plan from the applicant and junction photographs from all parties. They noted that, whilst there had been some improvement in visibility to the south as a result of tree clearance in association with the Cringletie Hotel junction alterations, there were still obstacles and problems

associated with the access, including steep gradient, fencing and a telegraph pole. These particularly impaired visibility to the north. Ultimately, without significant improvement to the junction, Members were in agreement with the Roads Planning service that the proposal would increase traffic using a sub-standard and unsafe access onto a busy A-class road

## **CONCLUSION**

After considering all relevant information, the Local Review Body concluded that the development was contrary to the Development Plan and that there were no other material considerations that would justify departure from the Development Plan. Consequently, the application was refused for the reasons stated above.

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### **Notice Under Regulation 22 of the Town & Country Planning (Schemes of Delegation and Local Review procedure) (Scotland) Regulations 2013.**

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.....** 26 September 2019