

APPENDIX III

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: 19/00013/RREF

Planning Application Reference: 18/01680/FUL

Development Proposal: Erection of three holiday lodges, access and associated infrastructure

Location: Land West of 1 Hallrule Farm Cottage, Bonchester Bridge

Applicant: Mrs Claire MacTaggart

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 three holiday lodges, access and associated infrastructure. The application drawings and documentation consisted of the following:

| Plan Type | Plan Reference No. |
|-----------------------|---------------------------|
| Location Plan | 01 |
| Topographical Plan | 02 |
| Proposed Site Plan | 03 |
| Site Plan Layout | 04 |
| Site Plan Access Road | 05 |
| Site Plan | 06 |
| Floor Plans | 07 |
| Site Plan | 08 |
| Proposed Plans | 09 |
| Proposed Plans | 10 |

| | |
|---------------------------|----|
| Proposed Roof Plan | 11 |
| Proposed Sections | 12 |
| Proposed Elevations | 13 |
| Proposed Elevations | 14 |
| Specifications | 15 |
| Proposed Plans | 16 |
| Proposed Plans | 17 |
| Proposed Elevations | 18 |
| Proposed Roof Plan | 19 |
| Proposed Elevations | 20 |
| Proposed Elevations | 21 |
| Proposed Plans & Sections | 22 |
| Proposed Plans & Sections | 23 |
| Location Plan | 24 |

PRELIMINARY MATTERS

The Local Review Body initially considered the review, which had been competently made, under section 43A (8) of the Town & Country Planning (Scotland) Act 1997 at its meeting on 15th July 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) Objections; and g) List of Policies, the LRB concluded that it did not have sufficient information to determine the review and that it required Further Procedure in the form of both an unaccompanied site visit and additional information from the applicant on the following: 1. Details of electricity supply, water supply, waste water drainage, internal heating and digital connectivity; 2. Further details of the sequential site selection; 3. Comparison figures for similar grade tourist accommodation in the Scottish Borders and projected occupancy rates/rents.

The Review was, therefore, continued to the Local Review Body meeting on 16th September 2019 where, after having carried out an unaccompanied site visit and after considering further written submissions from the applicant on the above matters, the Review Body then 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, PMD4, ED7, HD2, HD3, EP1, EP2, EP3, EP5, EP8, EP13, EP15, EP16, IS4, IS6, IS7, IS8 and IS9

Other Material Considerations

- Scottish Planning Policy 2014

- SBC Supplementary Planning Guidance on Placemaking & Design 2010
- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006
- SBC Supplementary Planning Guidance on Landscape and Development 2008
- SBC Supplementary Planning Guidance on New Housing in the Borders Countryside 2008
- Scottish Borders Tourism Strategy 2013-2020
- SESPlan 2013
- Tourism Development Framework for Scotland 2016
- The Borders Railway Maximising The Impact 2014
- Role of the Planning System in Delivering the Visitor Economy 2013

The Review Body noted that the proposal was to erect three holiday lodges, access and associated infrastructure. They considered that the site visit was very helpful in allowing them to interpret the proposals on the ground and appreciate the relationship of the development with its surroundings.

Members firstly considered the principle of the development under Policy ED7. They noted and accepted the various additional responses relating to sequential site selection and provision of site services. They then considered the business case submissions including the more detailed information submitted in response to the previous Review Body requests. It was noted that there was a lack of high quality and five star accommodation with which to compare within the Borders but that, nevertheless, there was demand demonstrated. Members noted the other examples given across Scotland and England and the rental and occupancy levels experienced. They also noted the comments of Visit Scotland that the higher the quality and star rating, the higher the level of occupancy experienced.

There was some concern expressed about whether the site and development in question could compare with the isolated and exceptional locations of the other examples given, in relation to the cost of the development and the ability to recoup that cost. Members also noted that the Appointed Officer had similar concerns over the viability of the business case and the future usage of the lodges. Members were advised that whilst they were entitled to consider the viability of the business case, potential future usage was not a matter that they could consider in determining the Review.

However, they ultimately concluded that all business ventures were based on assumptions and that it was difficult to compare as this would be the first of its type in the Borders. They appreciated that detailed market research had been undertaken into the proposal and that their business questions and concerns had generally been satisfactorily answered. They noted, particularly, that Economic Development supported the business case. Members concluded that the business case had been demonstrated.

The Review Body then considered the issues of countryside location and impact on the landscape, finding the site visit especially helpful in considering these matters. They were of the opinion that the development site itself was in a secluded and concealed river valley. The lodges would not be visible from outwith the site because of the topography and they would also be set well apart from each other, affording some privacy and seclusion to the occupants. Whilst it was appreciated that the site was isolated within a Special Landscape Area, the nature of the siting and design of the units within the valley would result in a minimal and, ultimately, acceptable impact on the landscape.

Members then considered the conditions that would be necessary to regulate the development and secure appropriate mitigation. The occupancy of the units was discussed and a condition was recommended that would ensure genuine and rotational occupancy of the units as holiday accommodation.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was consistent with Policies PMD2, ED7 and EP5 of the Local Development Plan and relevant Supplementary Planning Guidance. The development was considered to be in an appropriate rural location with minimal impact on the landscape and had been justified by supporting material including a Business 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. The occupation of the holiday lodges shall be restricted to genuine holidaymakers, any person staying for a maximum of 3 weeks in total within any consecutive period of 13 weeks. A register of holidaymakers shall be kept and made available for inspection by an authorised officer of the Council at all reasonable times.
Reason: Permanent residential use in this location would conflict with the established planning policy for this rural area.
2. No development to be commenced until samples of all external materials for the lodges are submitted to, and approved in writing by, the Planning Authority. The development then to be implemented in accordance with the approved materials.
Reason: To safeguard the visual amenity of the area.
3. No development to be commenced until full landscaping details of the boundary treatment of all access tracks from the public road junction and within the site are submitted to, and approved in writing by, the Planning Authority. Once approved, the details then to be implemented concurrently with the access track construction or during the next planting season thereto and maintained thereafter in perpetuity.
Reason: To safeguard the visual amenity of the area.
4. A scheme of details to be submitted in writing to the Planning Authority for approval, detailing the location and number of passing places on the public road adjoining the site, which shall first be agreed on-site. Thereafter the agreed scheme of details to be fully implemented prior to works commencing on site.
Reason: To mitigate the impact of the increase in vehicular movements associated with the development proposal on the public road network.
5. The precise specification for the construction of the private bellmouth, where it meets the public road, to be submitted in writing to the Planning Authority for approval. Thereafter the approved construction specification to be fully implemented prior to works commencing on site, unless otherwise agreed in writing.
Reason: To ensure the access is constructed to a satisfactory condition and provides the appropriate drainage measures to ensure the prevention of surface water from the development reaching the public road.
6. The precise specification for the construction of the private access track serving the lodges to be submitted in writing to the Planning Authority for approval. Thereafter

the approved construction specification to be fully implemented prior to works commencing on site, unless otherwise agreed in writing.

Reason: To ensure the access is constructed to a satisfactory condition.

7. No development shall take place within the development site as outlined in red on the approved plan until the developer has secured a Written Scheme of Investigation (WSI) detailing a programme of archaeological works. The WSI shall be formulated and implemented by a contracted archaeological organisation working to the standards of the Chartered Institute for Archaeologists (CIfA). The WSI shall be submitted by the developer no later than 1 month prior to the start of development works and approved by the Planning Authority before the commencement of any development. Thereafter the developer shall ensure that the programme of archaeological works is fully implemented and that all recording, recovery of archaeological resources within the development site, post-excavation assessment, reporting and dissemination of results are undertaken per the WSI.

Reason: The site is within an area where development may damage or destroy archaeological remains, and it is therefore desirable to afford a reasonable opportunity to record the history of the site.

8. 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.

9. No development should commence until the applicant has provided evidence that arrangements are in place to ensure that the private drainage system will be maintained in a serviceable condition

Reason: To ensure that the development does not have a detrimental effect on amenity and public health.

10. Prior to commencement of development, a construction method statement to protect waterbodies, including appropriate measures outlined in *GPP 5 "Works and maintenance in or near water"* shall be submitted to and approved in writing by the Planning Authority. Any works shall thereafter be carried out strictly in accordance with the approved scheme.

Reason: To protect the ecological interest in accordance with Local Development Plan Policies EP1 and EP3.

11. Prior to commencement of development, a Species Protection Plan for bats, otter and breeding birds (including measures identified in *Extended Phase 1 habitat survey (Ellendale Environmental, 29th November 2017)*) shall be submitted to and approved in writing by the Planning Authority. The SPP shall incorporate provision for a pre-development supplementary survey and a mitigation plan. No development shall be undertaken except in accordance with the approved SPP.

Reason: To protect the ecological interest in accordance with Local Development Plan Policy EP2.

INFORMATIVES

In relation to Conditions 4 and 5, all works within the public road boundary must be undertaken by a contractor first approved by the Planning Authority.

In relation to Condition 8, the following information should be provided:

1. A description of the source(s) / type of the supply – i.e. whether the supply is taken from a watercourse, loch, spring, well or borehole, or any other source or combination of sources.
2. The location of the source(s) of the supply – i.e. the appropriate eight figure Ordnance Survey National Grid Reference(s).
3. The estimated maximum average volume of water provided by the supply in cubic metres per day (m³/day), including the details of any pump tests / flow rate tests undertaken to determine this estimate. For boreholes / wells, refer to BS ISO 14686:2003 “Hydrometric determinations - Pumping tests for water wells - Considerations and guidelines for design, performance and use”.
4. The intended use of the proposed building(s) – e.g. holiday accommodation, etc.
5. Where there are existing users of the supply:
 - (a) the addresses of all properties served;
 - (b) the existing occupancy levels of all such properties, as far as is reasonably practicable. As a minimum, the provision of the number of bedrooms per property will allow an estimate to be made of potential occupancy levels;
 - (c) the current use of all properties served – i.e. as above;
 - (d) information identifying if and how the development will impact on the existing users; and
 - (e) the details of any mitigating measures to be implemented to ensure the quality, quantity and continuity of the water supply to the existing users will be secured.
6. Where there are other properties' private water supplies in the vicinity of the development that may be affected thereby (e.g. neighbouring boreholes, wells, springs, etc.):
 - (a) information identifying if and how the development will impact on these other supplies; and
 - (b) the details of any mitigating measures to be implemented to ensure the quality, quantity and continuity of the water supply to these other properties will be secured.
7. Details of all laboratory analysis / tests carried out to demonstrate that the water supplied to the development will be wholesome. For clarification, the quality of the water throughout the building(s) must conform to the requirements of the legislative provisions appropriate to the use of the supply, as described below.
8. Details of all water treatment systems to be installed to ensure that the water supplied to the development will be wholesome.

For information, the minimum daily volume of water that requires to be supplied by a private water supply must be equivalent to 200 litres of water per person per day who will be using the supply. It is the provision of this quantity that must be ensured and, as such, water storage facilities may be necessary for this purpose. When designing storage facilities, the minimum recommended capacity is three days' reserve, in order to allow for supply interruption / failure.

If the supply only serves owner-occupied domestic dwellings, the quality of the water must comply with the requirements of The Private Water Supplies (Scotland) Regulations 2006 (“the 2006 Regulations”). For all other supplies, the water quality must comply with the requirements of The Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017 (“the 2017 Regulations”).

If the supply falls under the remit of the 2017 Regulations, it will also require to be sampled / monitored on at least an annual basis, and the local authority will also require to carry out a risk assessment of the supply. As such, if the development is the sole reason for the supply falling into this category, the applicant should contact the Environmental Health Department of Scottish Borders Council prior to the occupation of the building(s) to ensure that compliance with the legislative provisions is able to be secured.

In relation to Condition 9, please note the following:

Private drainage systems often impact on amenity and cause other 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 the Condition relating to the private drainage arrangements, the Applicant should produce documentary evidence 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.

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, 4th 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 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.

Signed...Councillor S. Hamilton
Chairman of the Local Review Body

Date...23 September 2019

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