

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: 19/00028/RREF

Planning Application Reference: 19/00965/FUL

Development Proposal: Demolition of existing dwellinghouse and erection of replacement dwellinghouse and garage

Location: Folly Cottage, Woodside Farm, Kelso

Applicant: Mr & Mrs Roddy & Rachel Jackson

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 the demolition of an existing dwellinghouse and erection of replacement dwellinghouse and garage. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	812P2-01
Proposed Site Plan	812P2-02
Existing Plan	812P2-02
Existing Elevations	812P2-03
Existing Elevations	812P2-04
Ground Floor Plan	812P2-06
First Floor Plan	812P2-07
Proposed Elevations	812P2-08B
Proposed Elevations	812P2-09B
Proposed Garage	812P2-10A

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 16th December 2019.

After examining the review documentation at that meeting, which included a) Notice of Review and associated documents (including Decision Notice and Officer's Report); b) Papers referred to in Officer's Report; c) Consultations and d) 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, HD2, HD3, EP1, EP2, EP3, EP5, EP8, EP13, EP16, IS2, IS7 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
- SBC Supplementary Planning Guidance on Developer Contributions 2011
- SBC Supplementary Planning Guidance on Local Landscape Designations 2012

The Review Body noted that the proposal was for planning permission to demolish an existing dwellinghouse and erect a replacement dwellinghouse and detached garage on the site. They noted that the proposal was for an entirely new-build, differing from the three previous recent consents which were for reinstatement/conversion with extensions. Members also noted from the submissions that, by virtue of access junction improvements, the 2010 consent had been commenced and remained valid, as did the 2017 consent.

The Review Body carefully studied and compared the current proposals with the previous consents and were of the view that the proposed design was very similar in all respects to the previous consents, even being slightly smaller in footprint than the design approved in 2017. This was a significant material factor in their consideration of the Review, that the design would look little different to the previous designs and that the impacts on the surrounding countryside would be similar and remain acceptable. There was also comment that existing stonework from the demolitions could be salvaged and re-used in the development. Members considered that this could be addressed through a Condition and Informative on any consent.

The Review Body then assessed the application against Section E of Local Development Plan Policy HD2 and the relevant Supplementary Planning Guidance. They noted this was the only Section of that policy which covered entire rebuilding proposals, Sections C and D relating to conversions and retention of parts of buildings. They considered the views of the Appointed Officer and applicants with regard to whether the building was an existing house and noted that the property had been a house in the past. They also noted that there was no specific definition contained with Section E as to what constituted an existing house, particularly in relation to whether the house had to be in a habitable condition.

After discussion, the Review Body accepted the building was an existing house for the purposes of the Policy. They concluded that the proposal was in compliance with Section E of Policy HD2, representing an appropriate rebuilding of an existing house. As the details of the rebuilding were very similar to previous consents and were also supported by the Archaeology Officer, Members also considered that the proposal met with the criteria under Section E, including being in keeping with the scale and character of the existing building and providing a positive contribution to the landscape, allowing a deteriorating building to be replaced with an appropriate design. The Review Body also considered the principle to be in accordance with Scottish Planning Policy and provided additional benefits of energy efficiency.

The Review Body finally considered other material issues relating to the proposal including ecology, archaeology, road access, water and drainage but were of the opinion that appropriate conditions could address these satisfactorily. They also noted that development contributions were not required for the proposal as they had not been sought on earlier consents which remained valid.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was consistent with Policies PMD2, HD2 and EP5 of the Local Development Plan and relevant Supplementary Planning Guidance. The development was considered to be an appropriately designed replacement dwellinghouse with acceptable impact on the landscape. 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 development hereby approved shall only be carried out in strict accordance with details of the materials (and colour of these materials) to be used on the external walls and roof of the proposed building(s) which shall first have been submitted to and approved in writing by the Planning Authority.
Reason: To ensure a satisfactory form of development, which contributes appropriately to its setting
2. Parking and turning for two vehicles, excluding garages, must be provided within the site before the dwellinghouse is occupied and retained in perpetuity.
Reason: To ensure sufficient in-curtilage parking within the site, the interests of road safety.
3. Visibility splays of 3m x 120m to be provided at the junction with the minor public road prior to occupation and retained thereafter in perpetuity.

Reason: To ensure safe access and egress to the site.

4. A scheme of details for the provision of 120m forward visibility for vehicles travelling south to be provided to, and approved by, the Planning Authority prior works commencing on site. Thereafter the works to be completed prior to occupation and retained thereafter in perpetuity.
Reason: To ensure the development hereby approved is served by a junction with suitable visibility.
5. 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.
6. No development is to commence until a report has been submitted to and approved in writing by the Planning Authority that the public mains water supply is available and can be provided for the development. Prior to the occupation of the building(s), written confirmation shall be provided to the approval of the Planning Authority that the development has been connected to the public mains water supply.
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. No water supply other than the public mains water supply shall be used to supply the development without the written agreement of the Planning Authority.
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.
8. 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.
9. No development to be commenced until further landscaping details are submitted to, and approved in writing by, the Planning Authority. Once approved, the details then to be implemented concurrently with the development or during the next planting season thereto and maintained thereafter in perpetuity.
Reason: To safeguard the visual amenity of the area.
10. No development shall be undertaken during the breeding bird season (March to September), unless in strict compliance with a Species Protection Plan for breeding birds including barn owl, including provision for pre-development supplementary survey, that shall be submitted to and approved in writing by the Planning Authority.

Reason: To protect the ecological interest in accordance with Local Development Plan policies EP2 and EP3.

INFORMATIVES

1. With regard to Condition 1, consideration should be given to incorporating stone from the demolitions within the new development.
2. Forward visibility of 120m must be provided for vehicles approaching the access from the north so as to ensure that vehicles approaching the site have adequate awareness of any vehicle that may be sitting waiting to turn right into the site.
3. It should be borne in mind that only contractors first approved by the Council may work within the public road boundary.

4. Private Drainage System

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.

5. Stoves and Use of Solid Fuel

These installations can cause smoke and odour complaints and any Building and Planning Consents for the installation do not indemnify the applicant in respect of Nuisance action. In the event of nuisance action being taken there is no guarantee that remedial work will be granted building/planning permission.

Accordingly this advice can assist you to avoid future problems.

The location of the flue should take into account other properties that may be downwind.

The discharge point for the flue should be located as high as possible to allow for maximum dispersion of the flue gasses.

The flue should be terminated with a cap that encourages a high gas efflux velocity.

The flue and appliance should be checked and serviced at regular intervals to ensure that they continue to operate efficiently and cleanly.

The appliance should only burn fuel of a type and grade that is recommended by the manufacturer.

If you live in a Smoke Control Area you must only use an Exempt Appliance <http://smokecontrol.defra.gov.uk/appliances.php?country=s> and the fuel that is Approved for use in it <http://smokecontrol.defra.gov.uk/fuels.php?country=s> .

In wood burning stoves you should only burn dry, seasoned timber. Guidance is

available on -

[http://www.forestry.gov.uk/pdf/eng-woodfuel-woodasfuelguide.pdf/\\$FILE/eng-woodfuel-woodasfuelguide.pdf](http://www.forestry.gov.uk/pdf/eng-woodfuel-woodasfuelguide.pdf/$FILE/eng-woodfuel-woodasfuelguide.pdf)

Treated timber, waste wood, manufactured timber and laminates etc. should not be used as fuel.

Paper and kindling can be used for lighting, but purpose made firelighters can cause fewer odour problems.

6. Proposed works include septic tank drainage to soakaway and SUDS for surface water. SEPA Pollution Prevention Guidelines (e.g. GPP5 and GBR10) should be adopted to avoid potentially polluting substances entering the water environment.

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 T. Miers
Chairman of the Local Review Body

Date.....23 December 2019