

## **APPENDIX I**

### **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:** 19/00023/RREF

**Planning Application Reference:** 19/00590/FUL

**Development Proposal:** Erection of dwellinghouse and agricultural building

**Location:** Land North East of Hoprigshiels Farmhouse, Cockburnspath

**Applicant:** Mr & Mrs S Phaup

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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, informatives and the applicants entering into a Section 75 Agreement as set out below.

## **DEVELOPMENT PROPOSAL**

The application relates to erection of a dwellinghouse and agricultural building. The application drawings and documentation consisted of the following:

<b>Plan Type</b>	<b>Plan Reference No.</b>
Location Plan	17/B651/PL05
Site Plan	17/B561/PL03
Agricultural Shed	17/B651/PL08
Foul Drainage Plan	17/B562/PL09
Proposed Elevations	17/B561/PL02
Floor Plan	17/B561/PL01

## **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 18<sup>th</sup> November 2019.

After examining the review documentation at that meeting, which included a) Notice of Review (including Decision Notice) ; b) Officer's Report; c) Papers referred to in Officer's Report; d) Consultations and e) List of Policies, the Review Body concluded that it did not have sufficient information to determine the review and that it required Further Procedure in the form of an unaccompanied site visit to help their consideration and allow them to look at other possible sites discounted by the applicants.

The Review was, therefore, continued to the Local Review Body meeting on 20<sup>th</sup> January 2020 where, after having carried out an unaccompanied site visit, 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, HD2, HD3, ED7, ED10, EP3, EP13, EP14, EP15, EP16, IS2, IS5, IS6, IS7, IS9 and IS11

### Other Material Considerations

- Scottish Planning Policy 2014
- PAN72 "Housing in the Countryside" 2005
- 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 Development Contributions 2011
- SBC Supplementary Planning Guidance on Trees and Development 2008
- SBC Supplementary Planning Guidance on Waste Management 2015

The Review Body noted that the proposal was to erect a dwellinghouse and agricultural building on the site. They considered that the site visit was very helpful in allowing them to interpret the proposals on the ground, understand the relationship of the development with its surroundings and view other potential sites that had been discounted by the applicants.

Members firstly considered the principle of the development under Policy HD2 and the SPG. Under Part A of HD2 relating to building groups, they agreed with the Appointed Officer that the site was not part of the nearest building group at Hoprigshiels and that the farm to the west was not a building group as it contained only one dwellinghouse. The Review Body then considered the application under Part F of Policy HD2 relating to an economic requirement for the house and accepted that agricultural justification had been submitted to demonstrate that another house was needed for the farm.

Members then considered the issue of alternative sites and sequential testing of existing buildings or sites within a building group, as required by proposals under Part F where an economic case for a house had been accepted. Taking into account the information submitted by the applicants, including

examples of other consents within Berwickshire and the evidence from their site inspection, the Review Body accepted that sites had been investigated and discounted by the applicant for understandable reasons. They agreed that there could be issues of residential amenity impact if sited in the vicinity of the building group at Hoprigshiels or operational and use conflicts if sited near the farm steading. They concluded that the sequential testing required by Policy HD2 had been satisfied.

The Review Body then considered the issues of design, countryside location and impact on the landscape, as required by Policy HD2. Members felt the site visit was especially helpful in considering these matters, including viewing the site from distance to the south. They considered that the site was relatively well screened by the existing shelter belt and topography and that the design and siting of the house were in keeping with the area. However, Members were concerned over the scale of the agricultural building next to the proposed house. Whilst they may have accepted a smaller garage building on the site, they were of the opinion that the agricultural building, as proposed, would be more appropriately located within the farm steading to the west. They agreed that their concerns could be adequately addressed by condition and Informative, to achieve an alternative smaller scale building on the site, if required.

The Review Body then considered other matters in relation to infrastructure, planting and access but considered that these could be addressed in appropriate conditions and Informatives. Members then considered other conditions that would be necessary to regulate the development and secure appropriate mitigation. In relation to the occupancy of the house and to reflect the agricultural justification based upon another house being needed for a farm worker, Members agreed that an occupancy condition would also need to be supported by a tie between the house and farm holding within a Legal Agreement. The Agreement would also be necessary to secure developer contributions for education.

## **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 in an appropriate rural location with minimal impact on the landscape and the case for a house for an additional farm worker had been justified. 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 dwelling shall be limited to a person solely or mainly employed, or last employed, in the locality in agriculture as defined in section 277 of the Town and Country Planning (Scotland) Act 1997, or a dependant of such a person residing with him or her or a widow or widower of such a person, and to any residential dependents.  
Reason: The site is in a rural area where it is not the Council's policy to permit unrestricted residential development, and permission has therefore only been granted on account of the demonstrated agricultural needs.
2. No development to be commenced until samples of all external materials 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 further landscaping details of the boundary treatment, as shown on Drawing 17/B561/PL03, are submitted to, and approved in writing by, the Planning Authority. Once approved, the planting 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.
4. Notwithstanding the details on the approved drawings, no consent is granted for the agricultural building as shown and, should a building be required, the building shall not be commenced until revised drawings are submitted and approved in writing by the Planning Authority. Thereafter, the building shall be developed in accordance with the approved revised drawings.  
Reason: To safeguard the visual amenity of the area.
5. No development to be commenced until a scheme of finished ground and floor levels is submitted to, and approved in writing by, the Planning Authority. The development then to proceed in accordance with the approved details.  
Reason: To safeguard the visual amenity of the area.
6. No development shall commence until a scheme of details for upgrading the private access road serving the site has been submitted in writing to the Council for approval. Thereafter the approved scheme of details to be fully implemented prior to the dwelling becoming occupied.  
Reason: To ensure satisfactory access to the development site.
7. Parking and turning for two vehicles, excluding garages, must be provided within the curtilage of the plot before the dwellinghouse is occupied and retained thereafter in perpetuity.  
Reason: To ensure the property is served by adequate parking at all times.
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.

## **INFORMATIVES**

1. In relation to Condition 4, any revised design should be smaller in scale and more in keeping with the scale and design of a domestic garage. Should an agricultural building still be required of the original scale intended, this should be located within or immediately adjoining the farm steading and a new planning application or Prior Notification submitted as required.

2. In relation to Condition 6, the access road to the site should be upgraded to include two passing places at locations agreed with the Council and also for visibility splays of 2.4 metres by 70 metres to be achieved at the site's access onto the private road.
3. In relation to Condition 8, the following information should be provided:
  - i. 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.
  - ii. The location of the source(s) of the supply – i.e. the appropriate eight figure Ordnance Survey National Grid Reference(s).
  - iii. The estimated maximum average volume of water provided by the supply in cubic metres per day (m<sup>3</sup>/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”.
  - iv. The intended use of the proposed building(s) – e.g. holiday accommodation, etc.
  - v. Where there are existing users of the supply:
  - vi. the addresses of all properties served;
  - vii. 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;
  - viii. the current use of all properties served – i.e. as above;
  - ix. information identifying if and how the development will impact on the existing users; and
  - x. 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.
  - xi. 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.):
  - xii. information identifying if and how the development will impact on these other supplies; and
  - xiii. 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.
  - xiv. 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.
  - xv. 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.

4. 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.

5. Wood Burning Stoves

Is a stove is to be installed as part of this development and so long as it is less than 45kW no further information needs to be provided. If it is greater than 45kW then the applicant needs to declare this and provide additional information so that a screening assessment can be carried out.

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.

## **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 education and to tie the house to the farm holding.

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 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.....**3 February 2020