



**NOTICE OF REVIEW**

UNDER SECTION 43A(8) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED) IN RESPECT OF DECISIONS ON LOCAL DEVELOPMENTS

THE TOWN AND COUNTRY PLANNING (SCHEMES OF DELEGATION AND LOCAL REVIEW PROCEDURE) (SCOTLAND) REGULATIONS 2013

**IMPORTANT:** Failure to supply all the relevant information could invalidate your notice of review.

Use **BLOCK CAPITALS** if completing in manuscript

Applicant(s)	Agent (if any)
Name Bentley Developments Limited	Name Gillespie Macandrew LLP
Address c/o Ferguson Planning, 54 Island Street,	Address 163 West George Street, Glasgow
Postcode Galashiels TD1 1NU	Postcode G2 2JJ
Contact Telephone 1	Contact Telephone 1 0141 473 5562
Contact Telephone 2	Contact Telephone 2
E-mail* tim@fergusonplanning.co.uk	E-mail* keith.emmerson@gillespiemacandrew.co.uk
	Mark this box to confirm all contact should be through this representative: <input checked="" type="checkbox"/>
	Yes No
* Do you agree to correspondence regarding your review being sent by e-mail?	<input checked="" type="checkbox"/> <input type="checkbox"/>

Planning authority Scottish Borders Council  
 Planning authority's application reference number 18/00749/FUL  
 Site address Plot 1, Land South East Of Mearnhooley House, Jedburgh

Description of proposed development Variation of Condition 1 of planning permission 13/01082/FUL to allow the lifespan of the application to be extended by a further three years

Date of application 29 June 2018 Date of decision (if any) 14 January 2020

Note: this notice must be served on the planning authority within three months of the date of the decision notice or from the date of expiry of the period allowed for determining the application.

**Nature of application**

- 1. Application for planning permission (including householder application)
- 2. Application for planning permission in principle
- 3. Further application (including development that has not yet commenced and where a time limit has been imposed; renewal of planning permission; and/or modification, variation or removal of a planning condition)
- 4. Application for approval of matters specified in conditions

**Reasons for seeking review (tick one box)**

- 1. Refusal of application by appointed officer
- 2. Failure by appointed officer to determine the application within the period allowed for determination of the application
- 3. Conditions imposed on consent by appointed officer

**Review procedure**

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions; and/or inspecting the land which is the subject of the review case.

Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may tick more than one box if you wish the review to be conducted by a combination of procedures.

- 1. Further written submissions
- 2. One or more hearing sessions
- 3. Site inspection
- 4. Assessment of review documents only, with no further procedure

If you have marked box 1 or 2, please explain here which of the matters (as set out in your statement below) you believe ought to be subject of that procedure, and why you consider further submissions or a hearing are necessary:

The whole matter. Correspondence with the Council solicitor has produced an impasse - written submissions will allow a determination following full arguments from both sides.

**Site inspection**

In the event that the Local Review Body decides to inspect the review site, in your opinion:

- |  | Yes                                 | No                       |
|--|-------------------------------------|--------------------------|
| 1. Can the site be viewed entirely from public land?                                 | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 2. Is it possible for the site to be accessed safely, and without barriers to entry? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

If there are reasons why you think the Local Review Body would be unable to undertake an unaccompanied site inspection, please explain here:

**Statement**

You must state, in full, why you are seeking a review of your application. Your statement must set out all matters you consider require to be taken into account in determining your review. Note: you may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

If the Local Review Body issues a notice requesting further information from any other person or body, you will have a period of 14 days in which to comment on any additional matter which has been raised by that person or body.

State here the reasons for your notice of review and all matters you wish to raise. If necessary, this can be continued or provided in full in a separate document. You may also submit additional documentation with this form.

The basis of the refusal is that adverse representations have been made by SEPA and by the Council's Flood Risk Officer. The effect of granting a section 42 application is to create a new and separate planning permission; this new and separate permission being subject to the same conditions as those attached to the original permission with the exception of the wording of the condition to which variation or discharge under section 42 has been sought. As a general rule, when considering a section 42 application, the Council may only consider the issue of the conditions to any resulting permission. The Council cannot consider the overall effect of granting a new permission, except where the previous permission has lapsed (please note that in this case, our applications were submitted before the original Planning Permissions lapsed) or is not now capable of being implemented. Section 42(2) states that "the planning authority shall consider only the question of the conditions subject to which planning permission should be granted"; therefore, the principle of the development proposed is not the subject of the section 42 application, only the extent to which the grant of planning permission subject to the proposed revised condition remains acceptable in planning terms. In this case, the Council refused the application on the basis of the new SEPA and Flood Risk Officer objections (which were not made in respect of the original application). As stated above, the Council are not entitled to consider afresh the principle of the development, only the extent to which the grant of planning permission subject to the new condition (i.e. the extended time limit) remains acceptable in planning terms. We would submit that to refuse the s.42 applications on the grounds of the new objections from SEPA is not a legitimate or lawful ground to refuse the application. We are not seeking to amend the scope of the planning consent which was previously granted in any manner other than the time-limit for implementation. There is therefore no need or justification for the Council in considering additional information not provided in opposition to our clients' application when first determined. Copies of all correspondence with the Council setting out our clients' position are enclosed.

Have you raised any matters which were not before the appointed officer at the time the determination on your application was made?

Yes  No

If yes, you should explain in the box below, why you are raising new material, why it was not raised with the appointed officer before your application was determined and why you consider it should now be considered in your review.

**List of documents and evidence**

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review. Note: there will be no opportunity to submit further documents to accompany this notice of review.

1. Planning Permission 13/01082/FUL
2. Scottish Government Planning Circular 3/2013: Development management procedures
3. Letter from Gillespie Macandrew LLP to Scottish Borders Council dated 10 June 2019
4. Letter from Scottish Borders Council to Gillespie Macandrew LLP dated 17 July 2019
5. Letter from Gillespie Macandrew LLP to Scottish Borders Council dated 19 September 2019
6. Letter from Scottish Borders Council to Gillespie Macandrew LLP dated 11 October 2019
7. Letter from Gillespie Macandrew LLP to Scottish Borders Council dated 19 November 2019

Note: the planning authority will make a copy of the notice of review, the review documents and any notice of the procedure of the review available for inspection at an office of the planning authority until such time as the review is determined. It may also be available on the planning authority website.

**Checklist**

Please mark the appropriate boxes to confirm you have provided all supporting documents and evidence relevant to your review:

- Full completion of all parts of this form
- Statement of your reasons for requiring a review
- All documents, materials and evidence which you intend to rely on (e.g. plans and drawings or other documents) which are now the subject of this review.

Note: where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice from that earlier consent.

**Declaration**

I the ~~applicant~~/agent [delete as appropriate] hereby serve notice on the planning authority to review the application as set out on this form and in the supporting documents.

Signed [REDACTED] Date 

02	04	2020
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*The completed form should be returned to the Clerk of the Local Review Body, Democratic Services, Scottish Borders Council, Council Headquarters, Newtown St. Boswells TD6 0SA or sent by email to [localreview@scotborders.gov.uk](mailto:localreview@scotborders.gov.uk)*

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997**

**Town and Country Planning (Development Management Procedure) (Scotland) Regulations  
2013**

**Application for Planning Permission**

**Reference: 13/01082/FUL**

**To: Bentley Developments per Boydell Architecture Ltd 113 Channel Street Galashiels Scottish  
Borders TD1 1BN**

With reference to your application validated on **19th September 2013** for planning permission under  
the Town and Country Planning (Scotland) Act 1997 for the following development :-

**Proposal: Erection of dwellinghouse**

**at: Plot 2 Land South East Of Mounthooly House Jedburgh Scottish Borders**


The Scottish Borders Council hereby **grant planning permission** in accordance with the  
approved plan(s) and the particulars given in the application and in accordance with Section 58 of  
the Town and Country Planning (Scotland) Act 1997, subject to the following direction:

- That the development to which this permission relates must be commenced within three  
years of the date of this permission.

And subject to the conditions on the attached schedule imposed by the Council for the reasons  
stated

**Dated 18th November 2015  
Planning and Regulatory Services  
Environment and Infrastructure  
Council Headquarters  
Newtown St Boswells  
MELROSE  
TD6 0SA**

Signed

  
.....  
Chief Planning Officer

**APPLICATION REFERENCE: 13/01082/FUL****Schedule of Plans and Drawings Approved:**

Plan Ref	Plan Type	Plan Status
KB/98/11/BW4	Site Plan	Approved
P03 REV A	Floor Plans	Approved
P04 REV A	Elevations	Approved

**REASON FOR DECISION**

The proposed development, subject to the imposition of planning conditions, is considered acceptable and in compliance with Policies G1, G2, G4, G5, H2, Inf4, In5, Inf6 and D2, as contained within the Consolidated Local Plan 2011 and Supplementary Planning Guidance: New Housing in the Borders Countryside, Guidance on Householder Developments, Developer Contributions and Placemaking and Design. The dwelling is well related to an existing building group and is appropriately sited. The design, materials and finish are considered acceptable and ensure that the proposal respects the existing building group. The proposal will not impact upon the residential amenities of occupants of neighbouring properties or the visual amenities of the wider area.

**SCHEDULE OF CONDITIONS**

- 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.
- 2 Notwithstanding the description of the materials in the application, no development shall be commenced until precise details of the materials to be used in the construction of the external walls, windows, doors and roof of the dwellinghouse have been submitted to and approved in writing by the Planning Authority, and thereafter no development shall take place except in strict accordance with those details.  
Reason: The materials require further consideration to ensure a satisfactory form of development, which contributes appropriately to its setting.
- 3 Provision shall be made within the site for the disposal of surface water so as to prevent its discharge onto the highway, in accordance with scheme of details which shall first have been submitted to and approved in writing by the Local Planning Authority, prior to the commencement of development.  
Reason: In the interests of highway safety.
- 4 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 that there is adequate parking and turning provision within the site.
- 5 The means of water supply to be submitted to and approved in writing by the Planning Authority before the development is commenced. If the water supply is to be a private supply a report by a qualified person is to be submitted to the Planning Authority containing

information on the quantity and quality of the private water supply to serve the proposed dwellinghouse and the impact of the proposal on the water supply to existing properties. The development then to be completed in accordance with the approved scheme.  
Reason: To ensure that the site is adequately serviced.

- 6 Notwithstanding the details approved, no development shall be commenced until precise details of the means of foul drainage and surface water disposal have been submitted to and agreed in writing by the Local Planning Authority and thereafter no development shall take place except in strict accordance with the approved details.  
Reason: To ensure that the site is adequately serviced.
- 7 Unless otherwise agreed with the Planning Authority, in consultation with SEPA, the proposed dwellinghouse to have a minimum finished floor level of 55.3mAOD.  
Reason: To protect people and property from flood risk.
- 8 No development shall take place until details of the proposed means of enclosure around the site have been submitted to and approved in writing by the Local Planning Authority. The development then to be completed in accordance with the approved details, prior to the occupation of the dwellinghouse.  
Reason: To enable the proper effective assimilation of the development into its wider surroundings.
- 9 No development shall take place except in strict accordance with a scheme of soft landscaping works, which shall first have been submitted to and approved in writing by the Planning Authority, and shall include;
  - i indication of existing trees, shrubs and hedges to be removed, those to be retained and, in the case of damage, proposals for their restoration;
  - ii location of new trees, shrubs, hedges and grassed areas;
  - iii schedule of plants to comprise species, plant sizes and proposed numbers/density;
  - iv programme for completion and subsequent maintenance.Reason: To enable the proper form and layout of the development and the effective assimilation of the development into its wider surroundings.
- 10 All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the dwellinghouse or the completion of the development, whichever is the sooner, and shall be maintained thereafter and replaced as may be necessary for a period of two years from the date of completion of the planting, seeding or turfing.  
Reason: To ensure that the proposed landscaping is carried out as approved.
- 11 Prior to the occupation of the dwellinghouse, the access must be formed to the Council's satisfaction, in accordance with the Council's standard detail 'DC6'.  
Reason: To ensure a satisfactory access is constructed to serve the development.
- 12 A drawing showing the ground levels around the dwellinghouse designed to slope away from the outside walls of the dwellinghouse to shed surface water and mitigate the risk of ponding to be submitted to and approved in writing by the Planning Authority before the development commences. The development then to be completed in accordance with the approved scheme.  
Reason: To protect people and property from flood risk.

**FOR THE INFORMATION OF THE APPLICANT**

It should be noted that:

- 1 A copy of the consultation response from the Roads Planning Officer is attached for the attention of the applicant.
- 2 In respect of condition 11, a copy of specification 'DC6' is attached for the attention of the applicant. The verge crossing should be formed by a Council approved contractor to an acceptable standard.
- 3 The applicant should sign up to receive Flood Alerts and Warnings from SEPA. This can be done by signing up to FLOODLINE at [www.sepa.org.uk](http://www.sepa.org.uk) or by telephone on 0845 988 1188.  
  
An evacuation plan should be developed for the site which can be followed in the event of such flood warnings.
- 4 A copy of the consultation response from the Environmental Health Officer (Contaminated Land) is attached for the attention of the applicant.
- 5 The applicant should note that SEPA have advised that the low lying parts of the application site are at risk of flooding and it is recommended that these ground levels should remain un-altered so that there is no impact upon the risk of flooding to neighbouring land or properties.

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.

**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. A form is enclosed with this decision notice for this purpose.

**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.





## *Regulatory Services*

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.

If the applicant is aggrieved by the decision of the Planning Authority to refuse planning 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 require the planning authority to review the case under Section 43A of the Town and Country Planning (Scotland) Act 1997 within three months from the date of this notice. The notice of review should be addressed to Corporate Administration, Council Headquarters, Newtown St Boswells, Melrose TD6 0SA.

If permission to develop land is refused or granted subject to conditions, whether by the Planning Authority or by the Scottish Ministers, 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 may serve on the Planning Authority a purchase notice requiring the purchase of his interest in the land in accordance with the provisions of Part 5 of the Town and Country Planning (Scotland) Act 1997.