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SCOTTISH BORDERS COUNCIL LOCAL REVIEW BODY

MINUTE of Meeting of the LOCAL REVIEW BODY held in the Council Chamber, Council Headquarters, Newtown St Boswells, TD6 0SA on Monday, 17 February 2020 at 10.00 am

Present:- Councillors T. Miers (Chairman), A. Anderson, J. A. Fullarton, S. Hamilton, H. Laing, S. Mountford, C. Ramage, N. Richards and E. Small

In Attendance:- Principal Planning Officer – Major Applications/Local Review, Solicitor (E. Moir), Democratic Services Team Leader, Democratic Services Officer (F. Walling).

CHAIRMAN

The Chairman gave a particular welcome to Councillor Neil Richards to his first meeting of the Local Review Body.

1. DECLARATIONS OF INTEREST.

Councillors Ramage and Richards declared an interest in the following item of business in terms of Section 5 of the Councillors Code of Conduct and left the Chamber during the discussion.

2. REVIEW OF 19/00857/FUL.

There had been circulated copies of the request from Denholm Mill Proprietors Association to review refusal of the planning application for erection of fence on land south east of bungalow, Denholm Mill, Denholm. The supporting papers included the Notice of Review; Decision Notice; Officer's Report; papers referred to in the Officer's Report; Consultations; representations; and a list of policies. Members noted that the proposal was for a post and wire fence of 1.8m height and that a lower fence of up to 1.0m in height would not have needed planning permission and would have had less visual impact. Being located in a prominent position within a Conservation Area, Members concluded, after discussion, that the fence at the height proposed was not an appropriate boundary treatment.

DECISION

AGREED that:-

- (a) the review could be considered without the need for any further procedure on the basis of the papers submitted;**
- (b) the proposal would be contrary to the Development Plan and that there were no other material considerations that would justify departure from the Development Plan; and**
- (c) the officer's decision to refuse the application be upheld and the application be refused, for the reasons detailed in Appendix I to this Minute.**

3. REVIEW OF 19/00514/FUL.

There had been circulated copies of the request from Mr Walter Douglas, per Smith & Garratt, The Guildhall, Ladykirk, to review the decision to refuse the planning application

for erection of dwellinghouse on land south west of Carlenrig Farm, Teviothead. The supporting papers included the Notice of Review (including the Decision Notice and Officer's Report); papers referred to in the Officer's Report; application referred to in appellant's statement; Consultations; and a list of policies. The Planning Advisor drew Members' attention to whether certain matters included in the review documents constituted new evidence under Section 43B of the Act and whether or not this evidence could be referred to in their deliberations. This related to further information on a revised planning application for the proposed agricultural building adjoining the site, including drawings and photomontages. The Review Body were informed that planning permission for that building, in a revised position, had now been granted and that the combined impact of the house with the agricultural building in its original position related directly to one of the reasons for refusal of the house. Members considered that the information did meet the Section 43B test, was material to their consideration and could be considered. Members agreed that there was economic justification for a house providing the house and agricultural holding were tied together within a legal agreement. They went on to discuss the visual impact of the proposed house, whether there were any alternative and more appropriate sites, the proposed design of the house including external materials and mitigation of visual impact through new planting. In conclusion they agreed that there appeared to be no alternative and more appropriate sites for the dwellinghouse and that any landscape impacts could be mitigated through appropriate planting and materials.

DECISION

AGREED that:-

- (a) the request for a review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;**
- (b) the new information, relating to the approved application for the agricultural building in a revised position, met the test for new evidence set out in Section 43B of the Town and Country Planning (Scotland) Act 1997 and could be taken into consideration**
- (c) the review could be considered without the need for any further procedure on the basis of the papers submitted;**
- (d) the proposal was consistent with the Development Plan; and**
- (e) the officer's decision to refuse the application be reversed and planning permission be granted, subject to conditions, informatives and a legal agreement, for the reasons detailed in Appendix II to this Minute.**

4. REVIEW OF 19/01000/PPP.

There had been circulated copies of the request from Mr & Mrs C & W Davies, per Ferguson Planning, Shiel House, 54 Island Street, Galashiels, to review the decision to refuse the planning application for erection of dwellinghouse and garage on land east of Auburn Cottage, Ashkirk. The supporting papers included the Notice of Review (including the Decision Notice and Officer's Report); papers referred to in the Officer's Report; Consultations; and a list of policies. The Planning Advisor drew attention to new evidence submitted with the Notice of Review documentation in the form of new and more detailed planting proposals surrounding the application site. Members considered that the information did meet the Section 43B test, was material to their consideration and could be considered. In their initial discussion Members accepted that there was a building group at the location and that there was capacity to expand the building group. They went on to consider whether the proposed site was an appropriate addition to the group, noting that there appeared to be no other suitable sites available within the group and that there was no strong boundary between the site and Auburn Cottage. It was noted that the tree planting proposals around the application site should effectively create a stronger

more defensible boundary to the group. Some concerns were expressed that the proposal constituted ribbon development and after further debate Members' opinion remained divided as to whether the development would be an appropriate addition to the building group.

VOTE

Councillor Fullarton, seconded by Councillor Laing, moved that the decision to refuse the application be upheld.

Councillor Mountford, seconded by Councillor Hamilton, moved as an amendment that the decision to refuse the application be reversed and the application approved.

On a show of hands Members voted as follows:-

Motion - 3 votes

Amendment - 6 votes

The amendment was accordingly carried and the application was approved.

DECISION

DECIDED that:-

- (a) the request for a review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;**
- (b) new evidence in the form of new and more detailed tree planting proposals met the test for new evidence set out in Section 43B of the Town and Country Planning (Scotland) Act 1997 and could be taken into consideration;**
- (c) the review could be considered without the need for any further procedure on the basis of the papers submitted;**
- (d) the proposal was consistent with the Development Plan; and**
- (e) the officer's decision to refuse the application be reversed and planning permission be granted, subject to conditions, informatives and a legal agreement, for the reasons detailed in Appendix III to this Minute.**

CHAIRMAN

As this was the last meeting that would be attended by solicitor Emma Moir prior to her departure from Scottish Borders Council, the Chairman thanked her for her support to the Planning & Building Standards Committee and Local Review Body and wished her well for the future.

The meeting concluded at 11.50 am

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APPENDIX I

**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: 19/00031/RREF

Planning Application Reference: 19/00857/FUL

Development Proposal: Erection of fence

Location: Land South East of Bungalow, Denholm Mill, Denholm

Applicant: Denholm Mill Proprietor's Association

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 proposed development would be contrary to Policies EP9 and PMD2 of the Scottish Borders Local Development Plan 2016 in that it would represent a prominent and incongruous form of development that would have an adverse impact on the character and appearance of the Conservation Area.

DEVELOPMENT PROPOSAL

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

Plan Type	Plan Reference No.
Location Plan	01
Site Plan	02
Block Plan	04
Fence Elevation	

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 17th February 2020.

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) Representations; and g) List of Policies, the Review Body noted that the applicant had requested further procedure in the form of a hearing and site visit but did not consider either necessary in this instance 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, HD3, EP8, EP9 and IS5

Other Material Considerations

- SBC Supplementary Planning Guidance on Placemaking and Design 2010

The Review Body noted that the proposal was for planning permission to erect a fence of post and wire design at 1.8m height and that this had been reduced from 2.1m height during the processing of the application. They also noted that the location of the fence was within the Conservation Area and in a prominent position upon the approach to Denholm from the west. Members were also aware of the extant planning permission for two houses and proposed stone walling boundary treatment in the field to the rear of the proposed fence.

Whilst there was some recognition of the low visibility nature of the post and wire design, the Review Body agreed with the Appointed Officer that the fence was too high in a prominent location at the entry to Denholm and with adverse visual effects on the Conservation Area. They also noted the Appointed Officer and Landscape Architect advice that the fence was not needed for training fruit trees and that a lower fence of up to one metre height would not have needed planning permission and would have had considerably less visual impact.

They concluded that the fence at the height proposed was not a sympathetic or appropriate boundary treatment for the site, contrary to Policy EP9 of the Local Development Plan.

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.

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.....19 February 2020

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APPENDIX II

**SCOTTISH BORDERS COUNCIL
LOCAL REVIEW BODY INTENTIONS 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: 19/00032/RREF

Planning Application Reference: 19/00514/FUL

Development Proposal: Erection of dwellinghouse

Location: Land South West of Carlenrig Farm, Teviothead, Hawick

Applicant: Mr Walter Douglas

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

DEVELOPMENT PROPOSAL

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

Plan Type	Plan Reference No.
Location Plan	001B
Front Elevation	401
Back Elevation	402
Side Elevation 1	403
Side Elevation 2	404
Ground Floor	201
First Floor	202

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 17th February 2020. After examining the review documentation which included: a) Notice of Review (including Decision Notice and Officer's report); b) Papers referred to in officer's report; c) Application referred to in appellant statement; d) Consultations; and e) List of Policies, the Review Body considered whether certain matters included in the review documents constituted new evidence under Section 43B of the Act and whether or not this evidence could be referred to in their deliberations. This related to further information on a revised planning application for the proposed agricultural building adjoining the site, including drawings and photomontages. The Review Body were informed that planning permission for that building, in a revised position, had now been granted and that the combined impact of the house with the agricultural building in its original position related directly to one of the reasons for refusal of the house. Members considered that the information did meet the Section 43B test, was material to their consideration and could be considered.

Members also noted that the applicant had requested further procedure in the form of a hearing and site visit but did not consider either necessary in this instance 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: PMD1, PMD2, HD2, HD3, EP8, IS2, IS7 and IS9

Other Material Considerations

- SBC Supplementary Planning Guidance on New Housing in the Borders Countryside 2008
- 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 Development Contributions 2011
- SBC Supplementary Planning Guidance on Waste Management 2015

The Review Body noted that the proposal was for planning permission to erect a dwellinghouse on a site south-west of Carlenrig Farm, Teviothead. Before considering the Review, Members noted that planning permission had now been granted for the associated agricultural building in a revised position nearer to the proposed dwellinghouse. As this addressed one of the original reasons for refusal of the house, Members considered it material to the Review and had due regard to it in their decision.

The Review Body firstly considered the principle of a house on the site under Policy HD2. They noted that Carlenrig Farm steading, in itself, occupied a distinct sense of place separated from the application site by woodland and that there was no building group present. However, a case had been submitted for a need for the house on the basis of an agricultural business and this was accepted by the Appointed Officer and Economic Development. Members noted

that the farmer had purchased 136 acres of the farm and that, whilst farming a larger leased area on a temporary basis, the labour requirement had been established and accepted on the basis of the 136 acre holding. Members, therefore, agreed that there was a proven justification for a house under Section F of Policy HD2, provided the house and holding were tied together within a legal agreement.

The Review Body then considered the issue of whether there were existing opportunities within the farm to accommodate a house. The topography and enclosure of Carlenrig Farm were noted as were the comments of the Appointed Officer on constraints to alternative site selection. Ultimately, Members felt that there was no justification to oppose the application on the basis that there were other more appropriate sites.

Landscape impacts were then considered, Members paying particular attention to views of the site from the A7 and the elevation and steep levels of the site. Visual material was examined including photomontages and detailed section, landscaping and layout details which accompanied the planning application for the agricultural building. Members also noted the backdrop tree planting proposed to the rear of the site on the opposite side of the public road which reduced skyline impacts as well as bunding and planting proposed to the front of the agricultural building. Further consideration was also given as to whether such bunding and planting treatment was necessary to the front of the proposed dwellinghouse. Whilst Members recognised the potential landscape impacts of the house and the sloping levels, they considered that the impacts could be mitigated satisfactorily through new planting given that a similar approach had already been accepted by the Appointed Officer relating to the agricultural building. They were content to leave the final details to officers in an appropriate condition. A further condition should also address appropriate levels for the house and surrounding ground.

The Review Body then considered the design and scale of the house. They agreed with the Appointed Officer that the overall form, scale and materials were acceptable for the area, provided colours and materials were reserved for agreement in an appropriate condition. In particular, they considered that timber walling as proposed would enable the design to be integrated into the landscape.

In relation to the combined impacts of the house and proposed agricultural building, Members attached weight to the fact that the agricultural building was now approved, notably in a lower position than originally proposed, as well as being closer to the proposed house. This addressed the concerns over relationship between the two buildings and with the landscape, the Review Body considering that the submission had been improved in those respects and was an arrangement that would not look out of character for the rural area containing the site.

The Review Body finally considered other material issues relating to the proposal including access, archaeology, water and drainage but were of the opinion that appropriate conditions could address them satisfactorily.

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. There was justification for a house on the site and landscape impacts could be mitigated through appropriate planting and materials, secured by condition. 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. No development shall commence until a scheme of external materials (including specifications and samples of materials and colours) for the dwellinghouse, has first been submitted to and approved in writing by the Planning Authority. The development shall be carried out in accordance with the approved scheme.
Reason: To ensure external materials are visually appropriate to the development and sympathetic to the surrounding area.
2. No development shall take place except in strict accordance with a scheme of hard and soft landscaping works, which has first been submitted to and approved in writing by the planning authority. Details of the scheme shall include (as appropriate):
 - i. existing and finished ground levels in relation to a fixed datum preferably ordnance
 - ii. existing landscaping features, hedgerows and trees to be retained, protected and, in the case of damage, restored
 - iii. location and design, including materials, of walls, fences and gates
 - iv. soft and hard landscaping works including new tree planting and any bunding
 - v. existing and proposed services such as cables, pipelines, sub-stations
 - vi. A programme for completion and subsequent maintenance.Reason: To ensure the satisfactory form, layout and assimilation of the development.
3. No development to be commenced until the finished floor level of the house and all proposed ground levels have been submitted to, and approved in writing by, the Planning Authority. The development should then proceed in accordance with the approved levels.
Reason: To safeguard the landscape and visual amenity of the area.
4. No development to be commenced until further details of access and parking provision are submitted to, and approved in writing by, the Planning Authority. Thereafter the development to be completed in accordance with the approved details prior to occupation of the dwelling unless otherwise agreed. The details shall include:
 - i. The access junction with the public road
 - ii. The access to the site
 - iii. Parking and turning for a minimum of two vehicles, excluding garages, to be provided within the curtilage of the plot, prior to occupation and retained thereafter in perpetuity, unless otherwise agreed.Reason: To ensure satisfactory form of access and adequate parking and turning provision, in the interests of road safety.
5. No development to commence until further details of the provision of a water supply, foul and surface water drainage are submitted to, and approved by, the Planning Authority. Thereafter, development shall proceed in strict accordance with the approved details.
Reason: To ensure that satisfactory arrangements are made for the provision of water and for disposal of surface and foul water.
6. 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.

7. No development to be commenced until a scheme of waste storage has been submitted to, and approved in writing by, the Planning Authority. Once approved, provision to be made in accordance with the approved details prior to occupation of the dwellinghouse.

Reason: To ensure adequate provision for waste storage within the site.

INFORMATIVES

Please note that retention and use of the existing caravan on the site may require planning permission once the house has been occupied. You should contact Development Management regarding this.

LEGAL AGREEMENT

The Local Review Body required that a Section 75 Agreement be entered into 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, 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.....19 February 2020

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APPENDIX III

**SCOTTISH BORDERS COUNCIL
LOCAL REVIEW BODY INTENTIONS 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: 19/00033/RREF

Planning Application Reference: 19/01000/PPP

Development Proposal: Erection of dwellinghouse and garage

Location: Land East of Auburn Cottage, Ashkirk

Applicant: Mr & Mrs C & W Davies

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

DEVELOPMENT PROPOSAL

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

Plan Type	Plan Reference No.
Location Plan	003
Proposed Site Plan	001

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 17th February 2020. After examining the review documentation which included: a) Notice of Review (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 considered whether certain matters included in the review documents constituted new evidence under Section 43B of the Act and

whether or not this evidence could be referred to in their deliberations. This related to new and more detailed tree planting proposals surrounding the application site. Members considered that the information did meet the Section 43B test, was material to their consideration and could be considered.

Members also noted that the applicant had requested further procedure in the form of a site visit but did not consider it necessary in this instance 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: PMD1, PMD2, HD2, HD3, IS2, IS3, IS7 and IS9

Other Material Considerations

- SBC Supplementary Planning Guidance on New Housing in the Borders Countryside 2008
- 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 Development Contributions 2011
- SBC Supplementary Planning Guidance on Waste Management 2015
- Scottish Planning Policy 2014

The Review Body noted that the proposal was for Planning Permission in Principle to erect a dwellinghouse and garage on the site east of Auburn Cottage, Ashkirk.

Members understood that the site had been refused on two previous occasions for residential development and that there had been three further houses developed within the building group since those refusals. They also noted that, although the applicants were local farmers intending to retire and also had a nearby golf driving range to operate, there was no business case advanced for the application and approval was sought on the basis of addition to the building group under Policy HD2 and associated guidance.

The Review Body firstly considered whether there was a building group present at the location and concluded that, as six houses currently existed, this constituted a building group in terms of Policy HD2. They also recognised that the group could expand by up to two houses and that the proposal was within that scale of addition capacity.

Members then considered the relationship of the site with the group and whether it was in keeping with its character, whilst noting that the application was for planning permission in principle and that the suggested siting and design of house remained indicative. In this respect, they had regard to the opinion of the Appointed Officer who considered the site was well related and also that there appeared to be no infill or other suitable sites within the group to allow addition. Although they understood the concerns over ribbon development, the lack of a strong defensible boundary between the site and Auburn Cottage, combined with the

proximity of the site to the group and lack of other sites within the group, determined that they considered the site a natural location for building group expansion, in accordance with the Policy and Guidance. Members also considered that the nature of the group had changed since the earlier refusals.

The planting proposals were also given weight in considering the suitability of the site, Members accepting that substantial planting would provide a stronger end-stop to the building group in this direction. They noted that the applicants had sufficient land ownership to ensure the planting was achieved and the Review Body requested a condition to secure the planting. In this way, it was felt the group would benefit from a stronger, more defensible boundary. Whilst noting the Appointed Officer's concerns over repeated ribbon development if planning permission was granted, Members could only determine the current application on its own merits and not on whether it would set any precedent. Similarly, the case at Carfraemill, presented as a comparable application by the applicant and referred to by the Appointed Officer, was noted but not given weight in deciding the Review.

The Review Body finally considered other material issues relating to the proposal including residential amenity, access, site levels, water and drainage but were of the opinion that appropriate conditions could address them satisfactorily. They also noted that development contributions for the Waverley Line were required and could be secured by legal agreement.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was consistent with Policy HD2 of the Local Development Plan and relevant Supplementary Planning Guidance. The development was considered to be an appropriate addition to an existing building group within its sense of place and enclosed by proposed planting. Consequently, the application was approved.

DIRECTIONS

1. Application for approval of matters specified in the conditions set out in this decision shall be made to the Planning Authority before whichever is the latest of the following:
 - a. the expiration of three years from the date of this permission, or
 - b. the expiration of six months from the date on which an earlier application for approval of matters specified in the conditions set out in this decision notice was refused or dismissed following an appeal.

Only one application may be submitted under paragraph (b) of this condition, where such an application is made later than three years after the date of this consent.

Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

2. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the matters specified in the conditions set out in this decision.

Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

CONDITIONS

1. No development shall commence until the details of the layout, siting, design and external appearance of the building(s), the means of access thereto and the landscaping of the site have been submitted to and approved in writing by the Planning

Authority. Thereafter the development shall be carried out in accordance with the agreed details.

Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

2. No development shall commence until all matters specified in conditions have, where required, been submitted to and approved in writing by the Planning Authority. Thereafter the development shall only take place in strict accordance with the details so approved.

Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

3. No development shall take place except in strict accordance with a scheme of hard and soft landscaping works, which has first been submitted to and approved in writing by the planning authority. Details of the scheme shall include (as appropriate):

- I. existing and finished ground levels in relation to a fixed datum preferably ordnance
- II. a survey of existing trees within the site
- III. existing landscaping features, hedgerows and trees to be retained, protected and, in the case of damage, restored
- IV. location and design, including materials, of walls, fences and gates
- V. soft and hard landscaping works including new planting within and outwith the site as shown on the indicative plans 001 and 003 submitted with the PPP application
- VI. existing and proposed services such as cables, pipelines, sub-stations
- VII. A programme for completion and subsequent maintenance.

Reason: To ensure the satisfactory form, layout and assimilation of the development.

4. No development to be commenced until further details of access and parking provision are submitted to, and approved in writing by, the Planning Authority. Thereafter the development to be completed in accordance with the approved details prior to occupation of the dwellinghouse unless otherwise agreed. The details shall include:

- I. Access to be constructed as per SBC Standard Detail DC-3
- II. 2 no. parking spaces, not including any garage, and turning area for each dwellinghouse to be provided within the curtilage of the site and retained thereafter in perpetuity

Reason: To ensure satisfactory form of access and adequate parking and turning provision, in the interests of road safety.

5. No development to commence until further details of the provision of a water supply, foul and surface water drainage are submitted to, and approved by, the Planning Authority. Thereafter, development shall proceed in strict accordance with the approved details.

Reason: To ensure that satisfactory arrangements are made for the provision of water and for disposal of surface and foul water.

INFORMATIVES

All work within the public road boundary must be undertaken by a contractor first approved by the Council.

LEGAL AGREEMENT

The Local Review Body required that a Section 75, or other suitable legal agreement, be entered into to secure developer contributions for the Waverley Line.

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.
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Signed....Councillor T Miers
Chairman of the Local Review Body

Date.....24 February 2020

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