

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: 20/00002/RREF

Planning Application Reference: 19/01629/PPP

Development Proposal: Erection of dwellinghouse and associated infrastructure

Location: Walled Garden, Ashiestiel Mansion House, Galashiels

Applicant: Mr Simon Brown

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 associated infrastructure. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	1413.pl_01
Block Plan	1413.pl_02
Floor Plan	1413.pl_03
Elevations	1413.pl_04

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 25th May 2020. After examining the review documentation which included: a) Notice of Review and associated documents (including Decision Notice and officer's report; b) Papers referred to in

officer's report; c) Consultations; and d) List of Policies, the Review Body proceeded to determine the case.

REASONING

The determining issues in this Review were:

- (1) whether the proposal would be in keeping with the Development Plan, and
- (2) whether there were any material considerations which would justify departure from the Development Plan.

The Development Plan comprises: SESplan Strategic Development Plan 2013 and the Scottish Borders Local Development Plan 2016. The LRB considered that the relevant listed policies were:

- Local Development Plan policies: PMD1, PMD2, HD2, HD3, EP1, EP2, EP3, EP5, EP7, EP8, EP10, EP13, IS2, IS3, IS7, IS8, IS9 and IS13

Other Material Considerations

- SBC Supplementary Planning Guidance on Placemaking & Design 2010
- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006
- SBC Supplementary Planning Guidance on Development Contributions 2011
- SBC Supplementary Planning Guidance on New Housing in the Borders Countryside 2008
- SBC Supplementary Planning Guidance on Landscape and Development 2008
- SBC Supplementary Planning Guidance on Trees and Development 2008
- SBC Supplementary Planning Guidance on Waste Management 2015
- SBC Supplementary Planning Guidance on Local Landscape Designations 2012

The Review Body noted that the proposal was for planning permission in principle to erect a dwellinghouse and associated infrastructure at the Walled Garden, Ashiestiel Mansion House, Galashiels.

Members firstly considered whether there was a building group in the vicinity and also whether there was capacity for addition to any such group. They noted that the site consisted of the former walled garden to Ashiestiel House which existed to the north of the site and they also noted the presence of two lodge houses nearer to the site on the north side of the public road. The Review Body attached considerable weight to the historical connection of Ashiestiel House with the two lodge houses and walled garden. They concluded that there was a building group present and that there was capacity for the addition of one house, in compliance with Policy HD2 and the relevant SPG.

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 precise position and design of house remained indicative. In this respect, they had regard to the historical association of the walled garden with Ashiestiel House and noted that the wall and some outbuildings remained intact. Although they noted the Appointed Officer's concerns over detachment of the walled garden from the building group and lack of intervisibility, they agreed that the historical connection, relationship with the existing house and lodges and containment formed by the woodland all contributed to an impression that the walled garden formed part of the Ashiestiel estate and sense of place. These considerations outweighed any concerns over detachment and lack of intervisibility and

Members concluded that the site was well-related to the group and within the natural sense of place.

The Review Body noted that, although the application was for planning permission in principle, indicative drawings had also been provided to demonstrate how the site could be developed in sympathy with the character and context of the wall and surroundings which included incorporation and conversion of two small derelict outbuildings forming part of the wall. Whilst they accepted that the final siting and design details would be a matter for a subsequent application for the approval of matters specified as conditions, they acknowledged that the site could be developed sympathetically in keeping with the surroundings and with limited visibility.

The Review Body then considered the issue of the existing wall within the site and whether the retention of the wall was necessary for the application to comply with Policy HD2. Whilst Members were aware of the historical importance of the wall and noted that the Archaeology Officer considered the wall to be worthy of listing, they were also mindful of the significant length and height of wall that would need to be repaired and maintained in the longer term. They considered this could be an unjustifiable burden upon the developers of a single dwellinghouse. After discussion on whether a planning condition or other legal commitment was justified for retention of the wall or part of it, the Review Body concluded that the applicant should be advised, by means of an informative, that details of the retention and restoration of the relevant section of wall should be submitted with the first application for approval of matters specified as conditions.

Members also considered the issue of precedent which was a concern expressed by the Community Council. They concluded that each application must always be judged upon its own merits and any concerns over further development could not influence any decision on the current proposal.

The Review Body finally considered other material issues relating to the proposal including access, archaeology, contamination, ecology and tree protection but were of the opinion that appropriate conditions could address them satisfactorily. They also noted that development contributions for education and 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. 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. Parking and turning for a minimum of two vehicles, excluding any garages, must be provided within the curtilage of the site prior to the occupation of the dwelling. Thereafter they must be retained in perpetuity.

Reason: To ensure the development hereby approved is served by an appropriate level of off-road parking.

4. The junction with the public road must be amended to allow satisfactory access and egress. A scheme of details must be included with any subsequent application for approval.

Reason: To ensure the development hereby approved is served by an adequate form of junction.

5. The access track between the junction with the public road and the parking/turning area must be constructed so as to provide a level, free draining surface capable of taking a 14 tonne axle load.

Reason: To ensure the development hereby approved is served by an adequate form of access.

6. Any gates proposed should open into the site and be set back a minimum of 6m from the existing carriageway.

Reason: To ensure that the gates do not pose a danger to users of the adjacent public road.

7. Unless otherwise agreed in writing and in advance by the Planning Authority, prior to any development commencing on site, a scheme will be submitted by the Developer (at their expense) to identify and assess potential contamination on site. No construction work shall commence until the scheme has been submitted to, and

approved, by the Council, and is thereafter implemented in accordance with the scheme so approved.

The scheme shall be undertaken by a competent person or persons in accordance with the advice of relevant authoritative guidance including PAN 33 (2000) and BS10175:2011 or, in the event of these being superseded or supplemented, the most up-to-date version(s) of any subsequent revision(s) of, and/or supplement(s) to, these documents. This scheme should contain details of proposals to investigate and remediate potential contamination and must include:-

A desk study and development of a conceptual site model including (where necessary) a detailed site investigation strategy. The desk study and the scope and method of recommended further investigations shall be agreed with the Council prior to addressing parts b, c, d, and, e of this condition.

and thereafter

Where required by the desk study, undertaking a detailed investigation of the nature and extent of contamination on site, and assessment of risk such contamination presents.

Remedial Strategy (if required) to treat/remove contamination to ensure that the site is fit for its proposed use (this shall include a method statement, programme of works, and proposed validation plan).

Submission of a Validation Report (should remedial action be required) by the developer which will validate and verify the completion of works to a satisfaction of the Council.

Submission, if necessary, of monitoring statements at periods to be agreed with the Council for such time period as is considered appropriate by the Council.

Written confirmation from the Council, that the scheme has been implemented completed and (if appropriate), monitoring measures are satisfactorily in place, shall be required by the Developer before any development hereby approved commences. Where remedial measures are required as part of the development construction detail, commencement must be agreed in writing with the Council.

Reason: To ensure that the potential risks to human health, the water environment, property, and, ecological systems arising from any identified land contamination have been adequately addressed.

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

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

9. No development 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):
 - a) existing and finished ground levels in relation to a fixed datum preferably ordnance
 - b) trees to be retained within the site
 - c) existing landscaping features, hedgerows and trees to be retained, protected and, in the case of damage, restored

- d) location and design, including materials, of walls, fences and gates
 - e) soft and hard landscaping works including new planting within the site
 - f) existing and proposed services such as cables, pipelines, sub-stations
 - g) A programme for completion and subsequent maintenance.
Reason: To ensure the satisfactory form, layout and assimilation of the development.
10. No development to be commenced until a tree survey identifying the existing mature trees within the site is submitted to, and approved by, the Planning Authority. The identified trees then agreed for retention to be protected at all times during construction and building operations, by the erection of substantial timber fence around the trees, together with such other measures as are necessary to protect the trees and their roots from damage. Details of the methods it is proposed to use shall be submitted by the applicant to the Local Planning Authority and be approved by them in writing. The approved protective measures shall be undertaken before any works commence on the site and must, thereafter be observed at all times until the development is completed.
Reason: To ensure that adequate precautions are taken to protect trees during building operations.
11. 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.
12. No water supply other than the public mains water supply shall be used to supply the development without the written agreement of the Planning Authority.
Reason: To ensure that the development is adequately serviced with a sufficient supply of wholesome water and there are no unacceptable impacts upon the amenity of any neighbouring properties.
13. A bat survey to be submitted with the first application for approval of matters specified in conditions and no development to be commenced until the survey, including mitigation, a Species Protection Plan if required and display of any bat licence, is approved by the Planning Authority. The development then to proceed in accordance with the mitigation, Plan and any appropriate licence.
Reason: To protect the ecological interest in accordance with Local Development Plan Policy EP1.
14. No development shall be undertaken during the breeding bird season (March to September), unless in strict compliance with a Species Protection Plan for breeding birds that shall be submitted to and approved in writing by the Planning Authority.
Reason: To protect the ecological interest in accordance with Local Development Plan policies EP2 and EP3.
15. 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

1. A scheme of details of the retention and restoration of the relevant section of wall surrounding the site should be submitted with the first application for approval of matters specified as conditions.
2. With regard to Condition 5, the area between the public road and the walled garden has numerous trees within it. The applicant should ensure that the provision of the access track route and works, and the parking and turning area, do not adversely impact on the existing trees.
3. With regard to Conditions 4 and 6, the junction with the public road should include appropriate radii to allow vehicles easy access and egress, be surfaced for the initial 6m as shown below and have appropriate drainage in place, or designed layout, to ensure no surface water flows on to the adjacent public road. All work within the public road boundary must be undertaken by a contractor first approved by the Council.

Access Spec.

40mm of 14mm size close graded bituminous surface course to BS 4987 laid on 60mm of 20mm size dense binder course (basecourse) to the same BS laid on 350mm of 100mm broken stone bottoming blinded with sub-base, type 1.

4. With regard to Condition 8, the ALGAO guidance for historic building recording can be found at:
www.algao.org.uk/sites/default/files/documents/ALGAO_Scotland_Buildings_Guidance_2013.pdf
5. With regard to Condition 11, 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 Condition 11, 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.

LEGAL AGREEMENT

The Local Review Body required that a Section 75, or other suitable legal agreement, be entered into to secure developer contributions for Galashiels Academy, Clovenfords Primary School and 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.....8 June 2020