

## APPENDIX I

### SCOTTISH BORDERS COUNCIL LOCAL REVIEW BODY DECISION NOTICE

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#### APPEAL UNDER SECTION 43A (8) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

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

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**Local Review Reference:** 20/00005/RREF

**Planning Application Reference:** 19/01645/FUL

**Development Proposal:** Erection of dwellinghouse and detached garage

**Location:** Land South-West of 3 Mill Lade, Blyth Bridge

**Applicant:** Mr & Mrs William Rose

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## 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 development would be contrary to policy HD2 of the Local Development Plan 2016 and New Housing in the Borders Countryside Guidance 2008 in that it would not relate sympathetically to the character of an existing building group or surrounding landscape.
2. The development would be contrary to policy PMD2 of the Local Development Plan 2016 and Placemaking and Design 2010 in that it would be unsympathetic to the character of the surrounding area and it would fail to make a positive contribution to the sense of place.
3. The development would be contrary to policy PMD4 of the Local Development Plan 2016 in that it would be development beyond the settlement boundary for which there is insufficient justification and it would lead to an isolated house in the countryside with a resulting adverse impact on the character of the surrounding area.
4. The development would be contrary to policy IS8 of the Local Development Plan 2016 in that the applicant has failed to prove that the proposed development will not be at risk of flooding or materially increase the probability of flooding elsewhere.
5. The development would be contrary to policies EP1, EP2 and EP3 of the Local Development Plan 2016 and Biodiversity guidance in that the applicant has failed to prove that the development will not have an adverse effect on European Protected Species or other protected species and habitats which may be present on or adjacent to the site.

## **DEVELOPMENT PROPOSAL**

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

<b>Plan Type</b>	<b>Plan Reference No.</b>
Proposed Plans & Elevations	OGS 298 01
Flood Risk Assessment - Existing	20-001-FR-001
Flood Risk Assessment – Proposed 1	20-001-FR-002
Flood Risk Assessment – Proposed 2	20-001-FR-003

## **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 25<sup>th</sup> May 2020.

After examining the review documentation at that meeting, which included a) Notice of Review (including the Decision Notice); b) Officer's Report; c) Papers referred to in Officer's Report; 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 in the form of drawings demonstrating proposed site and building sections in relation to flood risk. Members considered that the information did meet the Section 43B test, was material to their consideration and could be considered. However, the Review Body noted that neither SEPA nor the Council's Flood Risk Officer had been afforded the opportunity to comment on the new flood risk sections. Members, therefore, considered further procedure was necessary to enable those consultations to be undertaken and to seek the applicant's response to the consultation responses.

The Review Body considered the responses from SEPA, the Council's Flood Risk Officer and the applicant at its meeting on 15<sup>th</sup> July 2020. They also noted that the applicant had requested further procedure in the form of written submissions 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, PMD4, HD2, HD3, EP1, EP2, EP3, EP15, EP16, IS2, IS7, IS8 and IS9

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 Waste Management 2015
- SBC Supplementary Planning Guidance on Biodiversity 2005
- SBC Supplementary Planning Guidance on Local Biodiversity Action Plan 2001

The Review Body noted that the proposal was for planning permission to erect a dwellinghouse and detached garage on a site south-west of 3 Mill Lade, Blyth Bridge.

Members firstly considered the location of the site and noted that, whilst it lay outwith the settlement boundary of Blyth Bridge as defined in the Local Development Plan and was subject to Policy HD2, the fact that the site was outwith but immediately adjoining the settlement boundary determined that the Review should be primarily assessed against Policy PMD4. The Review Body noted that any development immediately outwith a defined settlement boundary would normally be refused unless at least one of four qualifying requirements were met, relating to job generation, affordable housing, local housing land shortfall or significant community benefits. Members considered the proposal against these requirements but did not accept that any of them were met. Consequently, the Review Body did not assess the proposal against the secondary requirements of Policy PMD4 which only require to be considered had one of the four qualifying requirements been met.

Members then considered the issue of flood risk and noted that both SEPA and the Council's Flood Risk Officer maintained their objections after having been consulted on the additional flood sections submitted by the applicant. The Review Body agreed with the objections and expressed concerns over impacts within the flood plain and on other properties. Members saw no reason to disagree with the objections and concluded that the proposal was contrary to Policy IS8

The Review Body finally considered other issues relating to the proposal including biodiversity, house siting and design, residential amenity, roads, parking, water and drainage. Whilst some issues could have been addressed by conditions, Members agreed that other issues relating to house siting, design and biodiversity had not been satisfactorily addressed. They concluded that the site was not appropriate for the aforementioned reasons relating to Policies PMD2, PMD4, EP1-3 and IS8.

## **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.

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**Notice Under Regulation 22 of the Town & Country Planning (Schemes of Delegation and Local Review procedure) (Scotland) Regulations 2013.**

1. If the applicant is aggrieved by the decision of the planning authority to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.
  2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.
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**Signed....**Councillor T. Miers  
Chairman of the Local Review Body

**Date.....**7 August 2020

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