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SCOTTISH BORDERS COUNCIL LOCAL REVIEW BODY

MINUTE of Meeting of the LOCAL REVIEW BODY conducted remotely by Microsoft Teams Live Event on Monday, 1 June 2020 at 10.00 am

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

Apologies:- Councillor A. Anderson

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

CHAIRMAN

The Chairman opened the meeting and welcomed Members of the Local Review Body and members of the public to the Scottish Borders Council's open on-line meeting. The meeting was being held remotely in order to adhere to guidance on public meetings and social distancing currently in place, due to the Covid-19 pandemic.

1. REVIEW OF 19/01611/FUL.

There had been circulated copies of the request from Mr Francis Peto, per Aitken Turnbull Architects Ltd, 9 Bridge Place, Galashiels, to review the decision to refuse the planning application for erection of dwellinghouse with attached garage at disused sawmill, Cowdenknowes, Earlston. The supporting papers included the Notice of Review (including the Decision Notice, Officer's Report and consultations); papers referred to in the Officer's Report; and a list of policies. In their initial discussion Members agreed that there was a building group present which related to Cowdenknowes House and noted that this was a dispersed group of residential units separated by areas of mature woodland and private driveways. Although there was capacity for expansion of the building group Members noted that the former sawmill and site of the proposed development was located on the periphery of the building group and outwith a belt of mature trees which could be considered a defensible boundary to the group. Whilst noting the probable historical link and significance of the former sawmill to the estate, Members' consideration focussed on whether the proposed site for a dwellinghouse reflected the sense of place and character of the group. In this respect Members attached importance to the proposed design of the house which they felt may undermine and fail to reflect the traditional character and amenity of the group. Opinion was divided and concern was expressed that insufficient information had been presented about the character of the existing buildings within the building group, to enable a decision to be made as to whether the proposed new development was an appropriate addition to the group which was sympathetic to its character and sense of place.

VOTE:

Councillor Mountford, seconded by Councillor Richards, moved that a decision on the application be made without further procedure.

Councillor Ramage, seconded by Councillor Laing, moved as an amendment that the review could not be considered without further procedure and that additional visual information be requested.

Members voted as follows:-

Motion - 4 votes

Amendment - 4 votes

The Chairman used his casting vote in favour of the amendment so consideration of the review was accordingly continued for further procedure.

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) the review could not be considered without further procedure in the form of additional visual information;**
- (c) the applicant be requested to provide further information in the form of photographs, of the existing buildings within the building group at Cowdenknowes, to provide evidence of how the design of the proposed dwellinghouse relates to the character and sense of place of its surroundings; and**
- (d) consideration of the review be continued on a date to be arranged.**

2. REVIEW OF 19/01019/FUL.

2.1 There had been circulated copies of the request from Mr Anthony Williams, per Susan Williams, 2/151 Stanhill Drive, Surfers Paradise, QLD 4217, Australia, to review the decision to refuse the planning application for installation of replacement windows (retrospective) at 10 Exchange Street, Jedburgh. The supporting papers included the Notice of Review; Decision Notice; Officer's Report; papers referred to in the Officer's Report; and a list of policies. Members noted that the property within which the replacement windows had been installed was within the Jedburgh Conservation Area but outwith the Prime Frontage part of the Conservation Area. Whilst Members accepted that, for a number of reasons, the windows did not comply with current Policies and Supplementary Planning Guidance on Replacement Windows and Doors they took into account the surrounding mix of existing window styles and patterns in the area. After further debate, Members' opinion remained divided as to whether the windows were of an acceptable design. Before a vote was taken the process of taking the vote at the remote meeting was addressed and confirmed as below.

2.2 Voting procedure

In view of the technical difficulties of holding a vote by show of hands, within a meeting held remotely, Members agreed unanimously to suspend Standing Order 41 of Scottish Borders Council Procedural Standing Orders and that their voting choice be conveyed verbally. It was further agreed that this decision also be applied to the vote taken verbally under paragraph 1 above as this procedural requirement had been overlooked at that time.

DECISION

AGREED to suspend Standing Order 41 of the Scottish Borders Council Procedural Standing Orders to allow votes to be taken without a show of hands.

Consideration of 19/01019/FUL continued

VOTE

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

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

Members voted as follows:-

Motion - 5 votes

Amendment - 3 votes

The motion was accordingly carried and the application refused.

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) the review could be considered without the need for any further procedure on the basis of the papers submitted;**
- (c) 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**
- (d) 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 19/01432/PPP.

There had been circulated copies of the request from Mr Andrew Thomson, per Ferguson Planning, 54 Island Street, Galashiels, to review refusal of the planning application for erection of two dwellinghouses and associated works on land North West of Quarry Bank, Hume. The supporting papers included the Notice of Review (including the Decision Notice and Officer's Report); applications referred to by applicant; papers referred to in the Officer's Report; consultations; support comments; and a list of policies. Having accepted that the village of Hume constituted a building group and that there was capacity to expand the group, Members' discussion focussed on whether the proposed site for two houses was well related to and reflected the character of the group. They noted the linear nature of housing to the east of the site and that houses were principally on the same side of the public road as the site. Members concluded that the proposed development was an appropriate addition to the building group subject to a new planted boundary being provided to the west of the site. In their discussion they addressed concerns raised by the Roads Planning Officer about connectivity of the site to the footpath and street lighting at the eastern end of the village but noted the rural character of the settlement and that connection to these facilities may not be within the control of the applicant.

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 review could be considered without the need for any further procedure on the basis of the papers submitted;**
- (c) the proposal would be in keeping with the Development Plan; and**

- (d) **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 18/00749/FUL.**

There had been circulated copies of the request from Bentley Developments, per Gillespie Macandrew LLP, 163, West George Street, Glasgow, to review refusal of the planning application for 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, on Plot 2, land south East of Mounthooly House, Jedburgh. The supporting papers included the Notice of Review; Decision Notice; Officer's Report; papers referred to in the Officer's Report; consultations; and a list of policies. Members noted the differing views of both the applicant and the appointed officer on whether the Council were, in effect, able to re-examine the principle of the consent and the subsequent environmental effects and noted the documents lodged by the applicant, which included Scottish Government Circular 3/2013 "Development Management Procedures". They also considered the views of the appointed officer, and advice provided at the meeting by the Planning Advisor and the Council's Chief Legal Officer, which detailed both sides of the legal argument. Members took all this information into account and noted that both the Council's Flood Risk Officer and SEPA had objected to the application after considering the Flood Risk Assessment supplied as part of the application. After discussion the majority of Members concluded that there was a significant change in the detail of information and risk pertaining to flooding and that for this reason the proposed development was contrary to the Development Plan.

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 review could be considered without the need for any further procedure on the basis of the papers submitted;**
- (c) **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**
- (d) **the officer's decision to refuse the application be upheld and the application be refused, for the reasons detailed in Appendix III to this Minute.**

5. **REVIEW OF 18/00748/FUL.**

There had been circulated copies of the request from Bentley Developments, per Gillespie Macandrew LLP, 163, West George Street, Glasgow, to review refusal of the planning application for variation of Condition 1 of planning permission 13/01081/FUL to allow the lifespan of the application to be extended by a further three years, on Plot 1, land south East of Mounthooly House, Jedburgh. The supporting papers included the Notice of Review; Decision Notice; Officer's Report; papers referred to in the Officer's Report; consultations; and a list of policies. The presentation and advice provided to Members by the Planning Advisor and Chief Legal Officer for the review of 18/00749/FUL (paragraph 4 above) was also applicable to this review. Members considered the two cases together, as outlined in the paragraph above.

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 review could be considered without the need for any further procedure on the basis of the papers submitted;**
- (c) 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**
- (d) the officer's decision to refuse the application be upheld and the application be refused, for the reasons detailed in Appendix IV to this Minute.**

The meeting concluded at 12.45 pm

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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: 20/00008/RREF

Planning Application Reference: 19/01019/FUL

Development Proposal: Installation of replacement windows (retrospective)

Location: 10 Exchange Street, Jedburgh

Applicant: Mr Anthony Williams

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 is contrary to policies PMD2 and EP9 of the Scottish Borders Local Development Plan 2016 and the Supplementary Planning Guidance on Replacement Windows and Doors 2015 in that the windows are of an inappropriate design for the character of the building and do not preserve or enhance the character and appearance of the Conservation Area.

DEVELOPMENT PROPOSAL

The application relates to the installation of replacement windows. The application drawings and documentation consisted of the following:

Plan Type

Plan Reference No.

Location Plan

Photo showing replacement windows

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 1st June 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 and e) 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, HD3 and EP9

Other Material Considerations

- SBC Supplementary Planning Guidance on Replacement Windows and Doors 2015

The Review Body noted that the application was for replacement windows to the upper floors of a property at 10 Exchange Street, Jedburgh. As the windows had already been installed, the application was retrospective.

Members firstly considered the location of the property and noted that it lay within Jedburgh Conservation Area and was, therefore, subject to Policy EP9 on Conservation Areas and the associated Supplementary Planning Guidance (SPG) on Replacement Windows and Doors. The Review Body noted that the site lay outwith the Prime Frontage part of the Conservation Area defined in the SPG and they also had due regard to the surrounding existing window styles and patterns, including modern brown replacement windows to the adjoining property. Whilst noting some variation in surrounding window styles, Members still considered that any new proposals should be assessed against the Policies and Guidance as they currently stand, taking into account the prevailing window styles in the area. They were not unduly influenced by occasional differing styles which may have reflected previous versions of Policies and Guidance.

Members agreed with the Appointed Officer that the replacement windows did not comply with the Policies or Supplementary Planning Guidance. They did not consider that the mid-rails to the windows had either the step or thickness of profile that would be exhibited by sash windows in the vicinity. The Review Body also noted the thicker visible frame thickness of the installed windows and that they were single pane tilt and turn units. Whilst understanding that the applicant had offered to recess the windows behind the stone surrounds, they felt that they had no information to suggest such an amendment would be either achievable or result in a more acceptable design. Overall and whilst they had no issue with the colour or uPVC material, Members did not consider that the replacement windows complied with Policies and Guidance within the Conservation Area, due to the thicker frames and slender mid-rails. They

did not feel the windows preserved or enhanced the character or quality of the Conservation Area.

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

Date.....8 June 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: 20/00009/RREF

Planning Application Reference: 19/01432/PPP

Development Proposal: Erection of two dwellinghouses and associated works

Location: Land North West of Quarry Bank, Hume

Applicant: Mr Andrew Thomson

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 two dwellinghouses and associated works. The application drawings and documentation consisted of the following:

| Plan Type | Plan Reference No. |
|--------------------|---------------------------|
| Location Plan | ATPPP01 |
| Existing Site Plan | ATPPP02 |
| Proposed Site Plan | ATPPP03 |

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 1st June 2020. After examining the review documentation which included: a) Notice of Review (including Decision Notice and Officer's report); b) Applications referred to by applicant; c)

Papers referred to in officer's report; d) Consultations; e) Support comments and f) 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, EP4, EP8, IS2, IS5, IS7, IS9 and IS13

Other Material Considerations

- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006
- SBC Supplementary Planning Guidance on Waste Management 2015
- SBC Supplementary Planning Guidance on Placemaking & Design 2010
- SBC Supplementary Planning Guidance on Development Contributions 2011
- SBC Supplementary Planning Guidance on New Housing in the Borders Countryside 2008
- Scottish Planning Policy 2014

The Review Body noted that the proposal was for the erection of two dwellinghouses on land North-West of Quarry Bank, Hume.

The Review Body noted that Hume was not a defined settlement in the Local Development Plan and, firstly, considered whether it constituted a building group under the terms of Policy HD2. Members understood that approximately 20 houses currently existed and they, therefore, accepted this constituted a building group. It was also recognised that the group could expand by up to five 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 the houses remained indicative. In this respect, they noted the opinion of the Appointed Officer that the site did not relate well to the character of the group, was ribbon development and broke into an undeveloped field. However, whilst Members understood the concerns over ribbon development, they felt that the character of Hume was almost uniformly linear with no development, apart from Cragside Farm, on the opposite side of the public road. The group contained a mixture of older houses opposite the castle and newer houses to the eastern end. It was clear to them that such groups have grown in the past and must be encouraged to continue to expand under Policy HD2 and the Supplementary Planning Guidance. The site reflects linear expansion in keeping with the group's current character. They also noted from the Archaeology Officer's comments that the group had previously been larger to the west.

Whilst the Review Body accepted that the character of the group altered after the bend in the road to the north, they noted that there was no strong visual boundary between the applicant's house and site in question, the boundary consisting of fencing and hedging. Members did not

accept the view of the Appointed Officer that the shelter belt north of Cragside Farm provided a defensible boundary to the group as it was on the opposite side of the road from the site. However, they still considered it important that the site was provided with a new planted boundary, by condition, to represent the outer edge and visual termination of the building group. This would also help integrate the development into the sensitive landscape setting that was recognised by the Review Body.

With appropriate landscaping conditions, Members were content that the development would read as part of the building group. They also noted the support for the development from the Community Council and local residents and the fact that the development would support an active local business.

The Review Body then considered the issue of access links under Policy PMD2 and noted the concerns from the Roads Planning Officer over the lack of connection with the footpath and street lighting that exists at the eastern end of the village. However, Members also noted that there was a considerable distance between the site and these facilities and that connection may not be within the control of the applicant. Members also felt that the application of modern standards of pedestrian access and street lighting in the central and older parts of the building group may not be achievable or desirable in terms of impact on character. They concluded that the proposal was acceptable under the relevant part of Policy PMD2 in the circumstances.

The Review Body finally considered other material issues relating to the proposal including residential amenity, roads, parking, water, drainage and archaeology but were of the opinion that appropriate conditions could address them satisfactorily. They also noted that development contributions for affordable housing and education 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 Policies HD2 and PMD2 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. The landscaping shall include tree planting to form a strong boundary to the north-west. 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 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 first 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.

4. Notwithstanding the terms of Class 3E of Schedule 1 of The Town and Country Planning (General Permitted Development) Order (Scotland) 1992 (as amended 2011 and with any subsequent amendments or Orders), no means of enclosure to be erected within the site unless a planning application has been submitted to, and approved by, the Planning Authority.

Reason: To safeguard the surrounding landscape and visual amenity of the area.

5. 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.

6. 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 each dwellinghouse.

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

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 Berwickshire High School and affordable housing.

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.....8 June 2020



APPENDIX III

**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: 20/00010/RREF

Planning Application Reference: 18/00749/FUL

Development Proposal: 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

Location: Plot 2 Land South East of Mounthooly House, Jedburgh

Applicant: Bentley Developments

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 IS8 of the Local Development Plan 2016 in that the site is at risk of flooding to the extent that there is no safe access/egress route resulting in risk to life and, in addition, development on the functional floodplain may displace the capacity to convey and store flood water, materially increasing the risk of flooding elsewhere and putting people and property at risk.

DEVELOPMENT PROPOSAL

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

| Plan Type | Plan Reference No. |
|--------------------|---------------------------|
| Location/Site Plan | KB/98/11/BW4 |

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 1st June 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 and f) List of Policies, the Review Body noted that the applicant had requested further procedure in the form of written submissions, 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: PMD2, HD1, HD2, HD3, EP1, EP2, EP3, IS2, IS7, IS8, IS9 and IS13

Other Material Considerations

- SBC Supplementary Planning Guidance on Placemaking & Design 2010
- 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 Privacy and Sunlight 2006
- Scottish Planning Policy 2014
- Circular 3/2013 "Development Management Procedures"

The Review Body noted that the application was made under Section 42 of the Act to vary Condition 1 of planning permission 13/01082/FUL to allow the lifespan of the application to be extended by a further three years, at Plot 2 Land South East of Mounthooly House, Jedburgh. Members understood that the application had been submitted before the expiry of the consent. They also noted that the consent had, however, now expired. They noted the differing views of both the applicant and the Appointed Officer on whether the Council were, in effect, able to re-examine the principle of the consent and the subsequent environmental effects.

They noted that the applicant had lodged several letters from a solicitor and Circular 3/2013 "Development Management Procedures", maintaining that when an application under Section 42 is made within the expiry date of the consent, the Planning Authority may only consider the issue of the conditions attached to the resulting permission. The Review Body also noted the views of the Appointed Officer who determined the application after taking advice from the Council's Legal Services Officer. In his opinion, the Circular explained that in certain circumstances, such as when the previous permission has lapsed, a Planning Authority could consider the overall effect of granting a new planning permission. The consent had not lapsed when the Section 42 application was submitted but, during the processing of the application, the original consent had then lapsed and, in the Appointed Officer's opinion, he was entitled

to follow the advice of the Circular and consider the overall effect of granting a new permission taking into account any changed material factors.

The Legal Adviser to the Local Review Body detailed both sides of that legal argument to Members. She advised that Members were by law required to consider “only the question of the conditions subject to which planning permission should be granted” and that in interpreting that provision they should have regard to the Circular. Members were advised that the approach taken by the Appointed Officer was lawful, but they should now determine whether it was the correct decision in all the circumstances.

After full consideration of the matter, the Review Body determined that there was a significant change in the detail of information and risk pertaining to flooding on the site. They noted that both the Council’s Flood Risk Officer and SEPA had objected to the application after considering the Flood Risk Assessment that had been supplied as part of the Section 42 application.

Members noted the level of inundation and flood risk was now considered to be significant on the site, following a more detailed examination of the risks using more accurate information and modelling. They also noted that neither the Flood Risk Officer nor SEPA considered there to be a safe access or egress from the site in the event of flooding and that the site was within the functional flood plain. After considering all matters, the Review Body agreed with the objections from SEPA and the Flood Risk Officer and determined that the application was contrary to Policy IS8 of the Local Development Plan.

Members then considered other issues relating to the proposal including building group addition in the countryside and the siting and design of the house, but concluded that the proposal was not appropriate for the aforementioned reasons relating to Policy IS8. They noted that had the application been supported, then development contributions for affordable housing would have been secured by a new legal agreement.

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.....8 June 2020



APPENDIX IV

**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: 20/00011/RREF

Planning Application Reference: 18/00748/FUL

Development Proposal: Variation of Condition 1 of planning permission 13/01081/FUL to allow the lifespan of the application to be extended by a further three years

Location: Plot 1 Land South East of Mounthooly House, Jedburgh

Applicant: Bentley Developments

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 IS8 of the Local Development Plan 2016 in that the site is at risk of flooding to the extent that there is no safe access/egress route resulting in risk to life and, in addition, development on the functional floodplain may displace the capacity to convey and store flood water, materially increasing the risk of flooding elsewhere and putting people and property at risk.

DEVELOPMENT PROPOSAL

The application relates to the variation of Condition 1 of planning permission 13/01081/FUL to allow the lifespan of the application to be extended by a further three years. The application drawings and documentation consisted of the following:

| Plan Type | Plan Reference No. |
|--------------------|---------------------------|
| Location/Site Plan | KB/98/11/BW4 |

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 1st June 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 and f) List of Policies, the Review Body noted that the applicant had requested further procedure in the form of written submissions, 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: PMD2, HD1, HD2, HD3, EP1, EP2, EP3, IS2, IS7, IS8, IS9 and IS13

Other Material Considerations

- SBC Supplementary Planning Guidance on Placemaking & Design 2010
- SBC Supplementary Planning Guidance on Development Contributions 2011
- SBC Supplementary Planning Guidance on New Housing in the Borders Countryside 2008
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The Review Body noted that the application was made under Section 42 of the Act to vary Condition 1 of planning permission 13/01081/FUL to allow the lifespan of the application to be extended by a further three years, at Plot 1 Land South East of Mounthooly House, Jedburgh. Members understood that the application had been submitted before the expiry of the consent. They also noted that the consent had, however, now expired. They noted the differing views of both the applicant and the Appointed Officer on whether the Council were, in effect, able to re-examine the principle of the consent and the subsequent environmental effects.

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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.....8 June 2020