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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, 15 July 2020 at 10.00 am

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

Absent:- Councillor A. Anderson (not required)
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 Covic-19 pandemic.

MEMBER
Having not been present when the following reviews were first considered Councillor Anderson did not take part in the review of the following applications.

1. **CONTINUATION OF REVIEW OF 19/01645/FUL**
With reference to paragraph 5 of the Minute of 25 May 2020, there had been re-circulated copies of the request from Mr & Mrs William Rose, per Kanak Bose Ltd, Ogscastle, Roman Road, Carnwarth, to review refusal of the planning application for erection of dwellinghouse and detached garage on land south west of 3 Mill Lade, Blyth Bridge. The supporting papers included the Notice of Review (including the Decision Notice); Officer's Report; papers referred to in the Officer's Report; Consultations; and a list of policies. Also circulated were copies of submissions from SEPA and Council's Flood Risk Officer in relation to the additional information and response to those submissions from the applicant. Members noted that the proposed site lay immediately outwith the settlement boundary of Blyth Bridge and the application was therefore contrary to Policy PMD4 of the Local Development Plan. They proceeded to look at the four qualifying requirements which would provide an exception to this policy and concluded that the application did not meet any of those criteria. Members also noted that, following consideration of the additional information, SEPA and the Council's Flood Risk Officer maintained their objection to the application on grounds of flood risk.

DECISION
AGREED that:-

(a) the review could be considered without the need for any further procedure on the basis of the papers submitted and the additional written submission;

(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.

2. **CONTINUATION OF REVIEW OF 19/01611/FUL**

With reference to paragraph 1 of the Minute of 1 June 2020, there had been re-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. Also circulated were copies of additional information provided by the applicant which included photographs of the existing buildings within the Cowdenknowes building group and comments on the additional information from the Appointed Officer. In their discussion Members reiterated their view expressed when the review was first considered that a house would be acceptable on this site only if its siting and design respected the setting and character of the building group at Cowdenknowes. With reference to the photographs submitted by the applicant they commented on the traditional style of the buildings which in several cases had been altered or extended in a way that was sensitive and in keeping with their character. Whilst accepting that the proposed site could be part of the building group they concluded that the proposed design was not sympathetic to the character and setting of the group, nor did it contribute positively to the sense of place.

DECISION
AGREED that:-

(a) the review could be considered without the need for any further procedure on the basis of the papers submitted and the additional written submission;

(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 but varied and the application be refused, for the reasons detailed in Appendix II to this Minute.

The meeting concluded at 10.50 am

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: 20/00005/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

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:

Plan Type	Plan Reference No.
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 25th 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 15th 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.

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……7 August 2020

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APPENDIX II

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: 20/00007/RREF

Planning Application Reference: 19/01611/FUL

Development Proposal: Erection of dwellinghouse with attached garage

Location: Disused Sawmill, Cowdenknowes, Earlston

Applicant: Mr Francis Peto

DECISION

The Local Review Body varies the decision of the appointed officer and refuses planning permission as explained in this decision notice and on the following grounds:

The proposed development would be contrary to Policies PMD2 and HD2 of the adopted Scottish Borders Local Development Plan 2016 and supplementary guidance on placemaking and design and housing in the countryside, in that the design and siting of the dwellinghouse would not be well related or sympathetic to the character of the existing building group and would not contribute positively to the sense of place.

DEVELOPMENT PROPOSAL

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

Plan Type	**Plan Reference No.**
Location Plan	L(-1)100
Proposed Site Plan	L(-2)101
Proposed Elevations	L(-4)101

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 (including the Decision Notice, Officer's Report and consultations); b) Papers referred to in Officer's Report; and c) List of Policies, the Review Body noted that the applicant had requested further procedure in the form of a site visit, but did not consider it necessary in this instance. However, they did consider it was necessary to seek further procedure in the form of submission of photographs of the existing buildings within the Cowdenknowes Building Group, to provide evidence of how the design of the proposed dwellinghouse related to the character and sense of place of its surroundings.

The Review Body considered the photographs, together with the Appointed Officer's comments on them, at its meeting on 15 July 2020 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, HD2, EP1, EP7, EP10, EP13, IS2, IS3, IS7, 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 Waste Management 2015
- Scottish Planning Policy

The Review Body noted that the proposal was for planning permission to erect a dwellinghouse with attached garage on a site of a disused sawmill, Cowdenknowes, Earlston. In considering the review, Members noted the planning history of the site which included lapsed permission for the style and design of house now applied for but also noted that this was in 2006 and that there had been a new Local Development Plan and supplementary guidance on housing in the countryside and placemaking and design since then.

Members firstly considered whether there was a building group present under Part A of Policy HD2. They noted that a group had been identified under the previous consent and that the applicant and Appointed Officer agreed a group was present, consisting of three existing dwellinghouses and various other buildings in different uses. Although the site did not benefit from immediate proximity or line of sight to other houses in the group, those other houses

were also well separated from each other within an historic estate setting formed around Cowdenknowes House. The Review Body considered that, in this situation, the historic connections with Cowdenknowes House and the rest of the group were evident on site. The site would involve the removal of an old sawmill building previously connected with the estate and would also still be within the woodland belt surrounding the nearby lodge house, parkland and main drive to Cowdenknowes House.

They acknowledged, however, that the site was on the periphery of the former estate and was visible adjoining the public road. Members felt that the design and siting of the house were an integral part of whether they considered the site to be part of the sense of place and, therefore, an appropriate addition to the building group. Whilst they accepted that there were three houses constituting a building group and that there was capacity to add a further house to the group, they were not convinced that the detailed siting and, especially, the design of the house were appropriate or sympathetic to the character of the group.

Members considered the photographs supplied of the existing houses and buildings in the group, together with examples of contemporary design at Garden Cottage and elsewhere in the Borders. In noting that the buildings within the group were predominantly traditional in design but also incorporated a contemporary element, they concluded that the proposed design lacked the quality and sense of identity that was necessary to respect the connection of the site with the Cowdenknowes House estate and the position of the site within the Eildon and Leaderfoot National Scenic Area. Within a new policy background of the Local Development Plan and supplementary guidance on placemaking and design, the Review Body were of the opinion that improved and more sympathetic design and siting were necessary, beyond any minor improvements that could be achieved by planning condition or changes in external materials.

The Review Body concluded that the siting and design of the house within the site were the issue and not the position of the site in itself. Although the Appointed Officer had concerns over the design of the house, she had not specifically refused the application for those reasons. Members, however, considered siting and design to be pivotal in consideration of the Review and were not supportive of the current proposals for the aforementioned reasons. Whilst they accepted that the site could be considered to be part of the building group and sense of place, this was dependant on a siting and design of architectural merit which respected the character and quality of the building group and surrounding designated landscape.

The Review Body finally considered other material issues relating to the proposal including contamination, access, tree retention and ecology 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 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……7 August 2020