

## 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:** 20/00019/RREF

**Planning Application Reference:** 19/01256/FUL

**Development Proposal:** Erection of 15 No huts with associated access and car parking

**Location:** Land East of Wester Deans, West Linton

**Applicant:** Ms Jess Windsor

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## DECISION

The Local Review Body reverses the decision of the appointed officer and grants planning permission for the reasons set out in this decision notice subject to conditions and informatives as set out below.

## DEVELOPMENT PROPOSAL

The application relates to the erection of 15 No huts with associated access and car parking. The application drawings and documentation consisted of the following:

<b>Plan Type</b>	<b>Plan Reference No.</b>
Location Plan 1:2500	1 of 7
Location Plan 1:10000	2 of 7
Proposed Site Plan 1:1250	3 of 7
Proposed Site Plan 1:500 north	4 of 7
Proposed Site Plan 1:500 south	5 of 7
Elevations	6 of 7
Planting Plan	7 of 7

## PRELIMINARY MATTERS

The Local Review Body initially considered the review, which had been competently made, under section 43A (8) of the Town & Country Planning (Scotland) Act 1997 at its meeting on 21 September 2020.

After examining the review documentation at that meeting, which included a) Notice of Review; b) Decision Notice; c) Officer's Report; d) Papers referred to in Officer's Report; e) Consultations; f) General comment and g) 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 and proceeded to determine the case.

## **REASONING**

The determining issues in this Review were:

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

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

- Local Development Plan policies: PMD1, PMD2, ED7, HD3, EP1, EP2, EP3, EP13, IS7 and IS9

Other Material Considerations

- SBC Supplementary Planning Guidance on Placemaking & Design 2010
- SBC Supplementary Planning Guidance on Landscape and Development 2008
- SBC Supplementary Planning Guidance on Trees and Development 2008
- SBC Supplementary Planning Guidance on Biodiversity 2005
- SBC Supplementary Planning Guidance on Waste Management 2015
- Scottish Planning Policy 2014

The Review Body noted that the proposal was for the erection of 15 No huts with associated access and car parking.

Members firstly considered the principle of the development under Policy ED7. They noted that the Policy only required the submission of a business case where this was to support business and tourist proposals in the countryside. They noted that the applicant had clarified the proposal was not a commercial business and was not aimed at tourism, but that the huts would be leisure development for individual owners, their family and friends. The Review Body agreed with the Appointed Officer that a business case was not required for such a leisure development under Policy ED7 and that the principle of leisure development in the form of hutting was supportable under the Policy, being appropriate to a rural location and providing the occupancy was controlled by condition to ensure limited and occasional use only.

The Review Body then considered the criteria set down in Policy ED7 and PMD2 and, in particular, the issues of compatibility with rural surroundings and landscape impact. They noted the Appointed Officer's concerns over landscape, visual impact and the successful establishment of planting at the site to mitigate impacts. However, the Review Body did not consider the impacts to be sufficiently significant to justify refusal and acknowledged that the land was former forestry with new planting and was in a general rural setting characterised by a variety of different uses and buildings, including a number of large poultry units. They also noted the immediately adjoining Cloich Forest with consented wind farm scheme.

Members ultimately felt that the landscape was not of a quality that would be significantly impacted by the development, which was both modest in scale and size of huts. They noted that a landscape scheme had been advanced to a certain extent with the Landscape Architect and that, provided this was secured by condition including future management and maintenance of the planting, there was no reason to suggest the mitigation would not be successful in establishing on site, nor screen the development adequately over time.

Members then considered policy PMD1 and the issue of over-reliance on private cars and sustainable means of transport to the site. There were a number of concerns expressed in relation to owners bringing supplies to the site, water supply, foul drainage and waste removal provision and how such proposals would actually encourage access to the site without use of a private car. Members were concerned at the lack of information on these matters and particularly how they would be managed, given the fact that the huts would all be individually owned. However, the Review Body did recognise that being in a rural location, use of sustainable transport to the site would be more limited in any case and that, provided such concerns could be addressed by suspensive conditions seeking full details to be agreed, a certain degree of access to the site by private car would be expected and acceptable. The details to be agreed for each hut by suspensive conditions would include means of water supply, drainage, waste storage/removal and a management and maintenance scheme for the whole development.

The Review Body then considered other material issues relating to the proposal including residential amenity, site access and ecology but were of the opinion that such issues did not outweigh their decision to support the proposal and that appropriate conditions could address them satisfactorily. There was discussion over vehicular access to each hut for emergency vehicles but Members concluded that this matter could be considered in a condition covering overall access details.

## **CONCLUSION**

After considering all relevant information, the Local Review Body concluded that consent for the development was consistent with Policies PMD1, PMD2 and ED7 of the Local Development Plan. The development was considered to be a leisure development appropriate in scale and design to the rural location and accessible to sustainable methods of transport. Subject to conditions, including new planting and management of the development, impacts on the surrounding countryside and infrastructure were considered to be acceptable. Consequently, the application was approved subject to the conditions and informative listed.

## **DIRECTIONS**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.  
Reason: To comply with Section 58 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

## **CONDITIONS**

1. The occupation of the huts shall be restricted to any person staying for a maximum of 3 months in total within any calendar year.  
Reason: Permanent residential use in this location would conflict with the established planning policy for this rural area.
2. No development to be commenced until samples of all external materials for the huts are submitted to, and approved in writing by, the Planning Authority. The development then to be implemented in accordance with the approved materials.  
Reason: To safeguard the visual amenity of the area.

3. No development shall take place except in strict accordance with a scheme of hard and soft landscaping works, which has first been submitted to and approved in writing by the planning authority. Details of the scheme shall include (as appropriate):
  - i. existing and finished ground levels in relation to a fixed datum preferably ordnance
  - ii. existing landscaping features, hedgerows and trees to be retained, protected and, in the case of damage, restored
  - iii. location and design, including materials, of walls, fences and gates
  - iv. soft and hard landscaping works including new tree planting
  - v. existing and proposed services such as cables, pipelines, sub-stations
  - vi. A programme for completion and subsequent maintenance.

Reason: To ensure the satisfactory form, layout and assimilation of the development.
4. No development to be commenced until a tree survey identifying the existing 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 or tree areas, 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.
5. No development to be commenced until further details of the access junction, site roadway, parking area and paths to the huts are submitted to, and approved in writing by, the Planning Authority. The details shall also include information on access by emergency vehicles. Once approved, the details then to be completed before occupation of the first hut.

Reason: In the interests of road and pedestrian safety.
6. No development to be commenced until a scheme of management and maintenance of the development, including any factoring arrangements, is submitted to, and approved in writing by, the Planning Authority. The scheme shall include all huts, roads, paths, water, drainage, waste storage, fencing and all existing and proposed trees, The development then to be operated in accordance with the approved scheme.

Reason: To safeguard the visual amenity of the area and secure appropriate controls over the operation of the site.
7. No development to be commenced until a scheme of waste storage for each hut is submitted to, and approved in writing by the Planning Authority. Once approved, the development then to be operated in accordance with the approved scheme.

Reason: To ensure that the development is adequately serviced and does not have a detrimental effect on amenity and public health.
8. No development to be commenced until further details of the provision of a water supply and of disposal of foul and surface water for each hut are submitted to, and approved in writing by the Planning Authority.

Reason: To ensure that the development is adequately serviced and does not have a detrimental effect on amenity and public health.
9. No development to be commenced until a Construction Environmental Management Plan, incorporating the latest good practice guidelines and statutory advice, is submitted to, and approved in writing in writing by, the Planning Authority. Any works shall thereafter be carried out strictly in accordance with the approved Plan.

Reason: To protect the ecological interest in accordance with Local Development Plan policies EP1, EP2 and EP3.

10. No development shall be undertaken during the breeding bird season (March to August), unless in strict compliance with a Species Protection Plan for breeding birds, including provision for pre-development supplementary survey, 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.

## **INFORMATIVES**

1. With regard to Condition 3, the Landscape Officer of the Council advises the following:

Tree planting should be cell grown trees, all protected by tree tubes supported with robust tree stakes. Planting should be throughout the site at approx. 3m spacing (i.e. 1 plant/ 9 sq. metres) although this should not be regular and should take into account existing regeneration and hut positions, concentrating on areas immediately around the huts to improve their assimilation.

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, 4<sup>th</sup> 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.

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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 S Mountford  
Chairman of the Local Review Body

**Date.....**29 September 2020