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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, 14 December 2020 at 10.00 am

Present:- Councillors S. Mountford (Chair), A. Anderson, J. A. Fullarton, S. Hamilton, H. Laing, D. Moffat, C. Ramage, N. Richards and E. Small

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

1. **REVIEW OF 20/00028/PPP**

There had been circulated copies of the request from Mr & Mrs G & M Walker, per Ferguson Planning, 54 Island Street, Galashiels, to review the decision to refuse the planning application for the erection of a dwellinghouse together with access, landscaping and associated works on land NE of East Neuk, Morebattle. The supporting papers included the Notice of Review (including the Decision Notice and Officer's Report); papers referred to in the Officer's Report; consultations; support comment; further representation; and a list of policies. Members noted that the site of the proposed development was outwith the settlement boundary of Morebattle, according to the Local Development Plan but in terms of location adjoining other houses and its sense of place concluded that it was well related to the settlement. Members went on to discuss the economic and employment justification for a house on the site. They were keen to support this thriving local business and concluded that the dwellinghouse was justified to support the agricultural and forestry elements of the business.

DECISION

AGREED that:-

- (a) **the request for 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 consistent with the Development Plan; and**
- (d) **the officer's decision to refuse the application be reversed and planning permission be granted, subject to conditions and a legal agreement, for the reasons detailed in Appendix I to this Minute**

2. **REVIEW OF 20/00537/FUL**

There had been circulated copies of the request from Mr & Mrs D Tully, per Stuart Patterson Building & Timber Frame Design, 5 Burnflatt Lane, Hawick, to review the decision to refuse the planning application for formation of dormer at 19 Myrescroft Road, Ancrum. 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 expressed sympathy with the position of the applicant, in seeking to achieve the additional accommodation required, by provision of a double width dormer. In noting the prominent street frontage position of the property, they debated at length the scale and design of the

proposed dormer and their opinion was divided as to whether this was of an appropriate scale and in character with the property and the adjoining area.

VOTE

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

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

Members voted as follows:-

Motion - 6 votes

Amendment - 3 votes

The motion was accordingly carried and the application refused,

DECISION

DECIDED that:-

- (a) the request for 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 II to this Minute.**

The meeting concluded at 11.40 am



APPENDIX I

**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: 20/00025/RREF

Planning Application Reference: 20/00028/PPP

Development Proposal: Erection of dwellinghouse together with access, landscaping, associated works

Location: Land North-East of East Neuk, Morebattle

Applicant: Mr & Mrs G & M Walker

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 the applicants entering into a Section 75, or other suitable Legal Agreement, as set out below.

DEVELOPMENT PROPOSAL

The application relates to the erection of a dwellinghouse, access, landscaping and associated works. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	9420.0.01
Site Plan and Site Section	9420.0.02

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 14th December 2020. After examining the review documentation which included: a) Notice of Review (including Decision Notice and Officer's report); b) Papers referred to in officer's report;

c) Consultations; d) Support comment; e) Further representation; 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, PMD4, PMD5, ED2, ED7, HD2, HD3, HD4, IS2, IS7 and IS9

Other Material Considerations

- SBC Supplementary Planning Guidance on Placemaking & Design 2010
- 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 a dwellinghouse together with access, landscaping and associated works on land North-East of East Neuk, Morebattle.

The Review Body noted that Morebattle was a defined settlement in the Local Development Plan and that the site lay immediately outwith the settlement boundary. Members were aware that development would not normally be approved under Policy PMD4 unless one of four qualifying criteria were met. Whilst they considered all criteria, including housing land supply and affordable housing, Members considered the most relevant criterion to be that relating to job-generating development. It was also understood that as the site lay outwith the defined settlement boundary, Policy HD2 and the Housing in the Countryside Guidance Note also applied, particularly Part F relating to economic justification.

The Review Body then discussed the economic and employment justification for a house on the site. They were aware of the previous unsuccessful application by the applicants for a house on a site to the south of the village, based solely upon the groundworks business. However, Members noted that the current proposals were supported by agricultural and forestry contracting elements and that, combined with the groundworks business, the company was thriving in the local area with growing employment and the need to expand further. The Review Body were keen to support such a successful local business. They noted the Local Member's support for the business and house proposal and generally concluded that, even if the groundworks business was excluded from the justification, both the agricultural and forestry-based business were appropriate to the rural location and in compliance with Part F of Policy HD2.

Members also considered that the agricultural business, whilst not appearing to create sufficient labour hours at present to justify a full time residence on the site, would be enabled to expand as a result of such a presence. Residence on site would assist in the security and husbandry of the cattle and facilitate the expansion of the herd in the short term future. Given these proposals and, when combined with the forestry contracting element, and the business

performance and staff levels from the groundworks business over recent years, the Review Body were satisfied that a dwellinghouse was justified to support and nurture the agricultural and forestry elements of the business, thereby both complying with Part F of Policy HD2 and facilitating job generating development, thus representing an exception to Policy PMD4.

The Review Body then considered other aspects of Policies HD2, PMD4 and the Housing in the Countryside Supplementary Planning Guidance. It was concluded that the location and nature of the site resulted in the site being an appropriate addition and well-related to the settlement of Morebattle, immediately adjoining other houses and buildings, related to an existing cul-de-sac and lying between that and the farm track to the east. With appropriate design, siting and landscaping which could be controlled at the next planning stage, Members considered that the proposal was in compliance with the secondary criteria in Policy PMD4 and the general requirements of Policy HD2 and the SPG. Whilst they understood that an alternative approach may have been to seek inclusion of the site within the Morebattle settlement boundary during the next stage of the Local Development Plan, the Review Body were aware that the timescale for consideration of such inclusion could be lengthy and would not be conducive to the expansion of the business, which could be assisted at this stage by approval of the site on a justified economic case basis.

In supporting the case as an economically justified house under Policy HD2 and as a justified exception to Policy PMD4, Members were of the opinion that the occupancy of the house should be connected with the business that provided the justification, leading to their support and compliance with Policies. They agreed that an agricultural occupancy condition be attached to the consent and that a Legal Agreement tie the house to the agricultural land holding

The Review Body finally considered other material issues relating to the proposal including residential amenity, roads, parking, water and drainage but were of the opinion that appropriate conditions could address them satisfactorily. This should include a specific landscaping condition and a condition requiring that the main vehicular access be taken from the farm track to the east. Members also noted that development contributions for education were required and could be secured through the aforementioned legal agreement.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was consistent with Policies HD2 and PMD4 of the Local Development Plan and relevant Supplementary Planning Guidance. The development was considered to be a justified exception to PMD4 with a substantiated economic case for a house on this site. The site would also be a well-related and appropriate addition to the settlement of Morebattle with design and landscape treatment able to be addressed at the next planning stage. 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. The occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed, in the locality in agriculture as defined in section 277 of the Town and Country Planning (Scotland) Act 1997, or a dependant of such a person residing with him or her or a widow or widower of such a person, and to any residential dependents.

Reason: The site is outwith a settlement boundary where it is not the Council's policy to permit unrestricted residential development, and permission has therefore only been granted on account of the demonstrated agricultural needs.

4. 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. trees to be retained within the site
- III. existing landscaping features, hedgerows and trees to be retained, protected and, in the case of damage, restored
- IV. location and design, including materials, of walls, fences and gates
- V. soft and hard landscaping works including new planting within the site
- VI. existing and proposed services such as cables, pipelines, sub-stations
- VII. A programme for completion and subsequent maintenance.

Reason: To ensure the satisfactory form, layout and assimilation of the development.

5. 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 dwellinghouse unless otherwise agreed. The details shall include:

- I. The main vehicular access to the site to be taken from the farm track to the east of the site, including construction and levels details.
- II. 2 no. parking spaces, not including any garage, and turning area 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.

6. No development to be commenced until the details of water and drainage provision are submitted to, and approved in writing by, the Planning Authority. Once approved, the development then to be completed in accordance with those details.

Reason: To ensure that the development is adequately serviced and in the interests of public health.

7. No development to be commenced until a scheme of waste storage has been submitted to, and approved in writing by, the Planning Authority. Once approved, provision to be made in accordance with the approved details prior to occupation of the dwellinghouse.

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

LEGAL AGREEMENT

The Local Review Body required that a Section 75, or other suitable legal agreement, be entered into to secure developer contributions for Kelso High School and to tie the house to the land holding.

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 S Mountford
Chairman of the Local Review Body

Date.....17 December 2020



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: 20/00026/RREF

Planning Application Reference: 20/00537/FUL

Development Proposal: Formation of dormer

Location: 19 Myrescroft Road, Ancrum

Applicant: Mr & Mrs D Tully

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 PMD2 of the Scottish Borders Local Development Plan 2016 in that it would have a visually unsympathetic and dominant impact on the dwellinghouse and have an adverse impact on the character and appearance of the surrounding area. This conflict is not overcome by other material considerations.

DEVELOPMENT PROPOSAL

The application relates to the formation of a dormer extension to a dwellinghouse. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	20-693-1002
Existing Layouts	20-693-PL-1001
Proposed Layouts	20-693-PL-2001

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 14th December 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: PMD2 and HD3

Other Material Considerations

- SBC Supplementary Planning Guidance on Placemaking & Design 2010
- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006

The Review Body noted that the proposal was for planning permission to form a dormer extension to a dwellinghouse at 19 Myrescroft Road, Ancrum.

Members firstly considered the scale, position and relationship of the dormer window with the property and the adjoining area. They noted that the applicants were of the opinion the proposal was necessary to achieve the additional accommodation required and they also noted the examples of double width dormers in St. Boswells provided by the applicants. However, Members also noted the presence of lesser width dormers in the same and adjoining streets nearby. Whilst there was some discussion on the appropriateness of single and double width dormers on the character of the properties, the Review Body ultimately agreed with the Appointed Officer that the proposed dormer was excessive in width and was both out of scale with the property itself and out of character with the more relevant and appropriate examples of dormer extensions nearby.

They considered that the width of the dormer did not follow the scale and design of the more appropriate local examples and was, thus, contrary to Policy PMD2 and guidance within the Placemaking and Design SPG. The width, prominent street frontage position and loss of the chimney all contributed to a feeling that the dormer would be overbearing, out of scale and character. Members agreed with the Appointed Officer that the proposed dormer was not acceptable and that, if the applicants wished to pursue the proposal, reduction in width would be necessary in any new application.

The Review Body then considered other issues relating to the proposal including materials and residential amenity. They concluded that the materials could be addressed by condition and that there was no issue with privacy or overshadowing, the frontage of the property being angled away from those properties opposite.

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 S Mountford
Chairman of the Local Review Body

Date.....17 December 2020

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