

## 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:** 20/00018/RREF

**Planning Application Reference:** 20/00453/FUL

**Development Proposal:** Demolition of garage and erection of dwellinghouse

**Location:** Garden ground of Clifton Cottage, High Street, Kirk Yetholm

**Applicant:** Mr & Mrs D & C Morrison

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## DECISION

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

1. A dwellinghouse on this site would not comply with policy PMD5 of the Local Development Plan 2016 as it would detract from and harm the character and amenity of the surrounding area.
2. The proposals would not comply with Policy EP9 of the Local Development Plan 2016 in that there would be significantly harmful adverse impacts to Yetholm Conservation Area.
3. The proposals are contrary to Policy EP11 of the Local Development Plan 2016 in that there would be direct and indirect adverse impacts and harm caused to the public open space (the roadside verge and water pump) which front the site, to the detriment of the visual amenities of the area.
4. The proposals do not comply with Policy PMD2 and Policy PMD5 of the Local Development Plan 2016 and the Supplementary Planning Guidance on Placemaking and Design 2010 in that they do not respect the scale, form, and design of the surroundings, to the detriment of the visual amenities of the area.
5. Without further field evaluation, the development is contrary to Policy EP8 of the Local Development Plan 2016 in that there is a medium to high potential of the site yielding

archaeology of local or regional importance which could be harmed or destroyed by the development.

## **DEVELOPMENT PROPOSAL**

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

<b>Plan Type</b>	<b>Plan Reference No.</b>
Location Plan	AH073 P03B
Site Plan	AH073 P02B
Floor Plans and Elevations	AH073 P01A
Shadow Plan	AH073 P03B
Site Sections Plan	AH073 S01A

## **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 17<sup>th</sup> August 2020.

After examining the review documentation at that meeting, 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 Comments; e) Objections; f) General Comment; g) Additional representation from objector and response from applicant; and h) List of Policies, the LRB concluded that it did not have sufficient information to determine the Review with regard to the potential impacts of the scale and, especially, the height of the dwellinghouse on the character of the village. The Review Body requested further information be provided by the applicant on the ridge height of the proposed dwellinghouse and a drawing to show the levels/ridge height in comparison to the neighbouring house to the north. Members also decided to carry out an unaccompanied site visit to assess the development in the context of the surrounding area.

At its meeting on 16<sup>th</sup> November 2020, the Review Body were asked to consider the further procedure to be followed in terms of the unaccompanied site visit. The ongoing Covid-19 restrictions had delayed the visit and responses to risk assessments carried out, following a tightening of restrictions, led the Council to decide that a site visit could not be carried out. Members considered whether there were any alternative means of viewing the site. They concluded that video footage taken by the Planning Advisor and presented to the Review Body within an oral hearing session, open to all interested parties, was an appropriate alternative approach. Members also agreed that interested parties should be given the opportunity to suggest viewpoints and topics for the footage and that the applicant should be encouraged to erect a temporary profile on site, indicating the ridge height of the proposed dwellinghouse, to enable this to appear in the footage.

At the meeting on 16<sup>th</sup> November 2020, Members noted that the requested further information had also been submitted by the applicant in the form of a street section through the site, comparing ridge heights to those of surrounding houses. In noting that one of the objectors had questioned the survey methodology and accuracy of the submitted section, Members decided to seek further clarification from the Planning Officer on these matters, understanding that this may also necessitate the Officer seeking advice from an appropriately qualified colleague. The Review Body agreed that the advice should then be presented, with the video footage, at the hearing session, with opportunities for the applicant, third parties and the Planning Officer or colleague to participate in the session.

The hearing was held at 10am on Monday 18<sup>th</sup> January 2021, after which the Review Body re-convened to consider the case. Following the hearing, Members agreed that it had been very helpful viewing the video footage in place of a site visit and also understanding the technical details and arguments relating to the ridge height and associated section. Members then 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, PMD5, HD3, EP8, EP9, EP11, EP13, IS2, IS7 and IS9

### Other Material Considerations

- SBC Supplementary Planning Guidance on Placemaking & Design 2010
- SBC Supplementary Planning Guidance on Development Contributions 2011
- SBC Supplementary Planning Guidance on Landscape and Development 2008
- SBC Supplementary Planning Guidance on Trees and Development 2008
- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006
- SBC Supplementary Planning Guidance on Green Space 2009
- Scottish Planning Policy 2014
- PAN 65 "Planning and Open Space"
- PAN 71 "Conservation Area Management"

The Review Body noted that the proposal was for planning permission to demolish a garage and erect a dwellinghouse on a site opposite Clifton Cottage, Kirk Yetholm.

In their initial consideration of the case at the 17<sup>th</sup> August 2020 LRB meeting, Members had identified that whilst the site was within the settlement boundary of Kirk Yetholm and could potentially be considered an infill location, there was concern as to whether the proposal and site were acceptable under the infill Policy PMD5. In particular, the Review Body expressed concerns over the scale of the development in height and mass, impact on key greenspace, the contribution of the site to the history of the village and whether the proposal would preserve and enhance the amenity of the Conservation Area under Policy EP9. Members realised there were many such issues to be considered and felt it was necessary to carry out a site visit and seek a cross section showing the relationship of the proposed house with the immediately adjoining house to the north, "Burnsyde".

Due to Covid-19 restrictions, Members subsequently agreed to carry out a virtual site visit by viewing video footage taken by the LRB Planning Advisor and to view this within a Hearing. They also heard statements and comments from the applicant's agent and an objector regarding the submitted cross section and differing opinions over the measurements and methodology used.

Following the Hearing, Members returned to their concerns over the scale, size and prominence of the proposed house on the site. They considered that the video footage, including the height marker and pegged out footprint, indicated a development of significant scale and mass for the sensitive location. The Review Body considered the house to be oversized in relation to the size of the plot, domineering and incongruous in the street scene and on the Conservation Area. The fact that there was a slope on the site also concerned Members in relation to overbearing impact and scale, despite the suggestion that the ridge height could be reduced to match with "Clifton Cottage" opposite. They identified that the site was a key component and part of the setting of the Conservation Area, the view of, and from, the village green being potentially dominated by the proposal. Ultimately, the Review Body felt that the proposal represented overdevelopment and was of excessive scale and mass on a constrained site, both contrary to infill Policy PMD5 and to Conservation Area Policy EP9.

Members were also concerned that the site was allocated Key Greenspace in the Local Development Plan under Policy EP11. Whilst they understood that the site no longer functioned as allotments, they were aware of the history of the site as part of a wider area of open space and allotments on this part of the High Street. They also noted that the proposal resulted in the loss of open space without adequate or acceptable replacement of the space.

The Review Body also considered the design of the dwellinghouse and external materials. They acknowledged that there had been efforts to fit the design and frontage in with the village and street scene but that, ultimately, the overdevelopment, scale and mass of the house on the site outweighed any benefits resulting from the design.

The Review Body then considered other issues relating to the proposal including parking and archaeology but saw no reason to vary those matters that contributed to the original reasons for refusal. Similarly, Members considered that other matters such as drainage and residential amenity could be addressed by conditions.

## **CONCLUSION**

After considering all relevant information, the Local Review Body concluded that the development was contrary to the Development Plan and that there were no other material considerations that would justify departure from the Development Plan. Consequently, the application was refused for the reasons stated above.

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

1. If the applicant is aggrieved by the decision of the planning authority to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.
2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of

the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.

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**Signed...**Councillor S Mountford  
Chairman of the Local Review Body

**Date.....**21 January 2021

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