

**APPENDIX III**

**SCOTTISH BORDERS COUNCIL  
LOCAL REVIEW BODY INTENTIONS 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:** 15/00012/RREF

**Planning Application Reference:** 14/00934/FUL

**Development Proposal:** Erection of dwellinghouse and detached garage

**Location:** Land West of 3 Nethermains Cottage, Chirnside, Duns

**Applicant:** Mr Fred Millar

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**DECISION**

The Local Review Body reverses the decision of the appointed officer and gives notice that it intends to grant planning permission subject to conditions and the conclusion of a legal agreement, as set out in this decision notice.

**DEVELOPMENT PROPOSAL**

The application relates to the erection of a dwellinghouse and detached garage on land west of 3 Nethermains Cottage, Chirnside, Duns. The application drawings consisted of the following drawings:

<b>Plan Type</b>	<b>Plan Reference No.</b>
Location Plan	P29/LOCA
Floor Plans	P29/SK1B
Floor Plans	P29/SK2
Elevations	P29/SK3
Block Plans	P29/SK4A
Floor Plan	P29/SK5

**PRELIMINARY MATTERS**

The Local Review Body considered at its meeting on 17<sup>th</sup> August 2015, that the review had been competently made under section 43A (8) of the Town & Country Planning (Scotland) Act 1997.

After examining the review documentation, which included: (a) Decision Notice; (b) Notice of Review and supporting papers; (c) Report of Handling; (d) Consultations and (e) List of Policies, the Review Body concluded that it had sufficient information to decide the case. In coming to this conclusion, Members considered the applicant's request for further procedure in the form of a site visit.

The Notice of Review indicated that new evidence had been submitted to the Local Review Body that had not been before the appointed officer when the case was determined. This was in respect of the change in the personal circumstances of the applicant, in that the applicant had now moved into an existing cottage on the farm and that it was his grandson that would occupy the new house. The Local Review Body concluded that the provisions of Section 43B of the Act allowed them to consider this new evidence. The Local Review Body considered that, as the information could not have been raised before that time, there were exceptional circumstances that allowed them to consider this new evidence,

## **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 2013 and the consolidated Scottish Borders's Local Plan 2011. The Review Body considered that the most relevant of the listed policies were:

- Local Plan Policies: INF4, NE4, NE3, H2, D2, G5 and G1

Other material key considerations the Local Review Body took into account related to:

- Supplementary Planning Guidance on New Housing in the Borders Countryside 2008
- Supplementary Planning Guidance on Trees and Development 2008
- Supplementary Planning Guidance on Biodiversity 2005
- Supplementary Planning Guidance on Placemaking & Design 2010
- Supplementary Planning Guidance on Development Contributions 2011
- Scottish Borders Proposed Local Development Plan 2013

In considering the provisions of Local Plan Policy D2 and the Supplementary Planning Guidance on New Housing in the Borders Countryside, the Review Body was satisfied that a building group existed at Nethermains, comprising the farmhouse and the two farm cottages. The houses book-ended the existing farm buildings, which, in their view, also contributed to the area's sense of place.

Members' consideration turned to whether the proposed development would constitute an appropriate extension of the building group. The Review Body noted that the site lay partially within the garden ground of the most westerly of the existing

farm cottages and partly in the adjoining agricultural field. Members accepted the appointed officer's view that a development could be permissible if it was contained within its garden curtilage. In the circumstances, Members had to now judge whether extending the development site into the adjoining field would be demonstrably harmful to the appearance of the group and the locality. In their view, it would not.

The Review Body concluded that the existing boundary was not substantial and did not form a defensible edge to the group. The degree of existing screening at the site and along the approaches to the site and group more generally, meant that the boundary change would not be discernible and would have no visual impact on the character or appearance of the group. The provision of a suitably planted boundary would also assist in integrating the development into the building group.

The Review Body considered the design of the proposed house had much to commend it. The building was an attractive contemporary house that reflected local vernacular and which would make a positive contribution to the character and appearance of the building group.

## **CONCLUSION**

After considering all relevant information, the Local Review Body concluded that the development was consistent with the Development Plan and that there were no other material considerations that would justify departure from the Development Plan.

## **DIRECTION**

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. Notwithstanding the description of the materials in the application, no development shall be commenced until precise details of the materials to be used in the construction of the external walls and roofs of the building have been submitted to and approved in writing by the Local Planning Authority, and thereafter no development shall take place except in strict accordance with those details.  
Reason: The materials require further consideration to ensure a satisfactory form of development, which contributes appropriately to its setting.
2. 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 trees and hedgerow to be retained and how they are to be protected during the construction phase
  - iii. location of new trees, shrubs, hedges and grassed areas and schedule of plants to comprise species, plant sizes and proposed numbers/density
  - iv. location and design, including materials, of walls, fences and gates
  - v. soft and hard landscaping works

- vi. existing and proposed services such as cables, pipelines, sub-stations
- vii. other artefacts and structures such as street furniture, play equipment
- viii. A programme for completion and subsequent maintenance.

Thereafter the landscaping works shall be implemented in accordance with the approved scheme.

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

3. The means of water supply, surface water and foul drainage to be submitted to and approved in writing by the Planning Authority before the development is commenced. The development shall then be implemented in accordance with the approved details.

Reason: To ensure that the site is adequately serviced.

4. Prior to the commencement of the development, a scheme showing details of the necessary access, parking and turning arrangements for the new dwellinghouse shall be submitted to and approved by the Planning Authority. The scheme shall include:

- a new private access constructed to the following specification “75mm of 40mm size single course bituminous layer blinded with bituminous grit all to BS 4987 laid on 375mm of 100mm broken stone bottoming blinded with sub-base, type 1.”
- Parking and turning for two vehicles, not including garages, provided within the curtilage of the plot that shall be retained solely for that purpose.
- a single passing place, as per the Council’s specification DC-1 (attached), constructed at an agreed location on the single track private road serving the site.
- Visibility splays, as per schematic block plan Dwg No. P291/SK4A, provided prior to occupation of the dwelling. Thereafter, the visibility splays to be maintained and kept clear from obstruction.

The agreed scheme shall be fully implemented prior to the occupation of the dwellinghouse.

Reason: To ensure that the access road is of an acceptable standard to cater for the new development.

## **INFORMATIVE**

The plans lodged with this Application indicate the presence of a stove or solid fuel appliance. These installations can cause smoke and odour problems if not properly installed or used.

These installations can cause smoke and odour complaints and any Building and Planning Consents for the installation do not indemnify you in respect of Nuisance action.

Accordingly this advice can assist you to avoid future problems.

The location of the flue should take into account other properties that may be downwind.

The discharge point for the flue should be located as high as possible to allow for maximum dispersion of the flue gasses.

The flue should be terminated with a cap that encourages a high gas efflux velocity.

The flue and appliance should be checked and serviced at regular intervals to ensure that they continue to operate efficiently and cleanly.

The appliance should only burn fuel of a type and grade that is recommended by the manufacturer.

If you live in a Smoke Control Area you must only use an Exempt Appliance <http://smokecontrol.defra.gov.uk/appliances.php?country=s> and the fuel that is Approved for use in it <http://smokecontrol.defra.gov.uk/fuels.php?country=s> .

In wood burning stoves you should only burn dry, seasoned timber. Guidance is available on -

[http://www.forestry.gov.uk/pdf/eng-woodfuel-woodasfuelguide.pdf/\\$FILE/eng-woodfuel-woodasfuelguide.pdf](http://www.forestry.gov.uk/pdf/eng-woodfuel-woodasfuelguide.pdf/$FILE/eng-woodfuel-woodasfuelguide.pdf)

Treated timber, waste wood, manufactured timber and laminates etc. should not be used as fuel.

Paper and kindling can be used for lighting, but purpose made firelighters can cause fewer odour problems.

The appliance should only burn fuel of a type and grade that is recommended by the manufacturer.

## **LEGAL AGREEMENT**

The Local Review Body required that a Section 75 Agreement, or other suitable legal agreement, be entered into regarding the payment of a financial contribution towards educational facilities.

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## **Notice Under Section 21 of the Town & Country Planning (Schemes of Delegation and Local Review procedure) (Scotland) Regulations 2008.**

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 R Smith  
Chairman of the Local Review Body

**Date:...**2 September 2015