

APPENDIX III

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: 15/00019/RREF

Planning Application Reference: 15/00403/FUL

Development Proposal: Erection of dwellinghouse

Location: Land south west of Pyatshaw Schoolhouse, Lauder

Applicant: Ms P Milanesi

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 conclusion of a legal agreement as set out in this notice.

DEVELOPMENT PROPOSAL

The application relates to the erection of a house on land south west of Pyatshaw Schoolhouse, Lauder. The application drawings consisted of the following drawings:

Plan Type	Plan Reference No.
Location Plan	
Roof Plan	103
Floor Plans	110
Floor Plans	111
Sections	200
Existing Layout	101
Site Plan	102
Sections	300
Elevations	301
Elevations	302

PRELIMINARY MATTERS

The Local Review Body considered at its meeting on 21st September 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 at that meeting, which included: (a) Decision Notice; (b) Notice of Review and supporting papers; (c) Report of Handling; (d) Consultations; (e) Support comments and (f) List of Policies, the Review Body concluded that it had sufficient information to determine the review and proceeded to consider the case. In coming to this conclusion, the Review Body considered the request from the applicants for further procedure in the form of a site visit.

As a point of clarity raised by the appellants it was noted the 2no comments had been received from the Council's landscape team. Although they were similar they had different conclusions. It was confirmed that the second response should take precedence. Although it identified some issues to be addressed, ultimately it did not formally object to the proposal.

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 Border's Local Plan 2011. The Review Body considered that the most relevant of the listed policies were:

- Local Plan Policies: D2, G1, G4, G5, Inf4, Inf5, Inf6, H2, NE3, NE4, NE5

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

Other Material Considerations

- Supplementary Planning Guidance on New Housing in the Borders Countryside 2008
- Supplementary Planning Guidance on Placemaking and Design 2010
- Supplementary Planning Guidance on Privacy and Sunlight Guide 2007
- Supplementary Planning Guidance on Landscape and Development 2008
- Supplementary Planning Guidance on Trees and Development 2007
- Supplementary Planning Guidance on Development Contributions 2011
- Supplementary Planning Guidance on Biodiversity 2005
- Scottish Borders Proposed Local Development Plan 2013
- Scottish Planning Policy 2014
- Planning Advice Note 72 – Housing in the Countryside 2005

Members viewed slides of the site, which showed its characteristics, the design of the proposed new house, the proposed building materials, the trees to be removed to

accommodate the house and the replacement planting proposed. In the first instance members agreed that within the terms of the Housing in the Countryside policy there was a building group in the vicinity of the site and that the erection of a further house would not breach the 30% rule regarding the possible extension of that group. The Review Body's deliberations thereafter focussed primarily on whether the design of the house was appropriate in this rural location and whether the removal of trees and the proposed replacement planting was acceptable.

Noting the design was a modern one, members complemented its innovative appearance and supported the use of timber cladding, white painted facing brick and a pitched zinc roof. It was considered the design and materials were in accordance with the Council's Placemaking and Design Guidance.

Members did not consider that the proposed loss of the trees would be harmful to the amenity of the area, in the circumstances of this application. Indeed they noted that if the woodland was properly managed some trees would likely be removed in any event. Moreover, they considered that the proposed replacement planting would balance those lost as a result of the house and parking footprint and that this was an acceptable approach for the development to take.

The plans suggested the retention of a silver birch tree within the site although the proximity of the parking area may damage its root systems leading to its removal. Whilst that was considered regrettable members accepted this possibility but determined that an informative should seek to gain its retention if at all possible. A replacement tree should be planted in the vicinity of the silver birch to compensate if it does require to be removed.

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 landscaping features and vegetation to be retained and, in the case of damage, restored
- iii. location and design, including materials, of walls, fences and gates
- iv. soft and hard landscaping works
- v. existing and proposed services such as cables, pipelines, sub-stations
- vi. other artefacts and structures such as street furniture, play equipment
- vii. A programme for completion and subsequent maintenance.

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

3. Before any part of the development hereby permitted is commenced detailed drawings showing which trees are to be retained on the site shall be submitted to, and be approved in writing by the Local Planning Authority, and none of the trees so shown shall be felled, thinned, lopped, topped, lifted or disturbed without the prior written consent of the Local Planning Authority.

Reason: To enable the proper effective assimilation of the development into its wider surroundings, and to ensure that those existing trees representing an important visual feature are retained and maintained.

4. Before any part of the permitted development is commenced, the trees to be retained on the site shall be protected by fencing to BS35837:2012 specification, placed at a minimum radius of one metre beyond the crown spread of each tree, and the fencing shall be removed only when the development has been completed. During the period of construction of the development:

- (a) No excavations, site works, trenches or channels shall be cut, or pipes or services laid in such a way as to cause damage or injury to the trees by interference with their root structure;
- (b) No fires shall be lit within the spread of the branches of the trees;
- (c) No materials or equipment shall be stored within the spread of the branches of the trees;
- (d) Any accidental damage to the trees shall be cleared back to undamaged wood and be treated with a preservative if appropriate;
- (e) Ground levels within the spread of the branches of the trees shall not be raised or lowered in relation to the existing ground level, or trenches excavated except in accordance with details shown on the approved plans.

Reason: In the interests of preserving the health and vitality of existing trees on the development site, the loss of which would have an adverse effect on the visual amenity of the area.

5. The construction detail of the access from the public road, over the verge, and into the site should be constructed with a bituminous surface(tar) preferably to the following standard (or similar) : 1no layer of 75mm thick (40mm size) bitumen blinded with grit to BS 4987 laid on 375mm of 75mm broken stone bottoming blinded with Type 1 sub-base. The work carried out within the road and verge to be carried out by an SBC approved contractor.

Reason : To ensure the access is satisfactorily constructed

6. Site clearance or disturbance of habitats which could be used by breeding birds, including hedgerows and trees, shall not be carried out during the breeding bird season (March-August) without the express written permission of the Planning

Authority. Supplementary checking surveys and appropriate mitigation for breeding birds will be required if tree felling and habitat clearance are to commence during the breeding bird season.

Reason : To safeguard sites of breeding birds

7. To protect the water body SEPA Pollution Prevention Guidelines PPG1, PPG5 (general guidance and works affecting watercourses), and PPG 6 (construction and demolition) to be adopted as appropriate. Prior to commencement of works a proportionate Construction Method Statement for Works is required.

Reason : In the interests of pollution prevention

8. 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.

INFORMATIVE

The Local Review Body expressed a preference to retain the silver birch tree on the western side of the site. It is accepted in order to accommodate the house and its parking this may not be possible, and if not possible an alternative tree should be planted.

Environmental Health stated that in relation to the provision of solid fuel heating 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. In the event of nuisance action being taken there is no guarantee that remedial work will be granted building/planning permission. 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.

The Council's Flood Risk and Coastal Management stated that as access and egress to the development may be affected by flood waters, it is recommended that, to receive flood warnings from SEPA, the applicant signs up to FLOODLINE at www.sepa.org.uk or by telephone on 0845 988 1188.

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.

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 J Brown
Chairman of the Local Review Body

Date...4 October 2015
