



**LOCAL REVIEW STATEMENT**  
**REF: 21/00137/FUL**

**LAWFUL USE OF ANNEX AS**  
**HOLIDAY ACCOMMODATION**

**PENVALLA, BROUGHTON,**  
**SCOTTISH BORDERS**

**ON BEHALF OF: MR BRADLEY CLARKE**

**JUNE 2021**

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## **EXECUTIVE SUMMARY**

This Statement is submitted in support of a Notice of Review of the delegated decision of Scottish Borders Council to attach Condition 2 to Planning Permission 21/00137/FUL which prohibits the lawful use of the approved annex as holiday let accommodation. All Core Documents (CD) are referenced in Appendix 1.

Planning Permission 21/00137/FUL granted approval for erection of a new residential annex and array of solar panels within the curtilage of the existing dwelling Penvalla. Despite the Appellant disclosing that use of the annex would involve overnight stays by friends and family, the second of four conditions attached to the Decision Notice requires that the annex is occupied “only by persons of the same household”.

The appeal site is the existing dwelling Penvalla and its curtilage which sit in the village of Broughton in west Peeblesshire, approximately 7 kilometres east of Biggar. The site lies fully within the Development Boundary of the village and no development is proposed beyond the established curtilage.

During the course of the Application’s determination, the following consultee responses were received from Council Officers:

- Roads Planning team – No objection.
- Landscape Architect – No objection.

### **Proposed Revision of Condition 2**

It is accepted that conditions are required to manage the use of the approved annex.

However, the position of the Appellant is that a minorly edited version of the Councils’ standard condition for managing the use of holiday let accommodation would be appropriate to this case. The standard use wording is more lenient than the current wording of Condition 2 and is replicated below:

“The occupation of the approved annex shall be restricted to use incidental to the residential occupation of the principal dwelling as well as genuine holidaymakers – any person staying for a maximum of 4 weeks in total within any consecutive period of 13 weeks. A register of holidaymakers shall be kept and made available for inspection by an authorised officer of the Council at all reasonable times.”

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# F E R G U S O N P L A N N I N G



The supporting justification for the current wording of Condition 2 identifies road safety impacts. While the response of the Roads Planning team (copied in section 2) did raise issue with part of the proposal – a proposed new access to the public road – that element was withdrawn prior to the granting of planning permission. The consultation response identified no disagreement or concern with the erection and use of the residential annex.

Given that the Roads Planning team have raised no issues with the approved annex, it is the position of the Appellant that the wording of Condition 2 is dis-proportionate and unduly restrictive. It is considered that the proposed wording would allow the Planning Authority to appropriately manage the approved development in accordance with the standards and expectations set out in the Local Development Plan 2016 and Supplementary Guidance.

The Local Review Body, having considered the detail contained within the Planning Application package, together with the information set out herein, will be respectfully requested to allow the Appeal and grant Planning Permission.

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## 1.0 INTRODUCTION AND PROPOSAL SUMMARY

- 1.1 This Statement supports a Notice of Review of the delegated decision of Scottish Borders Council to word Condition 2 of Planning Permission 21/00137/FUL so as to prohibit lawful use for holiday let accommodation at Penvalla, Broughton.
- 1.2 The appeal site is an existing dwelling which sits to the west of the A701 within Broughton village. Penvalla is a detached dwelling arranged over two storeys. The house is set in a substantial garden and benefits from significant set back distances from neighbouring dwellings.
- 1.3 The site is served by an existing access to the A701 and sufficient surrounding hardstanding apron to accommodate the parking and turning of four cars minimum. The Gallow Knowe, a small belt of woodland, extends across the north boundary of the site which gives even greater amenity to the dwelling and its occupiers.
- 1.4 Planning Permission 21/00137/FUL grants consent for an annex and an array of solar panels. The annex has been approved in the garden of the existing dwelling to the north of the house. It lies fully within the residential curtilage of Penvalla and is supported by the existing infrastructure and amenity benefits.
- 1.5 While the Planning Authority and the Appellant are largely in agreement – that the annex is an ancillary building to be occupied in association with the primary residential use of Penvalla – it is the Appellant’s position that the wording of the condition is too onerous and slightly tips the balance beyond being proportionate.
- 1.6 It is the Appellant’s position that the annex can be used and maintained as an annex for residential and holiday let use managed by a standard condition which restricts the use and frequency with which any person can domicile themselves in the building. While it is accepted that it would not be suitable for the approved annex to be used as an independent dwelling, it is considered that there is no substantive justification preventing regular, regulated residential and holiday let use of the annex.

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## 2.0 REFUSAL OF APPLICATION BY SCOTTISH BORDERS COUNCIL AND PLANNING POLICY CONTEXT

2.1 Planning Permission 21/00137/FUL was approved on 19th April 2021. Four conditions were attached the Decision Notice, including Condition 2 copied below:

**“2. The development hereby approved shall remain as permanent ancillary accommodation to the principal dwelling (known currently as Penvalla) and shall be occupied only by persons of the same household. There shall be no subdivision of this single residential planning unit and it shall not be used for independent residential or holiday rental purposes.”**

2.2 The supporting reason identifies both the maximum extent of development that can be reasonably allowed without causing detriment to infrastructure provision and road safety concerns around use of the existing access.

2.3 The response of the Roads Planning team and criticism contained therein has been copied below:

“Whilst I have no objections to the ancillary accommodation, I do have concerns over a proposed new access onto the A701. The property is currently served by the existing access to the north and it would not be good practice to have multiple accesses to a single dwelling onto a principal road.”

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### 3.0 GROUNDS FOR APPEAL AND CASE FOR THE APPELLANT

- 3.1 The decision of the Planning Authority to draft Condition 2 in its current form is challenged on the basis of the Ground of Appeal set out below. It is the submission of the Appellant that the proposed wording of the revised condition is appropriate and reasonable for the purposes of regulating the use of the approved annex.
- 3.2 During the course of the Application's determination, the following consultee responses were received from Council Officers:
- Roads Planning team – No objection.
  - Landscape Architect – No objection.

**GROUND 1: THE APPROVED DEVELOPMENT CAN BE OPERATED SAFELY AS A RESIDENTIAL ANNEX INCLUDING BOTH INCIDENTAL TO THE RESIDENTIAL USE OF THE PRINCIPAL DWELLING ON-SITE AND AS HOLIDAY LET ACCOMMODATION.**

- 3.3 It is the Appellant's position that it is reasonable and proportionate to revise Condition 2 to a tailored revision of the Council's standard condition for holiday let accommodation. The proposed wording is set out below:

"The occupation of the approved annex shall be restricted to use incidental to the residential occupation of the principal dwelling as well as genuine holidaymakers – any person staying for a maximum of 4 weeks in total within any consecutive period of 13 weeks. A register of holidaymakers shall be kept and made available for inspection by an authorised officer of the Council at all reasonable times."

- 3.4 It is acknowledged that the appointed Planning Officer has attempted to address the limited capacity of the site's existing highway access. However, it is considered that the attempt to do so has slightly tipped the balance and does represent dis-proportionate use of a condition to manage approved development.
- 3.5 It is recognised that the originally submitted application proposed a second access to the highway while retaining the existing access – arrangements which were of concern to the Roads Planning team. However, the application proposal was revised during determination to retain the existing access and exclude the previously proposed new access.



Those arrangements have now been approved and locked into the granted Planning Permission – this Notice of Review does not attempt to revisit that.

- 3.6 Rather the rationale supporting revision of Condition 2 is that the Roads Planning team have not identified erection or use of the approved annex to pose a threat to road safety. The consultation response states that “I have no objections to the ancillary accommodation”.
- 3.7 Given the absence of concern about the road safety element of the approved development, it is considered that an unduly restrictive condition is not required in this case.
- 3.8 The supporting reason also identifies the causing of “detriment to infrastructure provision”. It should be noted that existing connections to the public water, electricity, and sewerage networks already serve the principal dwelling. It is considered that these connections are sufficient to serve the approved development.
- 3.9 It is considered that the impact (if any) that rewording Condition 2 would have on road safety would be acceptable. The existing dwelling is already served by an existing access to the public road network which has been assessed by the Roads Planning team to be acceptable. Existing connections to the utilities networks are in place and are considered to be sufficient for the Appellant’s purposes.

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## 4.0 CONCLUSIONS

- 4.1 The Notice of Review, supported by this Statement, requests that the Council amends Condition 2 of Planning Permission 21/00137/FUL to enable the lawful use of the approved annex at Penvalla, Broughton as holiday let accommodation.
- 4.2 The proposed revision of Condition 2 would enable the lawful residential and holiday let use of the approved annex. The consultation response of the Roads Planning team has not identified an unacceptable road safety impact associated with the annex. Existing connections to other infrastructure networks already serve the principal dwelling on-site and are considered to be sufficient for the purposes of the Appellant. The proposed revision of Condition 2 is considered to be reasonable and proportionate.
- 4.3 It is considered that Condition 2, as currently worded is dis-proportionate in that it imposes a restriction which is not based on professional advice. While it is accepted that the appointed Planning Officer's intentions in attaching the Condition were well meaning, it is considered that the Condition is not justifiable in its current form.
- 4.4 The Local Review Body is respectfully requested to allow the appeal and revise the wording of Condition 2 of Planning Permission 21/00137/FUL.

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## APPENDIX 1

### Core Documents

The following drawings, documents, and plans have been submitted to support the appeal:

- Appeal Form;
- CD1 Local Review Statement;
- Application Form;
- CD2 PL-001-P5 Location Plan and As Proposed Plans and Elevations;
- CD3 Roads Planning team consultation response to Application 21/00137/FUL;
- CD4 Report of Handling 21/00137/FUL; and
- CD5 Decision Notice 21/00137/FUL.

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