



**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: 21/00013/RCOND

Planning Application Reference: 21/00137/FUL

Development Proposal: Erection of ancillary accommodation to dwellinghouse and installation of 12KW ground mounted solar array

Location: Penvalla, Broughton

Applicant: Mr Bradley Clarke

DECISION

The Local Review Body overturns and varies the decision of the appointed officer and grants planning permission for the reasons set out in this decision notice subject to conditions as set out below including amendment to Condition 2 of the original consent 21/00137/FUL.

DEVELOPMENT PROPOSAL

The application relates to the erection of ancillary accommodation to the dwellinghouse and installation of 12KW ground mounted solar array at Penvalla, Broughton. The application drawings and documentation consisted of the following:

Plan Type

Plan Reference No.

Plan and Elevation
Section
Tree Plan

P001 Rev P5
Solar panel specification
PL102 Rev P1

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 16th August 2021.

After examining the review documentation at that meeting, which included a) Notice of Review (including the Decision Notice and Officer's Report); b) Papers referred to in Officer's Report; c) Consultations; and d) List of Policies, the Review Body considered whether certain matters included in the review documents constituted new evidence under Section 43B of the Act and whether or not this evidence could be referred to in their deliberations. This related to further information in the form of the "Local Review Statement - Lawful Use of Annex as Holiday Accommodation" and the request to vary condition 2 to seek holiday accommodation, which was in addition to the ancillary residential request.

Members agreed that the information was new and considered that it met the Section 43B test, that it was material to the determination of the Review and could be considered. However, there was a requirement for further procedure in the form of written submissions to enable the Planning Officer and Roads Planning Officer to comment on the new information.

The Review was, therefore, continued to the Local Review Body meeting on 18th October 2021 where the Review Body considered all matters, including responses to the further information from the Planning Officer and Roads Planning Officer, and the applicant's reply to those responses. The Review Body 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, EP4, EP13, IS7, IS9 and ED9

Other Material Considerations

- SBC Supplementary Planning Guidance on Placemaking & Design 2010
- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006
- SBC Supplementary Planning Guidance on Trees and Development 2008
- SBC Supplementary Planning Guidance on Renewable Energy 2017
- SBC Supplementary Planning Guidance on SUDS 2020

The Review Body noted that the proposal was for the erection of ancillary accommodation to a dwellinghouse and installation of 12KW ground mounted solar array at Penvalla, Broughton.

Members noted that the Review was submitted in relation to a condition attached to a planning permission but that, as the Review was not resulting from refusal of a Section 42 application, Members were required to re-assess the whole development and decision on a De Novo basis and not only in relation to the condition which was sought to be varied.

The Review Body, therefore, firstly considered the principle of an ancillary building within the grounds of Penvalla and had no issues with the design or siting of the building, nor with the installation of ground-mounted solar panels, which they noted were permitted development in any case.

Members considered that the main issue related to the proposed usage of the annex and the wording of Condition 2 which was imposed on the planning permission to regulate the occupancy. Whilst there was acceptance that the annex required some form of control over occupation to enable it to remain in character and ancillary to the main dwellinghouse, Members noted that the Planning Officer had imposed Condition 2 to restrict occupancy only to members of the same household at Penvalla.

The Review Body noted the Appointed Officer's reasons for such restriction but agreed with the applicant that the occupancy could be relaxed to allow for friends and family to visit and stay in the annex on a non-commercial basis. In considering the nature and capacity of the existing access onto the A701, Members did not consider relaxing the occupancy in this manner would result in any significant increase in vehicular traffic using the access and thus there would be no detrimental impact on road safety. They drew a comparison with having friends and family visiting and staying in the main dwellinghouse, thus creating the same level of traffic. For this reason, the Review Body were content to allow amendment of Condition 2 as suggested by the applicant, removing reference to occupation within the same household and replacing it with wording ensuring the occupation would be incidental to the residential occupation of the main dwellinghouse.

However, the Review Body did consider that further amendment to Condition 2 to allow commercial holiday occupancy, as suggested by the applicant, would change the nature of the annex and would increase usage of the existing access, which they viewed to be limited and potentially unable to safely accommodate such increased usage. Whilst they noted that closure of the existing access and formation of a new access had been proposed initially before being withdrawn from the planning application, they considered that any proposal for holiday use would need to be the subject of a new planning application with re-assessment of the access provision.

The Review Body finally considered other material issues relating to the proposal including impacts within the National Scenic Area, retention of trees, residential amenity, water and drainage but were of the opinion that appropriate conditions could address them satisfactorily.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was consistent with Policies PMD2 and PMD5 of the Local Development Plan. The development was considered to be appropriate infill and ancillary development within the grounds of a dwellinghouse, remaining within character and scale given the limitations of the existing access. Consequently, the application was approved.

DIRECTIONS

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. The development hereby permitted shall not be carried out otherwise than in complete accordance with the plans and specifications approved by the planning authority.
Reason: To ensure that the development is carried out in accordance with the approved details.

2 The occupation of the approved annex shall be restricted to use incidental to the residential occupation of the principal dwelling.

Reason: The planning authority considers that the development hereby permitted is the maximum that can be reasonably allowed without causing detriment to road safety through an intensification of use of the road/access by increased vehicle movements.

3 No development shall be commenced until a detailed 'method statement' in relation to all works within the root protection area (RPA) of retained trees has been submitted to and approved in writing by the planning authority. Specific issues to be dealt with in the method statement:

a) A scaled plan (minimum of 1:200) showing the position, size, RPA, species and unique identification reference of each retained tree affected by the works and including details of the extent and nature of all works within the RPA of retained trees. The Tree Protection Plan (as required in BS 5837:2012) to be submitted should show location of all tree protection in relation to the proposed

development, fencing and with hatching or other to show ground protection and there should be a statement about hand digging only within RPAs - when excavations are absolutely necessary;

b) a written statement detailing the proposed works including hand digging, use of filter cloth, timber edging, cellular ground reinforcement, porous surfaces etc. as relevant;

c) a specification for protective fencing to safeguard trees during the construction phases and a plan indicating the alignment of the protective fencing;

d) a specification for ground protection within RPAs.

The development thereafter shall be implemented in strict accordance with the approved details.

Reason: To ensure that the trees to be retained and which are of value to the national scenic area will not be damaged during construction operations.

4 No development should commence until evidence has been provided to the planning authority that the ancillary building is to be connected to the public water supply and foul drainage system, unless otherwise agreed in writing with the planning authority. Thereafter, the ancillary building shall not be occupied until the connections are made to those networks.

Reason: To ensure that the development is adequately serviced with a sufficient supply of wholesome water and to ensure that the development does not have a detrimental effect on amenity and public health.

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.....

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