

SCOTTISH BORDERS COUNCIL LOCAL REVIEW BODY

MINUTE of Meeting of the LOCAL REVIEW
BODY held via Microsoft Teams on Monday,
18 October 2021 at 10.00 am

Present:- Councillors S Mountford (Chair), H. Laing, J. Fullarton, S. Hamilton, D. Moffat (from para 3), C. Ramage (from para 3), N. Richards and E. Small.

Apologies:- Councillor A. Anderson.

In Attendance:- Principal Planning Officer (C. Miller), Managing Solicitor (R. Kirk), Democratic Services Team Leader, Democratic Services Officer (F. Henderson).

MEMBERS

Having not been present when the following review was first considered Councillors Moffat and Ramage did not take part in the determination of applications 21/00013/RCOND and 21/00486/FUL and left the Meeting prior to their consideration.

1. CONTINUATION OF REVIEW 21/00013/RCOND

With reference to paragraph 3 of the Minute of 16 August 2021, there had been re-circulated copies of the request from Mr Bradley Clarke, per Ferguson Planning, Shiel House, 54 Island Street, Galashiels to review Condition 2 attached to the planning permission granted for the erection of ancillary accommodation to dwellinghouse and installation of 12KW ground mounted solar array at Penvalla, Broughton. The supporting papers included the Notice of Review; Decision Notice; Officer's Report; papers referred to in the Officer's Report; Consultations and a list of policies. Also circulated were copies of further information requested by the Local Review Body, in the form of written submissions about the Local Review Statement - Lawful Use of Annex as Holiday Accommodation from the Council's Roads and Planning Officers and a further response to those submissions from the applicant. 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, 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. Following consideration of 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. Members did agree that the occupancy could be extended to include occupancy from outwith the household of Penvalla. However, Members were not agreed on the wording of Condition 2 as detailed in the vote below.

VOTE

Councillor Laing, seconded by Councillor Fullarton moved that the condition be re-worded to allow Friends and Family use of the Annex, but that commercial letting not be permitted without a further application.

Councillor Small, seconded by Councillor Richards, moved as an amendment that the condition be removed and commercial letting allowed.

Members voted as follows:-

Motion - 4 votes

Amendment - 2 votes

The Motion was accordingly carried and the condition amended.

DECISION

DECIDED that:-

- (a) the request for review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;**
- (b) the review could be considered without the need for any further procedure on the basis of the papers submitted and the comments from the Officers on new information;**
- (c) the proposal would be consistent with the Local Development Plan and that there were no other material considerations that would justify departure from the development plan; and**
- (d) the officer's decision to approve the development subject to Condition 2 be overturned and varied and grants planning permission for the reasons set out in Appendix I to this Minute.**

2. CONTINUATION OF REVIEW 21/00486/FUL

With reference to paragraph 5 of the Minute of 16 August 2021, there had been re-circulated copies of the request from Mr S Lamb, 3 Rowan Court, Cavalry Park, Peebles to review the decision to refuse the planning application for the Change of Use of part of the ground floor to Class10 – Non-residential institutions and the conversion of the loft to accommodate additional office space, Class 4 – Business. The supporting papers included the Notice of Review; Decision Notice; Officer's Report; papers referred to in the Officer's Report; Consultations and a list of policies. Also circulated were copies of further information in the form of DDL Care Hub Ltd – Business Plan and Cavalry Park – List of Companies; and responses requested by the Local Review Body to the additional information from the Council's Planning Officers and Chief Social Work Officer with a further response to those submissions from the applicant. . Following consideration of all relevant information, the Local Review Body concluded that the development was consistent with Policies ED1 and PMD3 of the Local Development Plan. The development was considered to be a complimentary use within Cavalry Park, created replacement Class 4 use on the first floor and offered significant community benefits that outweighed the need to retain Class 4 use on the ground floor. Consequently, the application was approved.

DECISION

AGREED that:-

- (a) the request for review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;**

- (b) the review could be considered without the need for any further procedure on the basis of the papers submitted and the comments from the Officers on new information;
- (c) the proposal would be consistent with policies ED1 and PMD3 of the Local Development Plan; and
- (c) the officer's decision to refuse the application be reversed and planning permission be granted, subject to conditions for the reasons detailed in Appendix II to this Minute.

3. **REVIEW OF 21/01620/PPP**

There had been circulated copies of the request from Mr Bruce Weir, per Ferguson Planning, 54 Island Street, Galashiels to review the decision to refuse the planning application for the Erection of 4 no. dwellinghouses with associated infrastructure and access on Land South of Crunzion Cottage, Earlston Road, Stow. The supporting papers included the Notice of Review (including the Decision Notice and Officer's Report); Papers referred to in the Officer's report; Consultation replies; Objection comments; further objection comments and Applicant Response; Additional information replies and List of policies. After considering all relevant information, the Local Review Body concluded that the development was contrary to Policy PMD4 of the Local Development Plan 2016 in that it would be located outside the settlement boundary of the village and did not meet the exceptions contained within Policy PMD4, particularly in that strong reasons had not been given to demonstrate that there was a shortfall identified by the Council through the housing land audit with regard to the provision of an effective five year housing land supply. Furthermore, PMD2 of the Local Development Plan 2016. This conflict with the Local Development Plan was not overridden by other material considerations.

DECISION

AGREED that:-

- (a) the request for review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;
- (b) the review could be considered without the need for any further procedure on the basis of the papers submitted;
- (c) the proposal would be contrary to the Development Plan and that there were no other material considerations that would justify departure from the Development Plan; and
- (d) the officer's decision to refuse the application be upheld and the application be refused, for the reasons detailed in Appendix III to this Minute.

4. **REVIEW OF 21/00019/RREF**

There had been circulated copies of the request from John Patterson, 16 Riverside View, East Broomlands, Kelso to review the decision to refuse the planning application for the development of a single dwellinghouse and parking on Land Adjacent to Carnlea, Main Street, Heiton. The supporting papers included the Notice of Review; Decision Notice; Officer's Report; Objection comments, further objection comments and Applicants Response, General comments received, other information and a list of policies. The Planning Adviser drew attention to information, in the form of Land Register of Scotland – Land certificate version 12/09/2006; Letters from Scottish Water dated 20 April 2004 and 24 February 2005; Excerpts from The Robert Burns Annual and Chronicle 1948 and Excerpts from the Federation Year Book 1951 which had been submitted with the Notice of review documentation but which had not been before the Appointed Officer at the time of determination. Members agreed that the information was new but considered that it met the Section 43B test, was material to the determination of the Review and could be considered.

However, they also agreed that the new information could not be considered without affording the planning officer and roads officer an opportunity of making representations on the new information so agreed that the application be continued for further procedure.

DECISION

AGREED that:-

- (a) the request for review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;**
- (b) new evidence submitted with the Notice of Review in the form of Land Register of Scotland – Land certificate version 12/09/2006; Letters from Scottish Water dated 20 April 2004 and 24 February 2005; Excerpts from The Robert Burns Annual and Chronicle 1948 and Excerpts from the Federation Year Book 1951 met the test set in Section 43B of the Town and Country Planning (Scotland) Act 1997 and was material to the determination;**
- (c) the review could not be considered without the need for further procedure in the form of written submissions;**
- (c) the Planning Officer and Roads Officer be given the opportunity to comment on the new evidence submitted with the Notice of Review.**
- (d) consideration of the review be continued to a future meeting on a date to be confirmed.**

The meeting concluded at 12:05 p.m.