

**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 2008**

Local Review Reference: 13/00032/RREF

Planning Application Reference: 12/01191/PPP

Development Proposal: Erection of dwellinghouse

Location: Land North East of Buxton House, Eastfield, Selkirk

Applicant: Mr Hugh Lovatt

DECISION

The Local Review Body reversed the decision of the appointed officer and indicated at its meeting on 16th September 2013 that it was minded to grant planning permission subject to the applicant entering into an appropriate legal agreement to secure financial contributions towards the reinstatement of the Waverley line and the conditions set out below.

The legal agreement has now been concluded and the decision can be issued.

DEVELOPMENT PROPOSAL

The application is for the erection of a single dwellinghouse on land north east of Buxton House, Selkirk. The application drawings consisted of the following drawings:

Plan Type	Plan Reference No.
Location Plan	1:2500
Site Analysis Plan	1:2500
Title Plan	SEL 1889
Aerial Photo	-

PRELIMINARY MATTERS

After examining the review documentation, which included: (a) Decision notice, (b) Notice of Review, (c) Report of Handling, (d) Paper referred to in the Report of Handling, (e) Correspondence from consultees, (f) Correspondence from objectors, (g) Support comments, (h) Further representations and (i) List of Policies, the Local Review Body determined that it had sufficient information to determine the review. In

coming to this conclusion, the Review Body considered the request from the applicant for further procedure in the form of a site visit.

The Local Review Body considered the Review competently made under section 43A (8) of the Town & Country Planning (Scotland) Act 1997 at its meeting on 16th September 2013.

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 consolidated Scottish Borders Local Plan 2011. The Review Body considered that the most relevant of the listed policies were:

- SESplan Policies 5 and 7
- Local Plan Policies: D2, G5, G6, INF4,

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 Development Contributions 2011
- Supplementary Planning Guidance on Placemaking 7 Design 2010
- Supplementary Planning Guidance on Local Landscape Designations 2012
- The extreme hardship to be occasioned by a refusal
- The Equality Act 2010

The Local Review Body was satisfied that there was a building group at Buxton, as defined in Local Plan Policy D2 and in the approved Supplementary Planning Guidance. The Local Review Body then considered whether the development was a suitable addition to the existing group and whether the group had the capacity to accommodate further development.

The Local Review Body took cognisance of the previous planning decisions on the site and in particular the determination in 2010 by the Local Review Body. They concluded that the site was located within the building group at Buxton; it fell within the area contained by its boundaries and sense of place. They also agreed that the north western boundary of that group was defined by the Dean Burn and the adjoining mature tree belt rather than the topography of the garden to Buxton House or man made boundaries adjoining the application site.

The Review Body also concluded that Buxton House formed an end stop to the built form of the group and that the application site and surrounding land were open areas that were in themselves part of the scenic qualities and character of the building group. Members determined that the proposal was therefore contrary to the stated Development Plan policies and the guidance in New Housing in the Borders Countryside SPG. In coming to this conclusion, they also considered the terms and

reasoning for the Section 75 Agreement entered into when Buxton House had been developed, that the group should not be added to further.

The Review Body accepted that the new dwellinghouse would generate additional traffic on the existing access road serving the site. However, they did not consider that the access was of such a standard that it could not accommodate one additional dwelling. They concluded that this was a not a justifiable reason to refuse the application.

Members debated at length the applicant's personal medical circumstances and whether they were a material consideration. They also considered the implications of the Equality Act 2010. The applicant's submissions had stressed that his circumstances had changed in recent years and that a new dwellinghouse designed for disabled access was required to meet his living needs. It had also been highlighted in the submissions that there was no viable or affordable means of adapting his existing house to allow suitable levels of wheelchair access.

The Local Review Body considered that personal circumstances can rarely be taken into account in considering the merits of planning applications; that any material consideration should serve or be related to the purpose of planning, relate to the development and use of land, and be fairly and reasonably related to the particular application. However, after reviewing the case in detail, the Local Review Body was persuaded that, in these specific circumstances, this information submitted by the appellant was material to the consideration of the appeal. The LRB concluded that a refusal of permission would cause the appellant extreme hardship. It concluded that this fact, together with the provisions of Section 149 of the Equality Act, enabled it to grant an exceptional approval of the application; to grant planning permission to the appellant to erect a new house specifically designed to improve his quality of life and to allow him to remain in an area with which he is familiar and to retain a connection to his existing small holding and equestrian operations.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that while the development was contrary to the Development Plan there were substantial and overriding material factors in this instance that outweighed the presumption in favour of the Development Plan.

CONDITIONS

1. Approval of the details of the layout, siting, design and external appearance of the building(s), the means of access thereto and the landscaping of the site shall be obtained from the Local Planning Authority.
Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.
2. Application for approval of matters specified in the conditions set out in this decision shall be made to the Planning Authority before whichever is the latest of the following:
 - (a) the expiration of three years from the date of this permission, or
 - (b) the expiration of six months from the date on which an earlier application for approval of matters specified in the conditions set out in this decision notice was refused or dismissed following an appeal.

Only one application may be submitted under paragraph (b) of this condition, where such an application is made later than three years after the date of this consent.

Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

3. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the matters specified in the conditions set out in this decision.
Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.
4. No development shall commence until written evidence is provided on behalf of Scottish Water to confirm that mains water, foul and surface water drainage systems shall be made available to serve the development.
Reason: To ensure the development can be adequately serviced
5. 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.
6. A Design Statement for the development must be submitted for the approval of the Planning Authority in conjunction with the submission of the first application for the Approval of Matters Specified in Conditions pursuant to this consent. The Design Statement shall set out the design rationale that underpins the development and must illustrate how the development will deliver a fully accessible dwellinghouse that is appropriate for the locality. In this respect, the design of the dwellinghouse must include the following elements:
 - a. fully detailed drawings showing wheelchair access into and throughout the dwellinghouse;
 - b. details of how the property and its facilities will meet the applicant's living needs;
 - c. details of wheelchair access from the house to the stables and adjoining land holding;
 - d. a traditional design of house in terms of scale, form and external materials used, and;
 - e. be single storey.

All Approval of Matters Specified in Conditions application must be compliant with the terms of the agreed Design Statement.

Reason: To ensure the satisfactory form, layout and assimilation of the development into the building group at Buxton.

SECTION 75 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 the Waverley Line reinstatement

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. 

Chairman of the Local Review Body

Date.....17.9.18.....

